

California Supreme Court: Continuous Accrual Principles Apply to 17200 Claims

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Today the California Supreme Court issued a long-awaited ruling in the *Aryeh* case regarding the application of the common law theory of continuous accrual to actions under the unfair competition law (Bus. & Prof. Code section 17200 et seq.) Though the case does not expressly address labor or employment issues, the case is nevertheless important for California employers, as the majority of employment litigation claims made are coupled with a 17200 claim.

In this case, the business owner leased copiers from the copy company and under the lease agreement, was required to pay a monthly rent for each machine plus an additional per copy charge for any copies over the maximum monthly allowance. The business owner noticed that the copy company's readings of the meter always differed from the actual number of copies made, and complained to the copy company. After receiving no response, he began keeping his own records, and he ultimately found that the copy company service employees were running thousands of test copies which resulted in him exceeding his monthly allowances. He, therefore, filed suit under the unfair competition law claiming that the copy company knew or should have known it was engaging in this practice of test copies, which it then improperly charged the business owner for. The business owner also made class allegations and sought restitution.

The copy company challenged the complaint on the grounds that it was time-barred. The trial court ultimately agreed, holding that the clock on a UCL claim starts running when the first violation occurs. Since the complaint alleged that the violations commenced in 2002, the 2008 lawsuit was deemed untimely as it had not been filed within four years of the violation.

The business owner appealed, and the Court of Appeals affirmed, holding that neither the delayed discovery nor the continuing violation doctrine applied to extend the statute for bringing UCL claims. The California Supreme Court granted review.

The Court disagreed with the lower courts and reversed the ruling. It reasoned that the common law theory of continuous accrual states that a cause of action that challenges a recurring wrong can accrue each time that a new wrong is committed. A review of the text and legislative history of the UCL compelled the Court to ultimately conclude that the same common law rules of accrual applicable to other causes of action should similarly apply

to claims made pursuant to the UCL. Just because a claim is labeled a UCL claim is not, in and of itself, dispositive. Rather, it's the "nature of the right sued upon" which compels this conclusion. Further, UCL does not have a definition of what it means for a UCL claim to accrue, so its silence suggests that common law accrual principles apply.

Thus, under these circumstances, continuous accrual principles prevented the complaint from being dismissed on demurrer on those grounds. This is because each bill that the business owner received allegedly contained the unfair charges, which constituted a wrongful act each time, triggering a new statute of limitations.

Notably, though the business owner also relied upon the continuing violation doctrine as a further argument to stave off dismissal, the California Supreme Court, like the lower courts before it, rejected this argument. In reviewing the pleadings, the Court noted that the business owner identified a series of discrete, independently actionable alleged wrongs, and did not involve a situation in which a wrongful course of conduct only became apparent through the accumulation of a series of harms. Thus, the continuing violation doctrine was inapplicable.

It is always important to evaluate claims for a potential statute of limitations defense. Cases like these, however, demonstrate that California courts are more and more likely to broaden the interpretation of the law so as to permit parties their day in court.

For more information read *Aryeh v. Canon Business Solutions, Inc.*, No. S184929 (Cal. Sup. Ct., January 24, 2013).

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