

Ruling: Winners in meal break cases can't collect legal fees

Sacramento Business Journal by **Kathy Robertson, Senior Staff Writer**

Date: Monday, May 21, 2012, 2:27pm PDT - Last Modified: Monday, May 21, 2012, 3:51pm PDT

The California Supreme Court has ruled that the winning party in meal and rest break cases cannot recover attorneys' fees.



Kathy Robertson Senior Staff Writer- *Sacramento Business Journal*

In an unanimous decision in *Kirby v. Immoos Fire Protection Inc.*, the court ruled April 30 that neither employees nor employers who prevail can collect legal fees. The decision could reduce wage-and-hour litigation by making employees think twice before filing a lawsuit and encourage more to file complaints with the state labor commissioner instead, observers say.

Local sprinkler fitter workers sued Immoos Fire Protection of Sacramento and area builders in 2007 on seven wage-and-hour issues that range from unfair business practices to failure to pay overtime or wages owed at each pay period. They later settled with some of the defendants and dismissed the lawsuit. Immoos did not settle and demanded attorney's fees.

Mixed lower court rulings brought the matter to the state Supreme Court. The court looked at whether attorneys' fees could be awarded in meal and rest break cases under either of the following two laws:

- Labor Code Section 218.5, which says attorneys' fees should be awarded to the prevailing party in "any action brought for the nonpayment of wages," or
- Labor Code Section 1194, which says employees who win any action for unpaid minimum wages or overtime should be awarded attorneys' fees.

Neither section of the law authorizes attorney fees to the winning party in a meal and rest break complaint, the Supreme Court ruled. These cases are not about nonpayment of wages but failure to provide meal and rest periods, the court ruled. Although the remedy for failure is a wage — one hour of premium pay — the nature of the violation is failure to provide a break, not failure to pay wages, according to a California Chamber of Commerce

"This is a great decision for all California employers except my guy — he got stuck paying his own legal fees," said **Bob Rediger, a Sacramento attorney** who represents the fire district. "I expect it will dissuade actions brought by disgruntled employees or attorneys who want to parlay them into class actions, because there won't be money in it." Workers can file wage and hour complaints with the state labor commissioner — and get some back pay when the employer has erred — but the payouts typically aren't as big as those filed in court. "My office is defending three class actions and one attorney already has called to settle the case," Rediger said. "Another said he was not going to pursue the matter."