

## THE IMPORTANCE OF DOCUMENTATION

In a recent California Court of Appeals decision, employers are reminded that a lack of documentation can hinder their ability to defend against an employee claim for additional compensation. In the case of *Furry v. East Bay Publishing, LLC*, the Court of Appeal held that if an employer fails to keep accurate records of an employee's work hours, even "imprecise evidence" by the employee "can provide a sufficient basis for damages." Importantly, the dispute in *Furry* was with regard to damages, not the underlying wage and hour claim.

In *Furry*, the employee was classified as exempt and, thus, did not track the hours that he worked. The employer did not challenge the ruling of the trial court that found that the employer had failed to prove that *Furry* was properly classified as exempt. Due to the fact that the employee had been classified as exempt, the employer did not require him to document the hours that he had worked. As such, when the employee made an overtime claim, the employer lacked any evidence of the hours that the employee had actually worked.

The Court allowed the employee's memory to satisfy his initial burden of proving that he performed work for which he was not paid and to show the amount and extent of that work. The burden then became the employer's to show evidence of the precise amount of work performed. The employer could not. Thus, in the absence of the availability or even existence of accurate time records, the court drew what it classified as reasonable inferences from the employee's evidence of the hours he worked.

This case also underscores the courts' expectation that employers maintain general documentation in an employee file. This includes obligatory legal documentation, i.e., I-9's, and

documentation of performance and discipline. Akin to the burden shifting that took place in *Furry*, an employer in a wrongful termination case that is claiming that it terminated an employee for a non-discriminatory or retaliatory reason, should have documentation to support its defense. Without it, courts are apt to give an employee's "imprecise evidence" the benefit of the doubt.

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