

Dollar Tree's Pay Stub Trial Win Stands After 9th Circ. Review

By Dave Simpson

<https://www.law360.com/articles/1155990/dollar-tree-s-paystub-trial-win-stands-after-9th-circ-review>

Law360 (May 2, 2019, 11:00 PM EDT) -- The Ninth Circuit has declined to revive class claims that Dollar Tree's practice of providing pay stubs on cash register receipts violated a California law requiring employers to provide accessible wage statements, rejecting claims that erroneously excluded evidence led to a jury's decision clearing the retailer.

In a unanimous decision Tuesday, the panel affirmed the trial judge's decision to preclude workers from showing the jury methods that other employers use for providing pay stubs. If the comparison evidence was presented, the trial judge concluded, a jury might mistake such best practices for the requirement under the law.

Thursday's panel ruled that the trial judge hadn't abused his discretion in reaching that decision, agreeing that the best method of delivering pay stubs is not the same as the legal standard for delivering them.

"There is no legal authority requiring Dollar Tree to make its wage statements as accessible as similar businesses do, and the concern of the district court regarding jury confusion was well-founded," the panel said.

The suit, brought by named plaintiff Francisca Guillen, claimed that instead of getting a paper statement or having an online portal, workers who want their direct deposit wage statements have to print them off of the cash registers at the stores.

Meanwhile, corporate workers have access to wage statement information via a company website, Guillen's counsel argued at trial.

Dollar Tree contended that its register stub system was designed to be convenient and free for store associates, who may not have access to the internet or a printer at home to get wage statements. The register statements didn't exclude any lawfully required information, Dollar Tree said, and employees were also permitted to call a company phone number to receive a paper statement in the mail.

In February 2017, U.S. District Judge Michael Fitzgerald certified the class over the wage statement claim that covers anyone who worked at retail stores in California at any time on or after April 2, 2014, who received their wages via direct deposit or a type of pay card, and hadn't entered into an arbitration agreement with Dollar Tree.

In November 2017, a California federal jury found that Dollar Tree's practice of providing pay stubs on cash register receipts for a class of 5,400 retail employees didn't violate a state law requiring that employers provide accessible wage statements.

The jury found that Dollar Tree provided workers with easy access to their electronic wage statements, ending an inquiry over whether any failure to provide easy access was intentional or caused any injuries.

The workers appealed, arguing that they should have been allowed to present the comparison evidence, that the court's instructions to the jury should have explained a California law, and that they should have been allowed to amend the complaint.

As to the jury instructions, the workers claimed that the jury should have been told that a California law requires employers to provide easy access to wage statements over the previous three years in instances where it elects to furnish electronic wage statements.

The panel disagreed, saying that the workers were referencing the wrong subsection of the law in question.

"Section 226 (a) of the California Labor Code establishes requirements for employers furnishing and retaining copies of wage statements, but imposes no requirement governing how employees may access retained copies of past wage statements," the panel said. "Those requirements are contained in separate provisions in Section 226 (b) and (c), violations of which were not claimed in this case."

And the panel said that the workers took too long to amend their pleadings as to claims under California's Private Attorney General Act, so the court was right to reject their request for leave to amend.

The deadline for amending the pleadings or adding parties was in December 2015, the panel said, and the workers didn't submit its PAGA pre-filing administrative notice until October 2016 and didn't try to file a third amended complaint until February 2017.

"Guillen contends that she could not seek this amendment until she had complied with PAGA's notice requirement but offers no explanation as to why she delayed fulfilling that requirement for almost a year after the deadline to add parties or amend pleadings," the panel said.

Josh Boxer, who is representing the workers, said they are considering options, including a petition for writ of certiorari.

"We believe that Dollar Tree Stores consistently violates settled law by failing to provide wage statements in a lawful and consistent manner throughout its stores, depriving their employees of vital information," he said in an email. "We hope that, despite the court's ruling, Dollar Tree takes appropriate action to treat all of its workers — from executives to store level employees — with equal dignity."

Representatives for Dollar Tree did not immediately respond to request for comment Thursday.

The workers are represented by Matthew J. Matern and Josh Boxer of Matern Law Group PC.

Dollar Tree is represented by Elena R. Baca of Paul Hastings LLP.

The case is Guillen v. Dollar Tree Stores Inc. et al., case number 17-56779, in the U.S. Court of Appeals for the Ninth Circuit.

--Editing by Jay Jackson Jr.