

## Can an Employee Seeking Unpaid Wages Use the Tort of Conversion?



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In a rare but positive development from the California Supreme Court, employers now have binding authority for the position that an employee-plaintiff cannot bring a conversion tort claim against a company's officer for unpaid wages. Yesterday, the California Supreme Court issued its decision in *Voris v. Lampert*. The case presented the issue of whether an employee's conversion claim for earned but unpaid wages was a valid cause of action. In a definitive decision, the Court held that "the conversion tort is not the right fit" for a claim for unpaid wages.

The Court affirmed the old adage that the employment relationship is "fundamentally contractual" in nature and that the promise to pay money in return for services rendered lies at the heart of this relationship. The Court affirmed the Court of Appeal's ruling holding that as applied to employers, a conversion claim for unpaid wages would duplicate the remedies already set forth under the Labor Code and wage orders, and that there was no sufficient justification for layering tort liability on top of the extensive existing remedies for earned, but unpaid wages.

The case essentially confirms the status quo: prohibiting employees from filing tortious causes of action for unpaid wages. The key take away is that employees cannot tack on the remedies available under tort law (punitive damages, emotional distress, consequential damages) in addition to the lofty penalties already in place for wage and hour violations. While the case is good news in that it maintains the status quo—unlike recent Supreme Court decisions like *Dynamex*—employers should still be vigilant about ensuring the timely payment of wages and compliance with the applicable wage and hour laws in light of the comprehensive scheme and the accompanying penalties set forth in the Labor Code. Indeed, various portions of the Labor Code already provide that corporate officers and managing agents can face statutory liability for their willful misconduct pertaining to wage nonpayment. (See, e.g., Cal. Lab. Code §§ 216, 225.5, 558.1.) Moreover, where there is evidence that officers or directors have abused the corporate form, an employee-plaintiff may proceed on a theory of alter ego liability against individual officers, directors, or managing agents. Finally, employers should be aware that the Court, in dicta, suggested an employee-plaintiff could bring a viable claim for conversion where the employee alleges the employer has

misappropriated gratuities or stocks earned by the employee. Employers who have questions about the legality of their policies and/or wage and hour practices should consult with counsel.

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