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6/3/08

LABOR CODE
Division 3. Employment Relations
Chapter 2. Employer and Employee
Article 2. Obligations of Employer

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Cal Lab Code § 2802 (2008)

§ 2802. Indemnification of employee for expenditures or losses in discharge of duties or obedience to directions

(a) An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

(b) All awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.

(c) For purposes of this section, the term "necessary expenditures or losses" shall include all reasonable costs, including, but not limited to, attorney's fees incurred by the employee enforcing the rights granted by this section.

HISTORY:

Enacted 1937. Amended Stats 2000 ch 990 § 1 (SB 1305).

NOTES:

Amendments:

2000 Amendment:

(1) Designated the former section to be subd (a); (2) amended subd (a) by substituting (a) "or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her" for "employee for all that the employee necessarily expends or loses in direct consequence of the discharge of his duties as such, or of his"; and (b) "the" for "such" after "time of obeying"; and (3) added subds (b) and (c).

Historical Derivation:

Former CC § 1969.

Note

Stats 2000 ch 990 provides:

SEC. 2. Nothing in this act is intended to establish the right of the Division of Labor Standards Enforcement to be awarded costs and attorney's fees.

Cross References:

Effect of contract or agreement to waive benefits of section: *Lab C § 2804.*

Indemnity: *CC § 2772.*

Damages for wrongs: *CC §§ 3333 et seq.*

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 115 "Civil Rights: Employment Discrimination".

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 248 "Employer's Liability For Employee's Torts".

Cal. Points & Authorities (Matthew Bender(R)) ch 100A "Employer And Employee: Respondeat Superior," § 100A.52.

Cal. Points & Authorities (Matthew Bender(R)) ch 115 "Indemnity And Contribution," § 115.94.

2 Witkin Summary (10th ed) Workers' Compensation § 42.

3 Witkin Summary (10th ed) Agency and Employment §§ 122, 123, 124.

5 Witkin Summary (10th ed) Torts § 373.

Cal Jur 3d (Rev) Employer and Employee § 31.

Forging a shield against sexual harassment claims. 10 CEB Bus L Practitioner 85.

Hanna, Cal Emp Inj & Workers' Comp. 2d (Rev) § 4.01 [2].

Cal. Legal Forms, (Matthew Bender) §§ 12C.24[9], 85.410[1][c], 85.442[1][c], 85.460[1][a], 85.480[1][b], 85.482[1][b], 85.12[3], 85.200[1][d][iv], 85.460[1][b].

Matthew Bender (R) Insurance Law & Practice § 46.05.

Forms:

Suggested forms are set out below, following notes of decisions.

Law Review Articles:

No man is an island: A compendium of legal issues confronting attorneys when individual defendants are named in an employment litigation complaint. 20 *Pacific LJ* 293.

Hierarchy Notes:

Div. 3 Note

Div. 3, Ch. 2 Note

Div. 3, Ch. 2, Art. 2 Note

NOTES OF DECISIONS

1. Generally
2. Applicability
3. Federal Law
4. Duty of Employer
5. Standing
6. Procedure
7. Actions against Employer

1. Generally

It is sufficient to establish liability under this section that the plaintiff was performing services at the request of and for the benefit of the defendant, and that the plaintiff was under the direction and control of the defendant while performing the services. *Tucker v. Cooper (1916) 172 Cal 663, 158 P 181, 1916 Cal LEXIS 585.*

The transfer of the provisions of former CC § 1969 to this section did not impose an independent liability for injuries to the person of the employee which are compensable under the workmen's compensation provisions of this code. *Roberts v. U. S. O. Camp Shows, Inc.* (1949, Cal App) 91 Cal App 2d 884, 205 P2d 1116, 1949 Cal App LEXIS 1319.

Lab Code, § 2802, requiring an employer to indemnify an employee for expenses and losses resulting from the employee's discharge of his duties or his obedience to the directions of his employer, requires an employer to defend or indemnify an employee who is sued by third persons for conduct in the course and scope of his employment, and there is no requirement that the action must be one which was "not brought in bad faith," unless the term "bad faith" is intended only to exclude actions brought as a result of collusion between the third person and the employee. *Douglas v. Los Angeles Herald-Examiner* (1975, Cal App 2d Dist) 50 Cal App 3d 449, 123 Cal Rptr 683, 1975 Cal App LEXIS 1310.

Factors having an obvious bearing on whether legal expenses incurred by an employee were necessary, within the meaning of *Lab. Code*, § 2802 (employer must indemnify employee for expenses or losses necessarily incurred in direct consequence of discharge of employee's duties), include: whether the employer has already agreed to provide counsel; the competency and experience of counsel provided by the employer; any time constraints requiring the employee to take unilateral action in selecting and hiring counsel; the complexity and difficulty of the litigation against the employee in relation to the ability and capacity of the employer-provided counsel; whether there are any conflicts between the employer and employee; the past history of the relationship between the employer and employee; and the nature of any problems arising in the attorney-client relationship and the reasons behind those problems. Evidence relating to these factors is obviously relevant in determining whether any given expenditure is a necessary one. *Grissom v. Vons Companies, Inc.* (1991, Cal App 4th Dist) 1 Cal App 4th 52, 1 Cal Rptr 2d 808, 1991 Cal App LEXIS 1346.

Even where a party is legally obligated to indemnify a second party, the first party's insurer is not the insurer of the second. *Lab C § 2802's* provisions promise an employee that he will be indemnified by the employer, but do not provide access to the pocketbook of an employer or its insurer through a third party suit against the employee. *Boyer v. Jensen* (2005, Cal App 2d Dist) 129 Cal App 4th 62, 28 Cal Rptr 3d 124, 2005 Cal App LEXIS 728, rehearing denied ces, L.P. (2005) 2005 Cal. App. LEXIS 919 .

Purported waiver of indemnity rights under *Lab C §§ 2802, 2804* in a release prepared by an employer violated public policy and was an independently wrongful act for purposes of the employee's action for intentional interference with prospective economic advantage. *Edwards v. Arthur Andersen LLP* (2006, Cal App 2d Dist) 142 Cal App 4th 603, 47 Cal Rptr 3d 788, 2006 Cal App LEXIS 1320, modified (2006) 2006 Cal. App. LEXIS 1488, review gr, depublished (2006) 52 Cal. Rptr. 3d 86, 147 P.3d 1013, 2006 Cal. LEXIS 14181, 2006 Cal. Daily Op. Service 10939, 2006 D.A.R. 15607.

Contract provision releasing "any and all" claims does not encompass nonwaivable statutory protections such as the employee indemnity protection of *Lab C § 2802*, and accordingly is not void under *Lab C § 2804*. *Edwards v. Arthur Andersen LLP* (2008, Cal) 44 Cal 4th 937, 2008 Cal LEXIS 9618.

2. Applicability

Where use of employee's automobile in employer's business was made by employee without any intention of making any charge therefor, other than value of gasoline, oil, and tires used in its operation which he drew from employer, and was therefore gratuitously given, except to extent it might be compensated by value of such supplies, such use could not form legal basis for demand for compensation. *O'Brien v. L. E. White Lumber Co.* (1919, Cal App) 43 Cal App 703, 185 P 514, 1919 Cal App LEXIS 862.

Mechanic's tools destroyed by fire when left overnight in the garage where the owner of the tools worked during the day are not indemnified by this section, the employee not being required to keep his tools at the garage at night. *Earll v. McCoy* (1953, Cal App) 116 Cal App 2d 44, 253 P2d 86, 1953 Cal App LEXIS 1036.

On appeal from a judgment in favor of an employer, in an action brought by a newspaper reporter for indemnity for losses and expenses incurred in defending an action brought by a third person, in which the trial court failed to find whether or not the reporter was sued because of acts committed within the scope and course of his employment, the appellate court could not hold as a matter of law that the employer knew that it was potentially liable to indemnify the reporter, where the trial court made no such finding. Since the reporter's right of recovery was derived from a statute, *Lab. Code*, § 2802, rather than a policy, and since the statutory right is based upon a state of facts requiring that the employee be sued "in direct consequence of the discharge of his duties as such, or of his obedience to the direction of the employer," it must logically follow that if the statutorily defined state of facts do not exist, then the statutory rights do not arise. Consequently, an employer does not have a duty to defend an employee who is sued solely because he was off on a frolic of his own not within the scope of his employment and not in obedience to the directions of his employer. *Douglas v. Los Angeles Herald-Examiner* (1975, Cal App 2d Dist) 50 Cal App 3d 449, 123 Cal Rptr 683, 1975 Cal App LEXIS 1310.

Lab. Code, § 2802, which provides for indemnity by an employer to an employee for losses in direct consequence of the discharge of the employee's duties, was applicable where a mechanic's tools were stolen in a weekend burglary of his employer's premises. The custom of the trade required the mechanic to supply his own tools for the performance of his duties. While the employer did not require the mechanic to leave his tools on the premises, the tools were too heavy to be transported routinely to and from the place of employment. Therefore the loss was incurred in direct consequence of the discharge of the employee's duties, and was therefore incidental to his employment. *Machinists Automotive Trades Dist. Lodge v. Utility Trailers Sales Co.* (1983, Cal App 1st Dist) 141 Cal App 3d 80, 190 Cal Rptr 98, 1983 Cal App LEXIS 1510, appeal dismissed (1983) 464 US 1005, 104 S Ct 520, 78 L Ed 2d 705, 1983 US LEXIS 2612.

In a negligence action against an employee, stemming from an automobile accident, and against his employer under the theory of respondeat superior, in which the employer filed a cross-complaint against the employee for comparative indemnity and declaratory relief, the employee was not "aggrieved" by the special verdict that he had been acting outside the scope of his employment, and therefore he had no standing to file an appeal from the denial of his motion for a judgment notwithstanding the verdict, pursuant to *Code Civ. Proc.*, § 902 (appeal rights of aggrieved party). The employee was not

aggrieved by the exoneration having deprived him of any indemnification he might have been entitled to pursuant to *Lab. Code, § 2802*, since an individually liable tortfeasor is not aggrieved by the exoneration of a joint tortfeasor even when that exoneration defeats what would otherwise be an actionable cause for contribution. *Holt v. Booth* (1991, *Cal App 4th Dist*) 1 *Cal App 4th* 1074, 2 *Cal Rptr 2d* 727, 1991 *Cal App LEXIS* 1446.

In an action by four police officers against the city in which they were employed, seeking indemnity pursuant to *Lab. Code, § 2802*, for legal fees incurred in their successful defense of criminal charges brought for actions taken within the scope of their employment, the trial court properly ruled in favor of the city. Even assuming that *Lab. Code, § 2802*, provides indemnity in such a case for a private employee, *Gov. Code, § 995.8*, specifies that public entities are not required to provide for the defense of criminal actions brought against their employees. When two acts governing the same subject cannot be reconciled, the later in time prevails over the earlier, and a particular provision prevails over a more general one. Thus, *Gov. Code, § 995.8*, prevails to the extent necessary over *Lab. Code, § 2802*, in cases involving public employees, since *Gov. Code, § 995.8*, is more recent and more particular than *Lab. Code, § 2802*. Moreover, the explicit language of *Gov. Code, § 995.8*, would be undermined by an interpretation allowing the general provision of *Lab. Code, § 2802*, to require the city to pay plaintiffs' criminal defense costs. *Los Angeles Police Protective League v. City of Los Angeles* (1994, *Cal App 2d Dist*) 27 *Cal App 4th* 168, 32 *Cal Rptr 2d* 574, 1994 *Cal App LEXIS* 787.

Plaintiff failed to state a cause of action against her former employer, a law firm, for indemnity under *Lab. Code, § 2802* (employer must defend or indemnify employee sued by third persons for conduct in course and scope of employment), for legal counsel in connection with depositions in other actions, at one of which she produced documents she had taken from defendant's premises. The statute requires indemnity for an employee's legal expenses only when the expenses are related to conduct of the employee within the course and scope of his or her employment, and plaintiff did not meet this criterion, since she took a position in her depositions adverse to the interests of defendant. The reason she incurred the expense of an attorney was to protect her from inadvertently waiving her right against self-incrimination in connection with her unauthorized removal of defendant's documents and her production of them at her deposition. Also, even if she had been entitled to indemnity, her expenses had already been reimbursed otherwise. *Devereaux v. Latham & Watkins* (1995, *Cal App 2d Dist*) 32 *Cal App 4th* 1571, 38 *Cal Rptr 2d* 849, 1995 *Cal App LEXIS* 209, review denied (1995) 1995 *Cal. LEXIS* 3734, overruled in part *Moran v. Murtaugh Miller Meyer & Nelson, LLP* (2007) 40 *Cal 4th* 780, 55 *Cal Rptr 3d* 112, 152 *P3d* 416, 2007 *Cal LEXIS* 1897.

The court affirmed summary judgment in favor of former union officials in their action against the union for indemnification arising out of an underlying age discrimination/wrongful termination action brought by a former union employee against the union and its officials. The union officials could act within the scope of employment even if acts were illegal or not in the employer's interests; claims against the officials were unfounded as a matter of law and their actions were within the scope of employment. As to the union's cross-claim for costs incurred defending and settling the discrimination action, defense costs can only be recovered where a judgment has been rendered against an employer for damages occasioned by the unauthorized negligent act of an employee. *O'Hara v. Teamsters Union Local*

#856 *O'Hara v. Teamsters Union Local #856*, (1998, 9th Cir Cal) 151 F3d 1152, 1998 US App LEXIS 17036.

An employee who was sued by a coworker for sexual harassment was entitled under *Lab C § 2802* to indemnification from his employer of the legal costs incurred in successfully defending the sexual harassment action. Although the test for recovery under § 2802 is whether the conduct defended against was within the course and scope of employment and sexual misconduct falls outside the course and scope of employment, the conduct at issue was determined in the underlying action not to amount to sexual harassment. However, the employee was not entitled to recover his attorney fees in bringing the indemnification action. *Jacobus v. Krambo Corp.* (2000, Cal App 1st Dist) 78 Cal App 4th 1096, 93 Cal Rptr 2d 425, 2000 Cal App LEXIS 159.

Vessel's pilot was not entitled to judgment on the pleadings in his declaratory judgment cross-claim against the vessel's owner, asserting that the owner was obligated under California law, specifically *H & N C § 1134* and *Lab C § 2802*, to indemnify the pilot for all expenditures or losses incurred in an accident in which a longshoreman was injured; the pilot's reliance on California law was misplaced, as the law to be applied in maritime cases was the general maritime law of the United States. Under general maritime law, because the pilot was a compulsory pilot aboard the vessel at the time of the accident and the owner was the vessel's owner, the owner could not be held personally liable for loss attributed to the pilot's negligence. *Davenport v. M/ooV New Horizon* (2002, ND Cal) 2002 US Dist LEXIS 26811.

Employer and its insurer could not be pursued indirectly under *Lab C § 2802* by the continuation of an injured driver's action (for injuries arising out of an automobile accident) against an employee, who was dismissed because he had been discharged in bankruptcy, because the fact that the driver had a statute of limitations problem that precluded suit against the employer did not justify creating an expanded exception to bankruptcy discharge law. Section 2802 did not allow the driver access to the pocketbook of the employer or its insurer through a third party suit against the employee. *Boyer v. Jensen* (2005, Cal App 2d Dist) 129 Cal App 4th 62, 28 Cal Rptr 3d 124, 2005 Cal App LEXIS 728, rehearing denied ces, L.P. (2005) 2005 Cal. App. LEXIS 919 .

Substantial evidence supported a finding that drivers who worked for a package delivery company were employees and not independent contractors because the company had extensive control over their work; the drivers worked on an exclusive full time basis, were paid weekly, and had regular schedules and routes. *Estrada v. FedEx Ground Package System, Inc.* (2007, 2d Dist) 2007 Cal App LEXIS 1302.

Accounting firm's demand that employee sign a termination of non-compete agreement in order to be released from a noncompetition agreement the employee had signed as a condition of employment did not purport to release the firm from any nonwaivable statutory claims, and therefore was not unlawful under *Lab C § 2802* and *Lab C § 2804*. *Edwards v. Arthur Andersen LLP* (2008, Cal) 44 Cal 4th 937, 2008 Cal LEXIS 9618.

3. Federal Law

A mechanic's claim under *Lab. Code, § 2802*, of a statutory right to indemnity from his employer for the loss of his tools, stolen in a weekend burglary of the employer's premises, was not preempted by federal labor law,

despite the employer's contention that the terms of the mechanic's employment were a subject of collective bargaining and that the final resolution of that issue in the bargaining supersedes any state law. In arbitration proceedings, the arbitrator concluded that the issue of indemnity for the loss of tools was not resolved by collective bargaining, as the parties failed to agree upon a proposal covering total losses. In any event, the mechanic's statutory right to indemnity was independent of any contractual right, and the arbitrator had authority only to resolve contractual questions. *Machinists Automotive Trades Dist. Lodge v. Utility Trailers Sales Co.* (1983, Cal App 1st Dist) 141 Cal App 3d 80, 190 Cal Rptr 98, 1983 Cal App LEXIS 1510, appeal dismissed (1983) 464 US 1005, 104 S Ct 520, 78 L Ed 2d 705, 1983 US LEXIS 2612.

Employee's claim that the employers' attribution of additional income to employees for their use of company vehicles to and from their homes was a failure to indemnify employees for business expenses in violation of Lab C § 2802 was improperly removed because it did not raise a substantial question of federal law. The claim was not an artfully pleaded federal tax refund claim under 26 USCS § 7422(a) that the employers misapplied 26 USCS § 61 because the employee challenged the employers' attribution as applied and did not seek recovery of taxes already paid to the Internal Revenue Service under the current policy or dispute the regulations that fringe benefits could include commuting in a company vehicle. *McMaster v. Coca-Cola Bottling Co.* (2005, ND Cal) 392 F Supp 2d 1107, 2005 US Dist LEXIS 5978.

4. Duty of Employer

Lab. Code, § 2802, requires employers in general to pay defense costs incurred by employees when defending unfounded third party civil actions challenging the employees' conduct within the course and scope of their employment. When an employer refuses to defend an employee in an action that may or may not be unfounded for conduct that may or may not have been within the course and scope of his or her employment, and it is ultimately established that the action was unfounded and the employee acted within the course and scope of his or her employment, then the employer has an obligation under § 2802 to indemnify the employee for his or her attorney fees and costs in defending the action. However, this right to indemnity encompasses only the right to indemnity for necessary expenditures. *Los Angeles Police Protective League v. City of Los Angeles* (1994, Cal App 2d Dist) 27 Cal App 4th 168, 32 Cal Rptr 2d 574, 1994 Cal App LEXIS 787.

Lab. Code, § 2802, requires an employer to defend or indemnify an employee who is sued by third persons for conduct in the course and scope of the employee's employment. The section requires an employer in general to pay defense costs incurred by an employee when defending an unfounded third party civil action challenging the employee's conduct within the course and scope of his or her employment. This right to indemnity encompasses only the right to indemnity for necessary expenditures. The test of whether an employee's conduct is within the scope of the employment is whether that conduct was so unusual or startling that it would be unfair to include the loss within the employer's cost of doing business. *Devereaux v. Latham & Watkins* (1995, Cal App 2d Dist) 32 Cal App 4th 1571, 38 Cal Rptr 2d 849, 1995 Cal App LEXIS 209, review denied (1995) 1995 Cal. LEXIS 3734, overruled in part *Moran v. Murtaugh Miller Meyer & Nelson, LLP* (2007) 40 Cal 4th 780, 55 Cal Rptr 3d 112, 152 P3d 416, 2007 Cal LEXIS 1897.

Lab C § 2802 requires an employer to indemnify his employee for all that the employee necessarily expends or loses in direct consequence of the discharge of his duties; this statute obligates the employer not only to pay any judgment entered against the employee for conduct arising out of his employment but also to defend an employee sued by a third person for such conduct. Unlike an insurer, the employer is not mandated to defend the employee whenever there is a potential for liability; however, if the employer elects to run a risk and refuses to defend, the employer must indemnify the employee for his attorney fees and costs in defending the underlying action if the employee was sued for acts within the scope of his employment. *Plancarte v. Guardsmark* (2004, Cal App 1st Dist) 118 Cal App 4th 640, 13 Cal Rptr 3d 315, 2004 Cal App LEXIS 721.

Because *Lab C § 2802* does not include a requirement to defend, a law firm's failure to defend an attorney in a professional negligence action did not obligate the firm to reimburse the attorney for fees incurred defending claims premised on his acts while employed elsewhere. *Cassady v. Morgan, Lewis & Bockius LLP* (2006, Cal App 2d Dist) 145 Cal App 4th 220, 51 Cal Rptr 3d 527, 2006 Cal App LEXIS 1877, modified (2006) 2006 Cal. App. LEXIS 2030.

Attorney who had been employed by several law firms had the burden of proof under *Ev C § 500* to establish, as an element of his *Lab C § 2802* indemnity action against a former employer, that his expenses incurred in defending a legal malpractice action arose from the discharge of his duties while working for that employer; as to claims arising from the attorney's conduct while employed elsewhere, the employer had no duty to indemnify. *Cassady v. Morgan, Lewis & Bockius LLP* (2006, Cal App 2d Dist) 145 Cal App 4th 220, 51 Cal Rptr 3d 527, 2006 Cal App LEXIS 1877, modified (2006) 2006 Cal. App. LEXIS 2030.

Drivers who worked for a package delivery company were entitled to recover their out-of-pocket expenses and work accident insurance premiums, but the company was not required to reimburse them for the cost of their trucks because it is lawful for an employer to require its employees to provide their own vehicles as a condition of employment. *Estrada v. FedEx Ground Package System, Inc.* (2007, 2d Dist) 2007 Cal App LEXIS 1302.

Employer can satisfy its statutory business expense reimbursement obligation by increasing base salary or commission rates, if the amounts intended as reimbursement are identified and sufficient. *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007, Cal) 42 Cal 4th 554, 2007 Cal LEXIS 12687.

Settlement payment from defendant's employer's insurer to the victim of a collision defendant caused while intoxicated and driving his employer's vehicle was deemed to be restitution from defendant under *Pen C § 1202.4(a)(1)* because the insurance company was contractually obligated to pay on behalf of both defendant and his employer; the insurance policy was an employment benefit as contemplated by the indemnification requirement of *Lab C § 2802* and was not a fortuitous windfall for defendant. *People v. Short* (2008, 3d Dist) 160 Cal App 4th 899, 73 Cal Rptr 3d 154, 2008 Cal App LEXIS 308.

5. Standing

An attorney-employer has standing to appeal a monetary sanction imposed on an attorney-employee. Because the employer is obligated to reimburse the employee for the sanction if it is upheld on appeal (*Lab C § 2802*), the employer's "rights or interests are injuriously affected" by the sanction

order and his interest is "immediate, pecuniary and substantial," thus making him an aggrieved party (CCP § 902). In addition, denying standing to appeal would be fundamentally unfair because if the employee failed to appeal, the employer would be bound to pay the sanction without any opportunity to contest its legality. *20th Century Ins. Co. v. Choong* (2000, Cal App 2d Dist) 79 Cal App 4th 1274, 94 Cal Rptr 2d 753, 2000 Cal App LEXIS 288.

6. Procedure

Lab C § 2802 does not mandate that an action by an injured first party must first be brought against an employee or that third parties may pursue an employer only after obtaining a judgment against the employee. *Boyer v. Jensen* (2005, Cal App 2d Dist) 129 Cal App 4th 62, 28 Cal Rptr 3d 124, 2005 Cal App LEXIS 728, rehearing denied ces, L.P. (2005) 2005 Cal. App. LEXIS 919 .

Allegations in a client's professional negligence complaint against an attorney who had worked for several firms, specifying dates or periods when the alleged negligent acts occurred, provided evidence to defeat a summary judgment motion filed by one of the attorney's former employers; the client's complaint was proper summary judgment evidence because the defense costs for which the attorney sought indemnity under *Lab C § 2802* arose from the necessity to defend against the allegations in the complaint. *Cassady v. Morgan, Lewis & Bockius LLP* (2006, Cal App 2d Dist) 145 Cal App 4th 220, 51 Cal Rptr 3d 527, 2006 Cal App LEXIS 1877, modified (2006) 2006 Cal. App. LEXIS 2030.

Class of city police officers was not certified under *Fed. R. Civ. P. 23* in an action for violation of in an action for violation of § 7(a) of the Fair Labor Standards Act (FLSA), 29 U.S.C.S. § 207(a), and *Lab C §§ 226.7, 512, and 2802* because the class would have been based on solely state law claims and a superior means of certification existed in § 16(b) of the FLSA, 29 U.S.C.S. § 216(b), *Edwards v. City of Long Beach* (2006, CD Cal) 467 F Supp 2d 986, 2006 US Dist LEXIS 93141.

Class certification ruling under *CCP § 382* on commonality in a suit by outside sales representatives who sought reimbursement for auto expenses under *Lab C § 2802* required an analysis of whether the employer paid by increasing base salary or commission rates as it claimed, and if so, whether the amounts intended as reimbursement were identified in accordance with *Lab C §§ 200(a), 226(a)* and were sufficient as required by *Lab C § 2804*. *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007, Cal) 42 Cal 4th 554, 2007 Cal LEXIS 12687.

7. Actions against Employer

Under *Lab C § 2802*, a former financial consultant could maintain a claim against his employer after the employer unilaterally settled a suit by his customer but then also unilaterally decided that the consultant should pay for part of the settlement costs and deducted them from his commissions; any waiver of the consultant's rights under § 2802 was null and void under *Lab C § 2804*. *Takacs v. A.G. Edwards & Sons, Inc.* (2006, SD Cal) 444 F Supp 2d 1100, 2006 US Dist LEXIS 55461.

Former financial consultants could maintain an action against their employer for unpaid business expenses under *Lab C § 2802* because genuine issues of material fact existed as to whether time extension costs, magazine

subscriptions, advertisement costs and bonuses to support staff were necessary under § 2802. *Takacs v. A.G. Edwards & Sons, Inc.* (2006, SD Cal) 444 F Supp 2d 1100, 2006 US Dist LEXIS 55461.

SUGGESTED FORMS

Complaint by Employee Against Employer for Indemnification for Losses or Expenditures Sustained by Employee While Discharging Employee's Duties