S241655

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IN THE
SUPREME COURT OF CALIFORNIA

JAZMINA GERARD, KRISTIANE MCELROY,
AND JEFFREY CARL,
Plaintiffs-Appellants

vs.

ORANGE COAST MEMORIAL MEDICAL CENTER,
Defendant-Respondent.

AFTER DECISION BY THE COURT OF APPEAL, FOURTH APPELLATE
DISTRICT, DIVISION THREE, CASE NO. G048039

FROM THE SUPERIOR COURT OF ORANGE COUNTY
THE HONORABLE NANCY WIEBEN STOCK, PRESIDING
CASE NO. 30-2008-00096591, DEPT. CX 105, (657) 622-5305

PETITION FOR REVIEW

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I. ISSUES PRESENTED FOR REVIEW

1. Can the Legislature dictate to the Judiciary how to interpret laws regarding meal period requirements that a prior Legislature had enacted and amended, forcing courts to conclude that employers do not owe their healthcare workers millions of dollars of premium pay already earned and vested under Labor Code section 226.7?

2. Can the Legislature retroactively deprive healthcare workers of their vested rights to millions of dollars of premium pay under Labor Code section 226.7 without due process of law?

II. THE COURT SHOULD GRANT REVIEW

Senate Bill No. 327 ("SB 327"), with one stroke of the Legislative pen, retrospectively wipes out health care workers' vested rights to recover premium wages under Labor Code section 226.7 going back to at least 2005. Plenary review of the Court of Appeal's decision in *Gerard v. Orange Coast Memorial Medical Center* (2017) 9 Cal.App.5th 1204 (*Gerard II*) is necessary to prevent a ruling that, if not corrected, would give an unconstitutional effect to the statute. [1]

First, under the separation of powers doctrine the Legislature enacts laws, but interpreting laws is a judicial function. By enacting SB 327, the 2015 Legislature dramatically and impermissibly crossed this constitutional line. The Legislature usurped the judicial function of interpreting laws by

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[1]A true and correct copy of *Gerard II* is attached hereto as Exhibit A. At the time of this writing, no Cal.App.5th page numbers were available on the Westlaw version of the Opinion. Therefore, citations to *Gerard II* herein reflect the page numbers on Exhibit A.

declaring, contrary to existing legislative history, what the law was in 2000 when a different Legislature enacted and then amended sections 512 and 516. *Gerard II* accepts the Legislature's declaration of what the law was in 2000 instead of addressing the legislative history of sections 512 and 516.

Second, the Legislature clearly intended SB 327 to retroactively change the law. However, retroactive application of SB 327 is constitutionally impermissible unless it complies with the requirements of due process, which it does not. *Gerard II* failed to reach this critical constitutional question.

III. BACKGROUND

A. The Court of Appeal's Decision in *Gerard I*

Appellants Jazmina Gerard, Kristiane McElroy and Jeffrey Carl ("Appellants") are healthcare workers formerly employed by Respondent Orange Coast Memorial Medical Center ("Respondent" or "OCMMC"). On August 29, 2008, Appellants filed a class action Complaint against Respondent. Appellants' primary claim is that a hospital policy based on Industrial Welfare Commission ("IWC") Wage Order 5 section 11(D) ("section 11(D)") illegally allowed healthcare workers to waive second meal periods on shifts longer than 12 hours.

After almost seven years of litigation, the Court of Appeal vindicated Appellants' liability theory. (*Gerard v. Orange Coast Memorial Medical Center* (2015) 234 Cal.App.4th 285, 290 ("*Gerard I*").) After reviewing the legislative history of Labor Code sections 512 and 516, the court "conclude[d] the IWC order is partially invalid to the extent it authorizes second meal period break waivers on shifts longer than 12 hours." (*Id.*) The court

further held, "Plaintiffs are entitled to seek premium pay under section 226.7 for any failure by hospital to provide mandatory second meal periods before today that falls within the governing three-year limitations period." (*Id.* at 302.)

The court reasoned that there is a conflict between section 11(D) and Labor Code § 512(a) in that section 11(D) creates an unauthorized exception to the general rule set out in section 512(a) prohibiting second meal period waivers where the total hours worked is more than 12 hours. (*Gerard I*, 234 Cal.App.4th at pp. 294-295, 298.)

In reaching its decision, the court reviewed the legislative history of sections 512 and 516 and concluded:

> We see nothing in this legislative history to support hospital's argument the additional regulatory exception embodied in section 11(D) for shifts longer than 12 hours is consistent with the Legislature's intent. To the contrary, everything in this legislative history evidences the intent to prohibit the IWC from amending its wage orders in ways that conflict with meal period requirements in section 512, including the proviso second meal periods may be waived only if the total hours worked is less than 12 hours.

(*Gerard I*, 234 Cal.App.4th at p. 296.)

The Court also noted, "we agree with *Bearden* 'section 516, as amended in 2000, does not authorize the IWC to enact wage orders inconsistent with the language of section 512.'" (*Gerard I*, 234 Cal.App.4th at p. 297) (quoting *Bearden v. U.S. Borax, Inc.* (2006) 138 Cal.App.4th 429, 438.)

The court ultimately held that the retrospectivity of its decision must be litigated on remand, with the exception of Plaintiffs' premium wage claims based on section 226.7. Finding that "plaintiffs' premium wage claims based on section 226.7, subdivision (c) present an issue of law that has been fully developed [in *Bearden*, 138 Cal.App.4th at p. 443]," the Court found (1) that the meal period waiver provisions inconsistent with section 516(a) were "void *ab initio*" and (2) that "Plaintiffs are entitled to seek premium pay under section 226.7 for any failure by hospital to provide mandatory second meal periods before today that falls within the governing three-year limitations period." (*Gerard I*, 234 Cal.App.4th at pp. 301-302.)

B. SB 327 is Enacted in Response to *Gerard I* and Purports to Be a "Clarification" of the Law

On May 20, 2015, this Court granted review on the issues of whether Wage Order No. 5, section 11(D) is valid under section 512(a) and whether the Court of Appeal's decision partially invalidating the Wage Order should be applied retrospectively. However, while the parties were briefing the merits, the Legislature enacted SB 327. SB 327 added the following underscored language to section 516:

> (a) Except as provided in Section 512, the Industrial Welfare Commission may adopt or amend working condition orders with respect to break periods, meal periods, and days of rest for any workers in California consistent with the health and welfare of those workers.
>
> (b) Notwithstanding subdivision (a), or any other law, including Section 512, the health care employee meal period waiver

> provisions in Section 11(D) of Industrial Welfare Commission Wage Orders 4 and 5 were valid and enforceable on and after October 1, 2000, and continue to be valid and enforceable. This subdivision is declarative of, and clarifies, existing law.

(Labor Code § 516, effective October 5, 2015.)

SB 327 was enacted in direct response to *Gerard I*. Section 1 of SB 327 states in part: "(b) Given the uncertainty caused by a recent appellate court decision, *Gerard v. Orange Coast Memorial Medical Center* (2015) 234 Cal.App.4th 285, without immediate clarification, hospitals will alter scheduling practices."

On August 17, 2016, this Court transferred the matter back to the Court of Appeal with directions to vacate its decision and to reconsider the cause in light of the enactment of SB 327.

C. The Court of Appeal's Decision in *Gerard II*

In *Gerard II*, the Court of Appeal concluded that SB 327 represents a clarification of the law before its decision in *Gerard I*. (*Gerard II*, *supra*, 9 Cal.App.5th at *6.) The underpinnings of the court's reasoning are twofold.

First, the Court of Appeal stated that its conclusion in *Gerard I* – that section 11(D) conflicts with section 512(a) – was incorrect. Relying on what it termed "a subtle but critical distinction in administrative law" between when a regulation is "adopted" and when it is "effective," the court reversed itself and held that section 11(D) *was* effective when adopted:

> [T]he SB 88 amendment to section 516(a) took away the IWC's authority to *adopt* wage orders inconsistent with the

> second meal period requirements of section 512(a) as of September 19, 2000. But the IWC had already adopted section 11(D) on June 30, 2000, under the AB 60 version of section 516(a) which authorized the IWC to do so "notwithstanding" section 512(a). Thus, the SB 88 amended version of section 516(a) should have been irrelevant to our analysis in *Gerard I.* Instead, it became dispositive. We concluded section 11(D) is subject to the SB 88 amended version of section 516(a). It isn't.

(*Gerard II, supra*, 9 Cal.App.5th at *4.)

Second, having already concluded that "the IWC did not exceed its authority by adopting section 11(D), and hospital's second meal period waiver policy does not violate section 512(a)," the Court of Appeal accepted the Legislature's declared purpose of SB 327 – to "clarify" rather than change the law. (*Gerard II, supra*, 9 Cal.App.5th at *4-*5.)

Appellants did not seek rehearing.

IV. ARGUMENT

A. Review is Necessary Because Under the Separation of Powers Doctrine, the Legislature Cannot Dictate to the Courts What the Law Was Prior to the Enactment of SB 327

Review of *Gerard II* is necessary because the Legislature cannot be permitted to dictate what the law was in 2000, forcing courts to conclude that employers never owed their healthcare workers years' of premium pay earned and vested under section 226.7.

The determination of whether SB 327 clarified or changed the law is critical to this case. "A statute that merely *clarifies*,

rather than changes, existing law does not operate retrospectively even if applied to transactions predating its enactment" "because the true meaning of the statute remains the same." (*Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243 ["*Western Security*"] [emphasis in original].) But if SB 327 *changed* the law, the issue of retroactivity arises and a court must decide whether that change in law applies retroactively to the claims in this case. (*McClung v. Employment Development Department* (2004) 34 Cal.4th 467, 472 ["*McClung*"].) Retroactive application is *impermissible* if it impairs a vested right without due process of law. (*In re Marriage of Fellows* (2006) 39 Cal.4th 179, 189.) Review of *Gerard II* is necessary because the Legislature cannot be permitted to make this determination.

Under the separation of powers doctrine, the Court, not the Legislature, must determine what the law was so that it can determine whether a new enactment changed the law. As this Court stated in *McClung*, "[u]nder fundamental principles of separation of powers, the legislative branch of government enacts laws. Subject to constitutional constraints, it may *change* the law. But *interpreting* the law is a judicial function." (*McClung*, *supra*, 34 Cal.4th at p. 470 [emphasis in original].) "After the judiciary definitively and finally interprets a statute ... the Legislature may amend the statute to say something different. But if it does so, it *changes* the law; it does not merely state what the law always was. Any statement to the contrary is beyond the Legislature's power." (*Id.* [emphasis in original].)

Moreover, "[i]t is settled that even if the courts have not conclusively interpreted a statute, a legislative declaration of an existing statute's meaning is but a factor for a court to consider and is neither binding nor conclusive in construing the statute." (*Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1141 [citing *McClung*, 34 Cal.4th at p. 473].) "This is because the 'Legislature has no authority to interpret a statute. That is a judicial task.'" (*Id.*) Even so, "[a] declaration that a statutory amendment merely clarified the law 'cannot be given an obviously absurd effect, and the court cannot accept the Legislative statement that an unmistakable change in the statute is nothing more than a clarification and restatement of its original terms.'" (*Id.*)

Furthermore, the declaration of a later Legislature carries little weight in determining the intent of the Legislature that enacted the law. (*Teamsters v. United States* (1977) 431 U.S. 324, 354, fn. 39.) "Indeed, there is little logic and some incongruity in the notion that one Legislature may speak authoritatively on the intent of an earlier Legislature's enactment when a gulf of decades separates the two bodies." (*Western Security, supra*, 15 Cal.4th at p. 244.)

B. Review is Necessary Because SB 327 is a Retrospective Change of the Law That Triggers Constitutional Concerns

Here, the 2015 Legislature went out of its way to attempt to legislate what the law was in 2000. SB 327 adds the following language to section 516:

> (b) Notwithstanding subdivision (a), or any other law, including Section 512, the

> health care employee meal period waiver provisions in Section 11(D) of Industrial Welfare Commission Wage Orders 4 and 5 **were valid and enforceable on and after October 1, 2000, and continue to be valid and enforceable.** This subdivision is **declarative of, and clarifies, existing law.**

(Labor Code § 516, as modified by SB 327 [emphasis added].) Plenary review of *Gerard II* is necessary because the court failed to discern that this statute was intended to have, and does have, retrospective application.

The legislative declaration in SB 327 provides little assistance to any court attempting to determine whether SB 327 changed or clarified the law. Fifteen years passed between October 2000 and the enactment of SB 327. The 2015 Legislature cannot speak to the intent of the 2000 Legislature that enacted and amended sections 512 and 516. A reviewing court must therefore look at the legislative history of section 512 and 516 authored by the legislators who enacted and amended those statutes to determine their intent.

That legislative history is well documented. As noted in both *Bearden, supra,* 138 Cal.App.4th at p. 438 and *Lazarin v. Superior Court* (2010) 188 Cal.App.4th 1560, 1571, the Senate third reading analysis for Senate Bill No. 88 states:

> This bill **clarifies** two provisions of the Labor Code enacted in Chapter 134. Labor Code Section 512 codifies the duty of an employer to provide employees with meal periods. Labor Code Section 516 establishes the authority of IWC to adopt or amend working condition orders

> with respect to break periods, meal periods, and days of rest. *This bill provides that IWC's authority to adopt or amend orders under Section 516 must be consistent with the specific provisions of Labor Code Section 512. ...*

(*Bearden*, *supra*, at p. 438 [emphasis added, italics added by the *Bearden* court].) As discussed above, the use of the word "clarifies" is significant. The Senate third reading analysis for Senate Bill No. 88 denotes a legislative intent that section 516 as then amended reflected the law as it always was, *i.e.*, when sections 512 and 516 were *originally* enacted. That means the Legislature never conferred upon the IWC authority to adopt or amend wage orders inconsistent with section 512. Because the IWC never had authority to adopt or amend the meal period waiver in section 11(D), the Court of Appeal's "subtle but critical distinction" between when a regulation is "adopted" and when it is "effective" is irrelevant.

Viewing the totality of the legislative history of sections 512 and 516, it is evident that the legislative declaration in SB 327 in 2015 directly contradicts the intent expressed by the very Legislature that enacted those statutes and amended them in SB 88. As discussed above, "[a] declaration that a statutory amendment merely clarified the law 'cannot be given an obviously absurd effect, and the court cannot accept the Legislative statement that an unmistakable change in the statute is nothing more than a clarification and restatement of its original terms.'" (*McClung*, *supra*, 34 Cal.4th at p. 473.) The court in *Gerard II* should have analyzed the legislative history of

SB 88 and concluded that SB 327 changed the law, and thus can only have retrospective application if it does not violate due process.

Once the Senate third reading analysis for Senate Bill No. 88 is considered, a proper way to construe the legislative declaration in SB 327 is to determine that it evidences a legislative intent to apply the enactment retrospectively.

Gerard II cites *Western Security* for the proposition that "[a] legislative enactment 'which in effect construes and clarifies a prior statute must be accepted as the legislative declaration of the meaning of the original act, where the amendment was adopted soon after the controversy arose concerning the proper interpretation of the statute....'" (*Gerard II*, *supra*, 9 Cal.App.5th at *5 [citing *Western Security*, *supra*, 15 Cal.4th at p. 243].) But *Western Security* also explains that while a legislative declaration *does not* require the reviewing court to accept a legislative declaration (it is only entitled to "due consideration"), it may reflect a legislative intent to apply a statute retroactively.

> Moreover, even if the court does not accept the Legislature's assurance that an unmistakable change in the law is merely a "clarification," the declaration of intent may still effectively reflect the Legislature's purpose to achieve a retrospective change.

(*Western Security*, *supra*, 15 Cal.4th at p. 244.)

To be sure, the plain language of SB 327 shows that the Legislature did intend to affect actions that occurred prior to its enactment, specifically including this case. That means that despite purporting to be a clarification of the law when it is not,

SB 327's purpose is in fact to achieve a retroactive change of the law. Accordingly, the Court of Appeal should have determined whether this raises any constitutional concerns. (*Western Security, supra,* 15 Cal.4th at p. 244.)

In sum, SB 327 changed the law as it existed in 2000. The prior Legislature never intended the IWC to have authority to adopt or amend wage orders that conflict with section 512. SB 327 changed that, and can only apply to the claims in this case if it complies with due process.

C. The Court of Appeal's Decision Requires Review Because It Fails to Determine that Retrospective Application of SB 327 Would Violate Due Process

Finally, review of *Gerrard II* is necessary to prevent an unconstitutional taking of earned premium wages.

A retrospective law is invalid if it conflicts with certain constitutional protections, *e.g.*, if it: (a) is an *ex post facto* law; (b) impairs the obligation of a contract; or (c) deprives a person of a vested right or substantially impairs that right, thereby denying due process. (*Roberts v. Wehmeyer* (1923) 191 Cal. 601, 612). "Even in the face of specific legislative intent, retrospective application is impermissible if it 'impairs a vested ... right without due process of law.'" (*In re Marriage of Fellows, supra,* 39 Cal.4th at p. 189 [quoting *In re Marriage of Fabian* (1986) 41 Cal.3d 440, 447].)

Here, Appellants and other health care workers have *vested rights* to premium wages under section 226.7. Those rights vested when OCMMC failed to provide them with second meal periods in violation of section 512. (*Safeway Inc. v. Superior*

Court (2015) 238 Cal.App.4th 1138, 1155 [citing *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094] ["In view of *Murphy*, under those circumstances, the employee is 'immediately' entitled to the premium wage, without any demand or claim to the employer, in a manner 'akin to an employee's immediate entitlement to payment of wages or for overtime.'"].)

Retroactive application of SB 327 would deprive Appellants and other health care workers of their vested rights to premium wages *without due process of law.* In evaluating a due process claim, courts consider two groups of factors: (1) the significance of the state interest served by the law and the importance of the retroactive application of the law to the effectuation of that interest; and (2) the extent of reliance upon the former law, the legitimacy of that reliance, the extent of actions taken on the basis of that reliance, and the extent to which the retroactive application of the new law would disrupt those actions. (*In re Marriage of Fellows, supra*, 39 Cal.4th at p. 189.)

Here, the state interest served by SB 327 appears on the face of the bill: "(b) Given the uncertainty caused by a recent appellate court decision, *Gerard v. Orange Coast Memorial Medical Center* (2015) 234 Cal.App.4th 285, without immediate clarification, hospitals will alter scheduling practices." (SB 327, section 1(b).) The state interest (that hospitals not have to alter scheduling practices) is fully effectuated by **prospective** application of the statute. Retroactive application of SB 327 does not advance that interest and the bill does not identify any state interest in retroactively wiping out years of vested premium pay

owed to health care workers.

Second, California has a fundamental policy of *protecting* earned wages. (*Vasquez v. Franklin Management Real Estate Find, Inc.* (2013) 222 Cal.App.4th 819, 829-831.) Appellants have justifiably and legitimately relied on the former law in bringing this action, seeking class certification, and obtaining a judicial determination from this Court that declared that IWC Wage Order No. 5, section 11(D), was partially invalid to the extent that it authorizes second meal period waivers on shifts longer than 12 hours and that Appellants are entitled to seek premium pay under section 226.7 from three years prior to the filing of the complaint. Retroactive application of SB 327 would disrupt those actions by denying Plaintiffs and health care workers the unpaid wages that they have already earned and therefore would violate California public policy.

V. CONCLUSION

For the foregoing reasons, Appellants respectfully request that the Court grant plenary review of the Court of Appeal's decision.

Dated: May 1, 2017

Respectfully submitted,
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CERTIFICATE OF WORD COUNT

Counsel of record hereby certifies that, pursuant to California Rules of Court, rule 8.504(d)(1), the enclosed Appellants' Petition For Review was produced using 13-point Century Schoolbook type font and contains 3,472 words, in accordance with the 8,400-word maximum. In arriving at this number, counsel has relied on the word count function of Microsoft® Office Word 2010, which was used to prepare the document.

Dated: May 1, 2017

Respectfully submitted,

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9 Cal.App.5th 1204
Court of Appeal,
Fourth District, Division 3, California.

Jazmina GERARD et al., Plaintiffs and Appellants,
v.
ORANGE COAST MEMORIAL MEDICAL CENTER, Defendant and Respondent.

G048039
Filed 3/1/2017

Synopsis

Background: Three health care employees sued their hospital employer for meal break violations under Labor Code and Private Attorneys General Act (PAGA). The Superior Court, Orange County, No. 30–2008–00096591, Nancy Wieben Stock, J., denied class certification and granted summary judgment for employer. Employees appealed. The Court of Appeal reversed and remanded with directions, 183 Cal.Rptr.3d 721. Employer petitioned for review. The Supreme Court granted review and transferred the case back to the Court of Appeal, 208 Cal.Rptr.3d 271.

[Holding:] The Court of Appeal, Thompson, J., held that Industrial Welfare Commission (IWC) wage order for health care employees validly allows employees to waive their second meal periods on shifts longer than 12 hours.

Affirmed.

West Headnotes (6)

[1] **Labor and Employment**
Requisites and validity

The Industrial Welfare Commission (IWC) wage order authorizing health care employees to waive their second meal periods on shifts longer than 12 hours was validly adopted, since it was adopted prior to the effective date of the statutory prohibition against adoption of wage orders inconsistent with the second meal period requirements. Cal. Lab. Code §§ 512(a), 516(a); Cal. Code Regs. tit. 8, § 11050.

Cases that cite this headnote

[2] **Statutes**
Amendatory statutes

When the Legislature clarifies a statute in response to an appellate court opinion construing it, the appellate court must consider whether the clarification applies in the pending case.

Cases that cite this headnote

[3] **Statutes**
Amendatory statutes

An amendment which in effect construes and clarifies a prior statute must be accepted as the legislative declaration of the meaning of the original act, where the amendment is adopted soon after the controversy arises concerning the proper interpretation of the statute.

Cases that cite this headnote

[4] **Constitutional Law**
Interpretation of statutes

Statutes
Legislative Construction

A legislative declaration of an existing statute's meaning is neither binding nor conclusive in construing the statute, and ultimately, the interpretation of a statute is an exercise of the judicial power the Constitution assigns to the courts.

Cases that cite this headnote

[5] **Statutes**
Legislative Construction

Legislature's expressed views on the prior import of its statutes are entitled to due consideration, and the Court of Appeal cannot disregard them.

Cases that cite this headnote

[6] **Labor and Employment**
Requisites and validity

The statute providing that health care employee meal period waiver provisions are valid and enforceable merely clarifies, rather than changing the meaning of, the statutory prohibition against adoption of wage orders inconsistent with the second meal period requirements for shifts longer than 12 hours. Cal. Lab. Code §§ 512(a), 516; Cal. Code Regs. tit. 8, § 11050.

See 3 Witkin, Summary of Cal. Law (10th ed. 2005) Agency and Employment, § 360 et seq.

Cases that cite this headnote

West Codenotes

Negative Treatment Reconsidered
Cal. Code Regs. tit. 8, § 11050.

Appeal from a judgment and an order of the Superior Court of Orange County, Nancy Wieben Stock, Judge. Affirmed. Requests for judicial notice. Granted. (Super. Ct. No. 30-2008-00096591)

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Seyfarth Shaw, Jeffrey A. Berman, James M. Harris, and Kiran A. Seldon, Los Angeles, for California Hospital Association as Amicus Curiae on behalf of Defendant and Respondent.

OPINION

THOMPSON, J.

INTRODUCTION

Three health care workers sued their hospital employer in this putative class and private attorney general enforcement action for alleged Labor Code violations and related claims. In this appeal, their primary complaint is the hospital illegally allowed its health care employees to waive their second meal periods on shifts longer than 12 hours.

A statute requires two meal periods for shifts longer than 12 hours. But an order of the Industrial Welfare Commission (IWC) authorizes employees in the health care industry to waive one of those two required meal periods on shifts longer than 8 hours. The principal issue before us concerns the validity of the IWC order.

This is our second opinion in this case. Our first opinion concluded the IWC order is partially invalid to the extent it authorizes second meal break waivers on shifts over 12 hours and we reversed. (*Gerard v. Orange Coast Memorial Medical Center* (2015) 234 Cal.App.4th 285, review granted May 20, 2015, S225205 (*Gerard I*))

After the California Supreme Court granted the hospital's petition for review in *Gerard I*, that court transferred the case back to this court with directions to vacate our decision and to reconsider the cause in light of the enactment of Statutes 2015, chapter 506 (Sen. Bill No. 327 (2015-2016 Reg. Sess.); SB 327).

Upon reconsideration we conclude the IWC order is valid and affirm.

PLEADINGS AND PROCEDURAL HISTORY

Plaintiffs and appellants Jazmina Gerard, Kristiane McElroy, and Jeffery Carl (plaintiffs) are health care workers who were formerly employed by defendant and respondent Orange Coast Memorial Medical Center (hospital). Gerard, McElroy, and Carl alleged they usually worked 12-hour shifts, but from time to time worked shifts longer than 12 hours.

A hospital policy allowed health care employees who worked shifts longer than 10 hours caring for patients to voluntarily waive one of their two meal periods,