Case No. S258966

In the

Supreme Court

of the

State of California

SUPREME COURT
FILED

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Deputy

GUSTAVO NARANJO,
on behalf of himself and all others similarly situated,
Plaintiff and Respondent,

v.

SPECTRUM SECURITY SERVICES, INC.,
Defendant and Appellant.

REVIEW OF A DECISION FROM THE CALIFORNIA COURT OF APPEAL
SECOND APPELLATE DISTRICT, DIVISION FOUR, CASE NO. B256232

OPENING BRIEF ON THE MERITS

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ISSUES PRESENTED FOR REVIEW

1. Does violation of Labor Code section 226.7, which requires payment of premium wages for meal and rest period violations, give rise to claims under Labor Code sections 203 and 226 when the employer does not pay the premium wages at any time or include the premium wages in the employee's wage statements?
2. What is the applicable prejudgment interest rate for unpaid premium wages owed pursuant to Labor Code section 226.7?

INTRODUCTION

California's remedial worker protection framework has influenced legislative enactments governing wages, hours, and working conditions to benefit employees for over a century. Meal periods, rest periods, and the prompt payment of wages have long been considered fundamental to these protections, which the Legislature repeatedly reinforces through the enactment and amendment of provisions to the Labor Code in order to uphold the State's overriding public policy despite changing times.

With respect to the payment of wages, the Legislature has established a simple framework for employers to follow. Employers must pay employees twice a month on designated paydays. (Lab. Code, § 204, subd. (a).) At the time of payment, employers must furnish employees with an itemized wage statement setting forth specific information. (Lab. Code, § 226, subd. (a).) If an employee is terminated or resigns, an employer must pay the employee all remaining wages owed and due. (Lab. Code, §§ 201-203.) Each statutory provision represents a distinct legal obligation under the Labor Code, and together they establish a coherent statutory scheme that reflects the remedial protection framework.

This case concerns the treatment of premium wages owed pursuant to Labor Code section 226.7 and whether employers must treat these premium wages in the same manner as all other "wages" with respect to sections 203 and 226.[1] The case also queries the applicable prejudgment interest rate to premium wages when an employer fails to pay them altogether.

The opinion of the Court of Appeal holds that neither section 203 nor section 226 applies to premium wages under section 226.7. Stated in terms of the employer's obligations set forth above, the Court of Appeal opinion holds that employers need not inform employees of any payment of section 226.7 premium wages (in accordance with section 226, subd. (a)), or pay those premium wages to employees when they resign or are terminated (in accordance with sections 201-203).

In reaching this conclusion, the Court of Appeal determined that premium pay under section 226.7 is wages in name alone and not accorded the status of *actual* wages under California law. From this, the Court of Appeal held that section 226.7 premium pay is neither considered "wages" as the term is used in section 203, nor considered "wages earned" as that term is stated in section 226. Based on the same rationale, the Court of Appeal reversed the award of ten percent prejudgment interest historically applied to wages and remanded to the trial court for recalculation at seven percent.

The entirety of the Court of Appeal's analysis emanates from the flawed conviction that section 226.7 premium pay is not wages, despite this Court's analysis and holding in *Murphy v. Kenneth Cole Productions, Inc.*

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[1] Unless otherwise stated, all subsequent unlabeled statutory references are to the Labor Code.

(2007) 40 Cal.4th 1094, which the Court of Appeal relegated to a decision concerning solely the statute of limitations applicable to claims under section 226.7. Once this faulty premise is discarded, the principles of statutory construction illustrate the Legislature's intent to have premium wages under section 226.7 treated in the same fashion as all wages when considering the employer's obligations to employees with respect to the payment of wages, or in response to an employer's outright failure to adhere to those independent statutory obligations.

This Court should validate the protections afforded by sections 203, 226, and 226.7 and promote the objectives of the statutory scheme of which they are part. As such, the opinion of the Court of Appeal must be reversed with respect to the Sections II and III. The statutory language of sections 203 and 226, their respective legislative histories, and the intended purpose of compensating employees for detrimental working conditions, all favor a construction that requires employers to treat wages under section 226.7 as all other wages for purposes of section 203 and 226. During the pendency of employment, employers should pay premium wages in the pay period during which the section 226.7 violation occurred, record the payment in the employee's wage statement, and most certainly pay any unpaid premium wages owed and due upon separation of employment or otherwise be subject to the independent remedies of each statutory provision. Further, when employers fail to pay wages under section 226.7 altogether, interest should accrue on those wages at ten percent per annum. The opinion of the Court of Appeal should be affirmed in all other respects.

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FACTS AND BACKGROUND

Defendant, Appellant, and Cross-Respondent Spectrum Security Services, Inc. (hereinafter "Spectrum") is a federal contractor that provides short-term custodial services to federal agencies. (2 JA 0185-0186, 0244.) Spectrum employs hundreds of security officers ("officers") to maintain custody of federal prisoners or detainees who require medical attention or treatment. (4 JA 0753, 0775.) The officers' sole responsibility is to maintain custody of the prisoner while he or she is outside the control of the contracting federal agency. (2 JA 0207-0208, 0244.) Since June 2004, Spectrum has provided these services throughout Southern California at hospitals, hotels, clinics, or other treatment centers. (2 JA 0211, 0243, 0306; 13 JA 2967-2969.)

Representative Plaintiff, Respondent, and Cross-Appellant Gustavo Naranjo (hereinafter "Naranjo") began working for Spectrum as an officer in December 2006. During Naranjo's employment, Spectrum's policies expressly prohibited officers from taking meal periods and rest breaks. As stated by Spectrum: "This job does not allow for breaks other than using the hallway bathrooms for [a] few minutes." (2 JA 0221-0223, 0254-0256.) Officers were required to remain in the prisoners' presence and maintain constant observation. (2 JA 0202-0203.) As a result, Spectrum did not provide officers with 30-minute off-duty meal periods or 10-minute duty-free rest breaks. (8 JA 1756; 8 RT 3307, 3652-3653.) Nor did Spectrum pay officers one additional hour of pay at their regular rate of compensation for each workday that their meal and rest periods were not provided.

I. PROCEDURAL HISTORY

Spectrum terminated Naranjo in May 2007 because he had left his post to eat. (3 JA 0419-0420.) On June 4, 2007, Naranjo filed a class action

on behalf of himself and other officers similarly situated, alleging causes of action for: (1) meal period violations; (2) rest period violations; (3) violation of Labor Code section 203; (4) violation of Labor Code section 226; (5) unfair business practices; (6) conversion; and (7) injunctive relief. (1 JA 1-11.) The trial court granted summary judgment in favor of Spectrum, concluding that the causes of action were preempted by the McNamara-O'Hare Service Contract Act (41 U.S.C § 351 et seq.), but the Court of Appeal reversed with respect to Naranjo's claims under Labor Code sections 203, 226, and 226.7, and remanded the case to the trial court for further proceedings. (*Naranjo v. Spectrum Sec. Services, Inc.* (2009) 172 Cal.App.4th 654 (*Naranjo I*).)

On February 3, 2011, the trial court certified a class of current and former officers employed by Spectrum in California during the period of June 4, 2004 to the then-present for adjudication of Naranjo's claims for meal period violations under Labor Code section 226.7, waiting time penalties under Labor Code section 203, and inaccurate itemized wage statements in violation of Labor Code section 226. (4 JA 0800-0804; 9 JA 1979.) The case proceeded to trial in three phases from January to August 2013.

In the first phase, the trial court heard evidence regarding various federal defenses asserted by Spectrum. After five days of trial, the trial court determined that Spectrum's asserted defenses were unsupported by the facts or the law and found in favor of Naranjo and the class. (9 JA 1981-1985.)

The trial court empaneled a jury for the second phase to determine the merits of the class meal period claim. The jury trial commenced on May 28, 2013 and concluded on June 6, 2013. The trial court directed a

verdict in favor of the class for the period of June 4, 2004 through September 30, 2007, and awarded damages pursuant to section 226.7 in the amount of $1,393,314, plus pre-judgement interest at a rate of ten percent per annum in the amount of $955,377. (9 JA 1985-1987.)

In the third phase, the trial court heard evidence and argument regarding the class's entitlement to penalties under sections 203 and 226 for meal period violations during the period of June 4, 2004 to September 30, 2007. At the conclusion of the third phase, the trial court held that penalties under sections 203 and 226 were legally available in cases based on a violation of section 226.7. (9 JA 1988.)

With respect to section 226, the court found in favor of the class, noting that Spectrum's failure to include section 226.7's additional hour of pay in its employees' wage statements was knowing and intentional and not inadvertent. (9 JA 1989.) As to section 203 waiting time penalties, the court found in favor of Spectrum, determining that its defenses were presented in good faith, precluding a finding of willfulness. (9 JA 1990.) Based on these findings, the court awarded $399,950 in penalties and $731,586.60 in attorneys' fees pursuant to section 226, subdivision (e). (9 JA 1190; 11 JA 2548.) Judgment was entered on January 31, 2014. (11 JA 2550-2554.)

II. APPELLATE PROCEEDINGS

Both Spectrum and Naranjo appealed from the judgment. Spectrum challenged its liability for meal period violations under section 226.7, the award of prejudgment interest, and the award of itemized wage statement penalties and attorneys' fees under section 226, subdivision (e). Naranjo and the class cross-appealed, challenging the trial court's denial of section 203 waiting time penalties, the apportionment of the attorneys' fees

awarded, and the intermediate order denying certification of the rest period claim. (*Naranjo et al. v. Spectrum Sec. Services, Inc.* (2019) 40 Cal.App.5th 444, 456, review granted Jan. 2, 2020, S258966 (*Naranjo II*).)[2]

The Court of Appeal affirmed the portion of the judgment finding Spectrum liable for meal period violations and awarding damages under section 226.7. (*Id.* at p. 463.) The court reversed the award of prejudgment interest at ten percent and remanded with instructions to recalculate and award interest at seven percent. (*Id.* at p. 476.) The order denying class certification as to the rest break claim was reversed with instructions to certify. (*Id.* at p. 481.)

With respect to the applicability of Labor Code sections 203 and 226, the Court of Appeal held "that section 226.7 actions do not entitle employees to pursue the derivative penalties in sections 203 and 226." (*Id.* at p. 474.) The opinion was modified on October 10, 2019, with respect only to language addressing rest period certification. The opinion was certified for publication and became final, as modified, on October 26, 2019. The Court granted Naranjo's Petition for Review on January 2, 2020.

ARGUMENT

Because this case involves questions of statutory construction, this Court's review is de novo. (*Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal.4th 381, 387.) The Court of Appeal's holding that violations of section 226.7 neither give rise to claims under sections 203 and 226, nor authorize an award of prejudgment interest at ten percent, is premised on

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[2] Citation to the Court of Appeal decision is made solely for consideration by this Court in accordance with Rule 8.1115, subdivision (e)(1) of the California Rules of Court.

the notion that premium payments made pursuant to section 226.7 are not, in fact, wages. The Court of Appeal limited its consideration of the term "wages" to the statutory text of section 200. (*Naranjo II*, *supra*, 40 Cal.App.5th at p. 473.) Finding that the additional hour of pay prescribed by section 226.7 does not fall within the statutory definition of wages in section 200, the Court of Appeal held that "an employer's failure, however willful, to pay section 226.7 statutory remedies does not trigger section 203's derivative penalty provisions for untimely wage payments." (*Id.* at p. 474.) As for section 226, "[t]he result is the same." (*Ibid.*) "Section 226.7's premium wage is a statutory remedy for an employer's conduct, not an amount 'earned' for 'labor, work, or service . . . performed personally by the [employee].'" (*Ibid*, citing Lab. Code § 200, subd. (b).) In the same vein, the Court of Appeal reversed the award of prejudgment interest, stating that "[t]his is not a wage case, and [*Bell v. Farmers Ins. Exchange* (2006) 135 Cal.App.4th 1138] has no application here." (*Id.* at p. 475.)

Contrary to the Court of Appeal's framing of the matter as statutory penalties and attorneys' fees from derivative claims following violation of section 226.7 (*id.* at p. 474), this case presents far more fundamental questions concerning employers' obligations under the Labor Code to provide employees with accurate itemized wage statements during the course of their employment (§ 226, subd. (a)), and to pay all wages owed and due upon separation of employment (§ 203, subd. (a)). The issues presented concern the treatment of premium wages owed pursuant to section 226.7, whether employers must treat these premium wages in the same manner as all other "wages" with respect to sections 203 and 226, and what prejudgment interest rate applies to unpaid premium wages owed pursuant to section 226.7. Consideration of these questions first requires

re-establishing the foundational principle that section 226.7 premium payments are wages.

I. PREMIUM PAYMENTS OWED TO EMPLOYEES UNDER LABOR CODE SECTION 226.7 ARE WAGES

The Court of Appeal pronounced that it was following this Court's decisions in *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094 (*Murphy*) and *Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244 (*Kirby*) in construing the statutory language of sections 203 and 226. (*Naranjo II*, *supra*, 40 Cal.App.5th at p. 472.) It was not.

Notably absent from the Court of Appeal's opinion is any acknowledgment that section 226.7 payments have been, in fact, deemed wages by this Court. The court's every reference to *Murphy* indicates that it considered *Murphy*'s holding solely applicable to the limitations question presented there. (*Naranjo II*, *supra*, 40 Cal.App.5th at pp. 456, 465, 467, 473.) Even in referring to the decision of the trial court, which acknowledged that section 226.7 payments are wages, the Court of Appeal identified the trial court's reliance on *Murphy* "for statute of limitations purposes." (Compare *id.* at p. 456 with 9 JA 1987.) The appellate court went so far as to emphasize this point, adding italics to this phrase. (*Naranjo II*, *supra*, 40 Cal.App.5th at p. 467 ["*Murphy's* conclusion that section 226.7's remedy is a 'wage' *for purposes of determining what statute of limitations applies*"] [internal quotations omitted].)

In reducing *Murphy* to a decision concerning merely the statute of limitations applicable to claims under section 226.7, the Court of Appeal starts its discussion with a quip on the famed passage from *Romeo and Juliet* wherein Juliet muses: "What's in a name?" (Romeo and Juliet, act II, scene

2, line 46.)[3] Entitling this section of the decision, "A Wage by any Other Name," the Court of Appeal suggests that premium pay under Labor Code section 226.7 are wages in name alone and not accorded the status of actual wages under California law.[4] (*Id.* at pp. 463-464.) To advance this construction—that premium pay under section 226.7 is not wages for any purpose other than the statute of limitations—the Court of Appeal limited its consideration of the term "wages" to the statutory text of section 200, ignoring many clearly applicable decisions of this Court to the detriment of employees whom those decisions are meant to protect.[5] Accordingly, a review of this Court's precedential holdings is warranted.

A. *Murphy*'s Precedential Authority Extends Beyond the Statute of Limitations for Claims Under Section 226.7

This Court's holding in *Murphy* is unequivocal: premium payments owed to employees under section 226.7 are wages. (*Murphy*, *supra*, 40 Cal.4th at pp. 1102 [Heading A], 1114.) Although *Murphy* arose in the context of the appropriate statute of limitations for actions under section 226.7 (*Murphy*, *supra*, 40 Cal.4th at p. 1099), *Murphy*'s significance clearly

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[3] The complete passage states: "What's in a name? That which we call a rose by any other name would smell as sweet." (Shakespeare, Romeo and Juliet, act II, scene 2, lines 46-47.)

[4] For analysis of this passage in contemporary usage, *see* Ammer, The Dictionary of Clichés (2013) p. 376; see also Farlex, *Dictionary of Idioms* (2015) https://idioms.thefreedictionary.com/a+rose+by+any+other+name [as of Nov. 1, 2019].

[5] The Court of Appeal proffers the justification that "the Legislature did not amend section 200 to accommodate the holding [of *Murphy*], i.e., the statutory definition of 'wages' was not expanded to include the payment of a remedy rather than simply the payment for labor." (*Id.* at p. 473.) This presupposes that the Legislature would ever need to amend section 200. (See PR 20-21.)

extends beyond that context. In reaching its holding, this Court engaged in a thorough analysis of the statutory language and its administrative and legislative history, identifying several distinguishing characteristics of the "additional hour of pay" prescribed by section 226.7 and relevant to the Court's analysis, namely:

- The Legislature frequently uses the words "pay" and "compensation" as synonyms for "wages," and use of the term "pay" in section 226.7 conforms to the definition of "wages" in section 200. (*Id.* at p. 1104, fn. 6.)
- In addition to all amounts received for labor performed by employees, wages include "those benefits to which an employee is entitled as a part of his or her compensation . . ." (*Id.* at p. 1103.)
- Many long-familiar types of compensation and elevated rates of pay required by the Legislature "compensate employees for certain kinds of labor or scheduling resulting in a detriment to the employee," and impose additional mandatory wage obligations notwithstanding an employer's payment of regular wage rates for all of the hours an employee actually spends working. (*Id.* at p. 1112.)
- Payments under section 226.7 are akin to overtime, double time, reporting time, and split-shift pay in that "[e]ach of these forms of compensation [] uses the employee's rate of compensation as the measure of pay and compensates the employee for events other than time spent working." (*Id.* at p. 1113.)
- Employees have an immediate entitlement to premium wages for violation of section 226.7. An employee is entitled to the additional hour of pay immediately upon being forced to miss a meal or rest period. (*Id.* at p. 1108.)

Since *Murphy*, this Court has repeatedly reaffirmed that "'[w]ages include various types of employment benefits to which employees are entitled as a part of their compensation." (*McLean v. State of California* (2016) 1 Cal.5th 615, 623, fn. 4.) During the same time, California appellate courts have relied on *Murphy* numerous times in the ensuing thirteen years in developing the State's wage and hour jurisprudence. (See, e.g., *Safeway,*

Inc. v. Superior Court (2015) 238 Cal.App.4th 1138, 1155 [acknowledging employees' immediate entitlement to premium wages]; *United Parcel Service, Inc. v. Superior Court* (2011) 196 Cal.App.4th 57, 65-68 [allowing recovery of two hours pay on a single work day for independent meal and rest period violations]; *Lazarin v. Superior Court* (2010) 188 Cal.App.4th 1560, 1582-1584 [discussing retroactivity of section 226.7].) This Court's holding in *Kirby* does not depart from the fundamental premise that premium pay owed under section 226.7 are wages.

B. In Distinguishing the Legal Violation from the Resulting Remedy, *Kirby* Reaffirmed that Premium Payments Owed to Employees Under Section 226.7 Are Wages

Five years after *Murphy*, this Court decided *Kirby*, which presented the question of whether a prevailing party in a case premised on meal- and rest-period violations could recover attorneys' fees under Labor Code section 218.5. (53 Cal.4th at p. 1255.) This Court held that "a section 226.7 action is brought for the nonprovision of meal and rest periods," not for the 'nonpayment of wages,'" and therefore the prevailing party in a section 226.7 action may not recover its attorneys' fees. (*Ibid.*)

Despite some federal district courts' view, the holdings in *Murphy* and *Kirby* are not incongruous. (See *Naranjo II*, *supra*, 40 Cal.App.5th at pp. 469-471 [reviewing cases]; *Stewart v. San Luis Ambulance, Inc.* (2017) 878 F.3d 883, 888 [same].) This Court expressly conveyed as much, stating that the decision in *Kirby* "is not at odds with our decision in *Murphy*." (*Id.* at p. 1257.) While reiterating that section 226.7 liability for an additional hour of pay "is properly characterized as a wage," this Court carefully distinguished the question resolved in *Murphy*—which turned on the nature of the payment required by section 226.7—from the question presented in

Kirby—which turned on the nature of a cause of action brought under section 226.7. (*Kirby*, *supra*, 53 Cal.4th at 1257.) Whereas *Kirby* holds that the legal violation at the heart of a section 226.7 claim is the nonprovision of meal and rest periods, *Murphy* maintains that the remedy for such a violation is the payment of a premium wage.

In reaching this conclusion, this Court parsed the statutory language of section 218.5, identifying a textual distinction between references to the legal violation and the resulting remedy. As this Court stated:

> As a textual matter, we note that section 218.5 uses the phrase "action brought for" to mean something different from what the phrase means when it is coupled with a particular remedy (e.g., "action brought for damages" or "action brought for injunctive relief"). An "action brought for damages" is an action brought to obtain damages. But an "action brought for nonpayment of wages" is not (absurdly) an action to obtain nonpayment of wages. Instead, it is an action brought on account of nonpayment of wages. The words "nonpayment of wages" in section 218.5 refer to an alleged legal violation, not a desired remedy.

(*Id.* at p. 1257.) Further harmonizing this supposed distinction with the holding in *Murphy*, which properly characterized section 226.7 payments as wages, the Court elucidated: "To say that a section 226.7 remedy is a wage, however, is not to say that the *legal violation* triggering the remedy is nonpayment of wages." (*Ibid*, original italics.) "Action brought for" is the operative phrase, and the object following the preposition "for" refers to the alleged legal violation, not the desired remedy. (*Ibid.*)

The language of section 218.5 and this Court's analysis of that statutory text in *Kirby* provide a useful contrast to the statutory

construction of sections 203 and 226, which both evidence the intent of the Legislature to include premium wages under section 226.7.

II. THIS COURT SHOULD HOLD THAT PREMIUM WAGES OWED UNDER SECTION 226.7 MUST BE TREATED AS WAGES WITH RESPECT TO SECTIONS 201-203

The wage payment provisions of the Labor Code impose timing requirements on the payment of wages to employees upon separation of employment. If an employee is discharged, "the wages earned and unpaid at the time of discharge are due and payable immediately." (§ 201, subd. (a).) If an employee quits, absent a written employment contract for a specified period of time, "his or her wages shall become due and payable not later than 72 hours thereafter," unless sufficient notice has been given, "in which case the employee is entitled to his or her wages at the time of quitting." (§ 202, subd. (a).) If an employer willfully fails to pay "any wages of an employee who is discharged or who quits" the employer is subject to penalties commonly referred to as waiting time penalties. (§ 203, subd. (a).) "Together, sections 201 and 202 direct employers to promptly pay wages upon separation of employment by discharge or by resignation, with section 203 providing for penalties when the employer willfully fails to do so." (*Smith v. Superior Court* (2006) 39 Cal.4th 77, 85 (*Smith*).)

The focus of the instant case is the application of section 203 to an employer's failure to pay premium wages owed under section 226.7 to an employee who was discharged.[6] (*Naranjo II*, *supra*, 40 Cal.App.5th at p. 454.) Based on its erroneous belief that section 226.7's remedy does not

[6] It is undisputed that Spectrum discharged Naranjo because he left his post to take a meal period (3 JA 0419-0420), thereby satisfying the condition precedent in section 201 to entitle him—and any other separated class member—to waiting time penalties under section 203.

constitute wages, the Court of Appeal held that "an employer's failure, *however willful*, to pay section 226.7 statutory remedies does not trigger section 203's derivative penalty provisions for untimely wage payments." (*Id.* at p. 474, italics added.) The statutory text of section 203 establishes the opposite conclusion, which is supported by the legislative history and the overriding public policy favoring the prompt payment of wages.

A. The Statutory Language Clearly and Unambiguously Requires Employers to Pay "Any and All" Wages to Employees upon Separation of Employment or Be Subject to Waiting-Time Penalties

In construing a statute, this Court's fundamental task is to ascertain the Legislature's intent so as to effectuate the purpose of the statute. (*Day v. City of Fontana* (2001) 25 Cal.4th 268, 272.) Statutes governing conditions of employment are to be construed broadly in favor of protecting employees. (*Murphy*, *supra*, 40 Cal.4th at p. 1103.) In determining whether the Legislature intended section 226.7 premium wages to be paid to employees upon separation of employment in accordance with sections 201-203, the Court "must look first to the words of the statute, 'because they generally provide the most reliable indicator of legislative intent.'" (*Ibid.*) In reading the statutes, the words chosen by the Legislature "are to be given their plain and commonsense meaning." (*Ibid.*)

The term "wages" is used several times throughout sections 201-203.[7] With respect to section 203, the Legislature makes clear that an employer who willfully fails to pay "*any wages* of an employee who is discharged or who quits" shall be subject to the penalty provided therein.

[7] The term "wages earned" provided in section 201 is discussed in Section III.A., *infra*, in conjunction with use of that term as provided in section 226.