

## Ohio Supreme Court Enforces Prevailing-Wage Penalties

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Today, in a 5-2 decision, the Ohio Supreme Court held that in a private action by employees, the penalties set forth in the prevailing-wage statute, R.C. 4115.10(A), are mandatory penalties that must be imposed against a party found to have violated the prevailing-wage law. The case is *Bergman v. Monarch Constr. Co.*, 2010-Ohio-622.

Monarch Construction entered into a contract with Miami University to serve as the general contractor for the construction of student housing. Because the project was a public improvement, Monarch was required to pay its employees prevailing wages under R.C. 4115. The Department of Commerce conducted an investigation and issued an initial determination that a subcontractor of Monarch Construction had underpaid its employees, and that, as a result, both the subcontractor and Monarch were liable for back wages and penalties.

A number of underpaid employees opted not to assign their claims to the Department of Commerce, and filed suit against Monarch and its subcontractor under R.C. 4115.10(A). After a bench trial, the court found Monarch liable for back pay, but denied the plaintiffs' request to penalize Monarch an additional 25% of the back wages it owed as provided in R.C. 4115.10(A). The court also refused to impose a penalty equal to 75% of the back wages to be paid to the Director of Commerce, reasoning that these penalties were discretionary and that the circumstances of the case did not warrant their imposition. The appellate court affirmed, and the Ohio Supreme Court accepted review.

In the majority opinion written by Justice Cupp, the Court rejected the appellate court's rationale that the R.C. 4115.10(A) penalties are discretionary based upon its misinterpretation of the statute. Specifically, the Supreme Court held that the phrase "may recover" within R.C. 4115.10(A) refers only to the choice the underpaid employee has to enforce his or her right to recover the underpayment, not the penalty. If the employee chooses to enforce his or her statutory right to recover the unpaid wages, and proves the case, then the statutory penalties set forth in R.C. 4115.10(A) follow as a matter of course and are mandatory.

Based upon this holding, Ohio courts will strictly enforce the penalty provisions set forth in R.C. 4115.10(A) upon finding a prevailing-wage violation.