



## Legal Alert: Reach of Employee's "Waiting-Time Penalties" Cut Off at Three Years

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The California Supreme Court clarified on November 18, 2010, that the statute of limitations period for a former employee's claim of "waiting-time penalties" under California Labor Code section 203 ("Section 203") is exactly three years. No more, no less. This is true regardless of whether the penalty claim is asserted by itself or whether it is asserted in conjunction with California's popular limitations-period enhancer, Business & Professions Code section 17200 ("Section 17200"). (See opinion online at <http://www.courtinfo.ca.gov/opinions/documents/S170758.PDF>.)

In *Pineda v. Bank of America, N.A.*, 2010 Cal. Lexis 11678, Jorge Pineda gave his employer, Bank of America, two weeks advance notice of his resignation in May 2006. The bank paid Pineda all of his final wages, but not until four days after his last day of work, in violation of Section 203. A year and a half later, Pineda filed a class action lawsuit, in which he sought to represent all former bank employees who did not timely receive their final wages. In addition to the Section 203 claim, Pineda alleged an "unfair competition" claim under Section 17200, as is habitually done by plaintiffs to extend their wage-claim statute of limitations period from three years to four years.

The trial court threw out Pineda's claims. The court reasoned that because Pineda only sought "waiting-time penalties" for the untimely wage payment, not the actual wages themselves, the one-year limitations period reserved for penalty claims applied. The Court of Appeal affirmed the ruling in all respects.

The Supreme Court reversed the ruling, concluding that Pineda's claim for "waiting-time penalties" was subject to the three-year limitations period. The Supreme Court reasoned that "Section 203(b) sets forth a single limitations period governing all actions to recover section 203 penalties regardless of whether an employee seeks both unpaid wages and penalties or penalties alone." (Opinion, p.2.)

Concerning application of the Section 17200 claim, the Supreme Court agreed with the reasoning of both lower courts. It concluded that in contrast to unpaid wages, which an employee earns and owns as a vested right, the "waiting-time penalties" provided by Section 203 are not designed to compensate employees for work performed. Section 203 "is intended to encourage employers to pay final wages on time, and to punish employers who fail to do so." (Opinion, p.4.) As a result, the recovery of "waiting time

penalties" cannot be deemed restitution, which is the only type of monetary relief available under Section 17200.

### ***The Impact of Pineda?***

For the average individual-plaintiff wage case, *Pineda* will have little impact. Individual plaintiffs usually file their wage claims within three years of termination anyway, and the one-year limitations period was often not a realistic outcome or expectation, even though the argument could be creatively made.

But for the average class-action wage case, *Pineda* is a substantial victory for management. It shrinks the size of a class representative's "net" by 25 percent. For "waiting time penalties" under Section 203, the alleged class will now be limited to include only those who separated from the company within the three years – not four years – preceding the filing of the Complaint. This reduces the number of potential class members for the claim, diminishing the value of a plaintiff's Section 203 class allegation. Hopefully, *Pineda* signals a trend for the California Supreme Court with respect to its remaining wage-and-hour cases.

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