

In Arizona, Employers Are Required to Pay Earned Wages to Employees

By Kraig Marton and Jeffrey Silence

When you left your last job, did your former employer pay you everything you were owed? If not, your former employer faces serious consequences under state and federal laws. When an employee quits or is even fired for cause, employers are required to pay their former employee everything they are owed, including wages, commissions, bonuses, and other agreed upon amounts. Depending on company policies and other factors, the employer may also owe you for sick pay, vacation pay, paid time off and severance pay. Many employers, however, fail to pay their employees everything they are owed because they are either upset with the employee, or they may simply feel they can get away with it. Often, employees do nothing about it because they believe they cannot afford to hire an attorney, or they fear their former employer will provide a bad reference if they sue or threaten to sue them. As will be discussed below, those assumptions are not necessarily true.

Remedies

In Arizona, when an employer in bad faith fails to pay an employee for everything they are owed, an employee may recover three times the total value of their unpaid wages, sick days, vacation days, severance pay, bonuses, etc.¹ Employees may also recover their attorneys' fees.² As a result, even though your employer may have only failed to pay you about \$1,000, you may be entitled to \$3,000, plus your attorneys' fees, which makes these types of cases appealing to both employees and attorneys.

The key issue in these cases is whether the employer acted in bad faith because courts will only award triple damages if the employer acted in bad faith. Also, courts will very likely award attorneys' fees if the employer acted in bad faith. Simply put, an employer acts in bad faith if they have no good faith reason for failing to pay. To prove bad faith, we recommend that an employee email their employer or send a letter requesting an explanation for their failure to pay the agreed upon compensation. It is important that you give your employer an opportunity to provide a written explanation because you need to know why the employer failed to pay you before you or your attorney can determine the reasonableness of their position. If your former employer ignores your email or letter, that will tend to show bad faith.

In most cases, it is pretty clear whether an employee should have been paid certain monies based on prior dealings, policies and/or any employment contract. However, an employer may have simply made a mistake in its calculations, or the employment contract or employee handbook may state that an employee forfeits certain accrued paid time when they leave, so you should ensure the employer provides a written explanation.

¹ A.R.S. § 23-355.

² A.R.S. § 12-341.01.

Be sure to act quickly because an employee only has one year in which to bring a claim for unpaid compensation and/or breach of an employment contract.³

Failure to Pay State or Federal Minimum Wages

Although an employee only has one year in which to bring a claim for unpaid compensation or breach of an employment contract, an employee has two years in which to bring a claim for failure to pay state and federal minimum wages⁴. In fact, an employee has three years to file a claim for failure to pay federal minimum wages if the failure to pay wages was “willful.”⁵ A claim for failure to pay state and federal minimum wages generally arises when an employer fails to its employee any money for a day in which the employee worked, although the claim may also arise when an employer fails to pay an employee the state minimum wage, which is \$7.65 per hour in Arizona. In contrast, a claim for failure to pay the agreed upon compensation, as discussed above, means the employer paid the minimum wage but did not pay the additional agreed upon compensation. An employee cannot bring a claim for failure to pay state and federal minimum wages if an employer fails to pay paid-time off (i.e., sick, vacation, and personal days) because the employee did not actually work those days.

If your employer failed to pay state or federal minimum wages, you are likely entitled to recover twice the amount of the unpaid state or federal minimum wages. Unlike a claim for failure to pay agreed upon wages, an employee is automatically awarded their attorneys’ fees if it is found that the employer failed to pay state or federal wages.⁶ In addition, individual corporate officers can be personally liable for failure to pay federal minimum wages if they exercise control over the employment relationship, even if they lack an ownership interest in the business.⁷ The ability to hold individual corporate officers personally liable can make a real difference, especially if the company is not paying because of a lack of funds.

Why Employees Should Act

Many employees may be hesitant to sue their former employer because they fear the employer will provide a bad reference. Although this could be a somewhat legitimate fear, there are some things you should know. First, if you reach a settlement agreement, that possibility could be addressed in the settlement paperwork, so that neither you nor your employer will be able to discuss the settlement. Second, a well written settlement agreement will require the employer not to say anything negative about you to anyone. Third, even if a prospective employer finds out you sued your former employer for failure to pay wages, the prospective employer would likely understand and appreciate

³ A.R.S. § 23-356; 12-541(3).

⁴ A.R.S. § 23-364(H); 29 U.S.C. § 255(a).

⁵ 29 U.S.C. § 255(a).

⁶ A.R.S. § 23-364(G); 29 U.S.C. § 216(b).

⁷ *Boucher v. Shaw*, 572 F.3d 1087, 1091 (9th Cir. 2009); *Donovan v. Sabine Irrigation Co., Inc.*, 695 F.2d 190, 194 (5th Cir. 1983) *cert. denied*, 463 U.S. 1207 (1983).

that you wanted to be paid everything you were owed. Fourth, if you can prove an employer sent out a negative reference because you asserted your rights, you may also have a defamation claim or other remedy.

If you are currently working for the employer who you believe owes you money, you have many options. You may send a demand letter, file a claim with the Labor Department, or file a lawsuit to collect whatever amount you are owed, and your employer is prohibited from taking any retaliatory action against you.⁸ For these reasons, you should not be afraid to assert your rights and recover what you are owed.

If you are not being paid what you are owed, you should promptly seek legal advice and agree with your lawyer about what you want to do about it. Our firm, and many others, regularly handle such cases.

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This article is not intended to provide legal advice and only relates to Arizona law. It does not consider the scope of laws in states other than Arizona. Always consult an attorney for legal advice for your particular situation. This policy is written based on Arizona law for Arizona employers.

⁸ A.R.S. § 23-364; 29 U.S.C. 215(a)(3).