

March 6, 2018

Colorado Supreme Court Clarifies Only Two- or Three-Year Statute of Limitations Applies to Colorado Wage Claim Act Claims

Most On March 5, 2018, the Colorado Supreme Court issued a key ruling establishing that a terminated employee seeking to recover unpaid wages under the Colorado Wage Claim Act (“CWCA”) may pursue only those claims still within the two- or three-year statute of limitations, and not all allegedly unpaid wages from the beginning of his or her employment. The employees’ reading of the CWCA would have allowed an indefinite statute of limitations on unpaid wage claims under Colorado law. Accordingly, this ruling clarifies for employers (including multijurisdictional employers, particularly those subject to wage class and collective actions across multiple states) that unpaid wage claims under Colorado law have the same statute of limitations as claims under the Fair Labor Standards Act (“FLSA”). This is in contrast to states such as New York, which provides up to a six-year statute of limitations for state law wage claims.

The case, *Hernandez v. Ray Domenico Farms, Inc.*, originated in the U.S. District Court for the District of Colorado, where the plaintiffs alleged claims for unpaid wages under the CWCA, the FLSA, and other federal statutes. 250 F. Supp. 3d 789, 790 (D. Colo. 2017). The plaintiffs sought to recover under the CWCA all allegedly unpaid overtime wages going back to the beginning of their employment relationships with the employer, which in some cases was back to 1992. *Id.* at 790–91.

CWCA Section 109 provides that “[w]hen an interruption in the employer-employee relationship by volition of the employer occurs,”—*i.e.*, when the employer terminates the employee—“the wages or compensation for labor or service earned, vested, determinable, and unpaid at the time of such discharge is due and payable immediately.” C.R.S. § 8-4-109(1)(a). The CWCA also provides a statute of limitations: “[a]ll actions brought pursuant to this article shall be commenced within two years after the cause of action accrues and not after that time; except that all actions brought for a willful violation of this article shall be commenced within three years after the cause of action accrues and not after that time.” C.R.S. § 8-4-122. The *Hernandez* plaintiffs contended that this two- or three-year statute of limitations did not begin to run on a Section 109 claim until the termination of the employment relationship, and therefore, Section 109 permitted a terminated employee to seek all unpaid wages, even regular wages that had previously been earned but not paid, back to the beginning of their employment.

The issue arose before the District of Colorado on cross-motions for partial summary judgment. After considering the rather unclear statutory language of the CWCA and the differing decisions reached by the other judges in the District of Colorado, U.S. District Judge William Martínez *sua sponte* certified the question to the Colorado Supreme Court. 250 F. Supp. 3d at 801.

The Colorado Supreme Court held that, upon termination by the employer, an employee may pursue a Section 109 claim for both (1) wages that only became due and payable at the end of the employment (such as accrued vacation pay), and (2) those that had previously become due and payable yet remained unpaid (such as overtime accrued in a given pay period). *Hernandez v. Domenico Farms, Inc.*, 2018 CO 15 ¶ 16. However, because “the statute of limitations for those [second set of] wages begins to run on the date that each set of wages first became due and payable—not on the date of separation,” an employee must pursue a claim to recover such wages within two or three years. *Id.* at ¶ 14. If the employee does not do so, the employee’s claim is extinguished by the

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operation of the statute of limitations, rejecting plaintiffs' contention that the statute of limitations on unpaid wages is, essentially, indefinite. *Id.* at ¶¶ 16, 19. Thus, the limitations period for any unpaid wages claims "begins to run on the payday following the conclusion of the pay period in which the wages were earned—not on the day of termination." *Id.* at ¶ 20.

As the Colorado Supreme Court noted, this decision reflects the plain language of the CWCA, its legislative history and intent, and the underlying purpose of the statute of limitations—"promoting justice, avoiding unnecessary delay, and preventing the litigation of stale claims." *Id.* at ¶ 16. Importantly, this result provides certainty for employers facing wage claims and class/collective actions given the potential indefinite liability proposed by plaintiffs. In *Hernandez* alone, this would have resulted in 26 years of unpaid wages at issue. Now, it is clear that upon terminating an employee, any claims for unpaid wages are limited to the two- or three-year statute of limitations under both the FLSA and the CWCA.

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This memorandum is intended to provide you with general information regarding the Colorado Supreme Court's holding concerning the statute of limitations applicable to Colorado Wage Claim Act claims for unpaid wages. This memorandum is not intended to provide specific legal or tax advice. If you have any questions or if you need legal advice as to a specific benefit plan or employment law issue, please contact one of the following members of the Brownstein Hyatt Farber Schreck Employee Benefits Executive Compensation Group or Employment Law Group: