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California Supreme Court Rules on Statute of Limitations for Waiting Time Penalty Claims

A new California Supreme Court decision underscores the importance for employers to timely pay final wages. The Court has ruled that in all cases the statute of limitations to recover “waiting time penalties” under California Labor Code section 203 for late payment of final wages is three years. This limitations period applies regardless of whether the employee sues only for the penalty or also seeks unpaid wages. The case is [Pineda v. Bank of America, N.A.](#), No. S170758 (November 18, 2010).

Plaintiff Jorge Pineda gave his employer, Bank of America, two weeks’ notice that he was resigning effective May 11, 2006. The bank paid Pineda his final wages on May 15, 2006, four days after Pineda’s last day of work, in violation of California Labor Code section 202. Section 202 requires payment on an employee’s last day of work if the employee provides at least 72 hours’ advance notice of resignation. On October 22, 2007, Pineda filed a class action lawsuit against the bank, seeking to recover section 203 penalties on behalf of former employees who did not receive their final paychecks in a timely manner under Labor Code sections 201 (final wages upon discharge) or 202 (upon resignation). Pineda also sought restitution of section 203 penalties under California’s Unfair Competition Law (“UCL”), Business & Professions Code section 17200 *et seq.*

The bank argued that Pineda’s section 203 claim was untimely. While actions for unpaid final wages under sections 201 and 202 are governed by a three-year limitations period, the bank contended that where an employee was *only* seeking waiting time penalties and *not* wages, the one-year statute of limitations under Code of Civil Procedure section 340(a) for actions to recover penalties applied. The bank also asserted that the UCL, which has a four-year statute of limitations, cannot be used to recover section 203 penalties.

The California Supreme Court ruled that section 203 “contains a single, three-year limitations period governing all actions for section 203 penalties irrespective of whether an employee’s claim for penalties is accompanied by a claim for unpaid final wages.” The Court pointed out that the plain language of section 203 specifies that “[s]uit may be filed for these penalties any time before the expiration of the statute of limitations on an action for the wages from which the penalties arise.” Furthermore, applying a one-year statute of

limitations for section 203 penalties that did not include an underlying claim for unpaid wages would create inconsistent results that could not have been intended by the legislature. To illustrate this, the Court gave examples of Employees A, B, and C who all leave their jobs on the same day and have employers who fail to pay them:

“A’s employer never pays the owed wages and so A can, any time before three years have expired, timely file suit for both unpaid final wages and the 30 days of accumulated section 203 penalties. By contrast, B’s employer pays the owed final wages, albeit six months late. As a result, no claim for unpaid wages remains and, under defendant’s construction, the three-year limitations period that once would have governed B’s available section 203 claim is now, six months after the statute of limitations began to run, a one-year limitations period. Finally, C’s employer pays the final wages over a year after they were due. No claim remains for the now paid final wages and, as defense counsel acknowledged at oral argument, C would no longer have a claim for section 203 penalties, as more than a year has passed since the claim initially accrued.”

The Court went on to consider whether an employee may recover section 203 penalties as restitution under California’s Unfair Competition Law. The UCL prohibits “any unlawful, unfair or fraudulent business act or practice,” and generally limits relief to that which would make the plaintiff whole (*i.e.*, restitution). The Court reasoned that the penalties under section 203 were not intended to make the employees whole but rather “intended to encourage employers to pay final wages on time, and to punish employers who fail to do so.” Therefore, the Court held that section 203 penalties cannot be recovered as restitution under the UCL or its more generous four-year statute of limitations.

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