

LEGAL UPDATES

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## Service

Labor &amp; Employment

## Colorado Supreme Court Enforces Statute of Limitation on Wage Claims

The Colorado Supreme Court has confirmed what most employers had long assumed about the statute of limitation in the Colorado Wage Claim Act: Employees may seek unpaid wages going back two or three years, but no further. The Court's ruling, which agreed with an amicus brief from Husch Blackwell, ensures that Colorado employers are not on the hook for unpaid wages going back decades.

The plaintiffs in *Hernandez v. Ray Domenico Farms, Inc.* had sought to exploit an unusual feature of the Colorado Wage Claim Act (the Wage Act). It allows employees to bring suit for unpaid wages under two separate provisions, depending on whether the employee is currently employed or no longer employed. Plaintiffs in this case had reasoned that the provision that applies to former employees revived claims that were time-barred under the provision that applies to current employees. If true, former employees could bring suit for unpaid wages dating to the beginning of their employment, possibly 20 or 30 years ago.

In its unanimous decision on March 5, 2018, the Supreme Court rejected this novel argument and held that the Wage Act means what it says: All claims for unpaid wages must be brought within two or three years after wages were earned, regardless of the section under which the employee filed suit.

On behalf of the Colorado Civil Justice League and other business interests, Husch Blackwell attorneys filed the only amicus brief in support of the employer. The Supreme Court's opinion agreed with each of the positions set forth in Husch Blackwell's amicus brief and disagreed with the briefs of the plaintiffs, their amici and, with respect to at least one issue, even the defendant employer.

### Background

The Supreme Court interpreted the interplay between three sections of the Wage Act: Section 103, which requires employers to pay employees at regular intervals during their employment; Section 109, which requires employers to pay employees upon termination for unpaid wages that are earned, vested and determinable but unpaid; and Section 122, which contains a two- or three- year statute of limitations (three years for willful violations).

In the underlying case, the employees and employer agreed that the Wage Act provides two separate cause of actions under Sections 103 and 109. The employees, seasonal and migrant workers employed for seven to 22 years, brought claims for unpaid wages stretching back approximately two decades. The employees did not dispute that claims under Section 103 were subject to the statute of limitation. But they claimed they were entitled to a second opportunity to bring claims for the same wages under Section 109 once their employment had ended. The employer, in turn, argued that claims under Section 109 were limited to recovery of only those wages earned and vested within the final pay period, including unused vacation and perhaps vested commissions or bonuses.

Husch Blackwell's amicus brief took a middle ground by focusing on the plain language of Section 122's statute of limitation. It requires all actions under the Wage Act, whether under Section 103 or 109, to commence within two or three years after a cause of action accrues and "*not after that time.*" Section 109 similarly made clear that "wages and compensation for labor or service earned, vested, determinable and unpaid" were due, not just those earned within the last pay period.

The Supreme Court agreed with the positions Husch Blackwell's amicus brief advocated. A discharged employee under Section 109 may seek recovery of previously earned and unpaid wages, as well as wages due at separation. But importantly, the statute of limitation limits employees to seeking claims for such wages for only two or three years. This Supreme Court's ruling is consistent not just with the language of the Wage Act, but also with the federal Fair Labor Standards Act and the Wage Act's requirement of maintaining employment records for three years.

*Hernandez* is the first published decision drafted by Justice Melissa Hart, whose academic career preceding her appointment to the Supreme Court advocated for employee rights and expansion of employer liability.

### **What This Means for You**

Had employees won, the impact on collective and class actions for wage claims could not be overstated. Disregarding a statute of limitation and permitting litigation over decisions made decades ago would substantially increase the potential liability for employers defending these actions. It also would have put employers on an unfair footing because memories fade, witnesses become unavailable and records no longer exist, all factors that would favor employees. The Supreme Court's decision

thus reinforces the strong public policy favoring statutes of limitation, including promoting justice, avoiding unnecessary delay and preventing the litigation of stale claims.

### **Contact Us**

For more information on how the Court's ruling affects your organization, contact Sonia N. Anderson, Stacey Bowman, Christopher L. Ottele or another member of Husch Blackwell's Labor & Employment team.