



penalty time: california supreme court clarifies the statute of limitations for employees seeking "waiting time" penalties for late paid wages

MSK Client Alert

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When an employee is terminated, California law generally requires the employer to pay all final wages immediately upon termination. When an employee voluntarily resigns, the law requires that the final wages are paid upon termination or within 72 hours of the employee's giving notice, whichever is later. Final wages include overtime, as well as any unpaid vacation accrued by the employee. If an employer fails to timely pay final wages, it may be subject to a penalty in the amount of a full day's pay for each calendar day the wages are late, up to a maximum of 30 days. These penalties are commonly referred to as "waiting time penalties" or "section 203 penalties" (in reference to the Labor Code section that imposes them). Usually, waiting time penalties are sought in conjunction with a claim for the unpaid wages themselves. However, in *Pineda v. Bank of America, N.A.* (Nov. 18, 2010), the California Supreme Court considered a claim seeking only waiting time penalties.

Plaintiff Jorge A. Pineda provided his employer, Bank of America, with two weeks' notice of his resignation. However, the Bank did not pay him his final wages until four days after his resignation became effective. More than one year after the wages were paid, Pineda filed a class action lawsuit on behalf of all former Bank of America employees whose final wages were untimely paid. Pineda's complaint alleged two causes of action. First, he sought waiting time penalties pursuant to section 203 of the California Labor Code; second, Pineda sought to recover the unpaid penalties as restitution under California's Unfair Competition Law (Business & Professions Code section 17200).

The Court first addressed whether Pineda filed his lawsuit within the appropriate statute of limitations for a claim for waiting time penalties under Labor Code section 203. When seeking to recover both unpaid wages **and** associated

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waiting time penalties, a claim must be brought within three years. However, because Pineda was seeking **only** waiting time penalties (since he had, in fact, been paid his final wages), Bank of America argued that the one-year statute of limitations generally applicable to penalty actions should control. The Court disagreed. Relying on the purpose of Labor Code section 203, the language of the statute, and its legislative history, the Court held that the three-year limitations period provided by the Labor Code governs all actions for section 203 penalties regardless of whether the claim also includes a claim for unpaid wages. Specifically, the Court was concerned about creating an inconsistent statutory scheme whereby claims for penalties only were subject to a shorter statute of limitations than claims for wages and penalties.

Next, the Court addressed Pineda's alternate claim seeking waiting time penalties under California's Unfair Competition Law (UCL), which prohibits "any unlawful, unfair or fraudulent business act or practice..." (Business & Professions Code section 17203.) Remedies under the UCL are limited to injunctive relief and restitution. Ordinarily, a plaintiff files a UCL claim along with his Labor Code claim in order to take advantage of the UCL's **four-year** statute of limitations. Under the UCL, a plaintiff may seek restitution of unpaid wages because, once earned, those wages become the property of the employee. However, the Court held that waiting time penalties could not be recovered as "restitution" because "Section 203 is not designed to compensate employees for work performed. Instead, it is intended to encourage employers to pay final wages on time, and to punish employers who fail to do so."

In its decision, the Supreme Court expressly reaffirmed its position that California's "public policy in favor of full and prompt payment of an employee's earned wages is fundamental and well established," and that the failure to pay wages in a timely manner injures the public at large. The Court's decision reinforces the importance of ensuring that employees are paid all of their final wages upon termination in order to avoid the imposition of waiting time penalties and extremely costly class action litigation.

Ask MSK - Q&A Session

Q: Are all California employers required to pay final wages immediately?

A: No. There are exceptions for certain industries. For example, employees engaged in the production or broadcasting of motion pictures (including television programs, commercials, and music videos) may be paid final wages on the employer's next regularly scheduled payday following the date of the employee's termination or resignation.

Q: How does the Pineda decision impact other penalty claims under the Labor Code?

A: Various other sections of the Labor Code include penalty provisions. For example, Labor Code section 226 imposes a penalty on employers who fail to provide employees with a properly itemized statement with their paychecks. Based on the Court's reasoning in *Pineda*, unless such penalty provisions specifically reference a different statute of limitations, the one-year statute of limitations generally applicable to penalty actions should continue to control.



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Q: Can I mail or direct deposit an employee's final wages?

A: Final wages should not be mailed to an employee who is terminated; terminated employees must be paid at the time and place where they are informed of their termination. Mailing final wages to a terminated employee could subject an employer to waiting time penalties for any delay caused by mailing. An employee who quits may request that his or her final wages be paid by mail, but unless and until the employee makes such a request, an employer should not mail final wages. Final wages may be paid by direct deposit to the employee's account provided that the employee previously authorized payment by direct deposit and the time limits for paying final wages are still met.

Q: If the company hires an employee for a single day of work, when are that employee's final wages due?

A: An employee who is hired to perform one day of service must be paid at the end of that day. The California Supreme Court previously ruled in *Smith v. Superior Court* that the length of employment does not change the requirement that final wages be timely paid. 39 Cal. 4th 77 (2006).

Q: When is an employer required to pay final commissions to an employee?

A: Once earned, commissions are treated as wages and, as such, are governed by the rules regarding the timing of wage payments. However, some commission plans establish prerequisites on the earning of commissions that may make it difficult to calculate future commissions. For example, many commission plans require that payment for a sale be received from the customer before a commission is earned; these types of requirements make it difficult, if not impossible, to calculate commissions at the time of termination. Please consult with legal counsel to determine when final commissions should be paid in accordance with the terms of a particular commission plan.