A Timely Analysis of Legal Developments

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The California Supreme Court recently held in *Pineda v. Bank of America* that the penalties recoverable under California Labor Code section 203 for unpaid final wages are subject to a three-year statute of limitations and not a one-year statute of limitations. The impact of this decision is substantial and immediate, in the form of increased potential exposure not just in individual claims, but, more importantly, in wage and hour class actions.

California Employers Can't Get a Break: Supreme Court Applies Longer, Three-Year Statute of Limitations to Claims for Waiting Time Penalties

By Dominic Messiha and Lauren Howard

In yet another blow to employers, the California Supreme Court unanimously announced in *Pineda v. Bank of America, N.A.* that the penalties recoverable under section 203 of the California Labor Code are subject to a three-year rather than a one-year statute of limitations. This is true irrespective of whether the employee seeks to recover unpaid wages in addition to waiting time penalties.

Under section 203, if an employer willfully fails to timely pay final wages to an employee after termination or resignation, the employee is entitled to a penalty in the amount of a day's wages for each day the wages remain unpaid, up to a maximum of 30 days. Following a review of the statutory language, legislative history, and public policy underlying section 203, the California Supreme Court ruled that section 203 penalties are subject to the longer three-year statute of limitations. The impact of this decision is substantial and immediate, in the form of increased potential exposure not just in individual claims, but, more importantly, in wage and hour class actions.

Additionally, however, the California Supreme Court determined that section 203 penalties are not recoverable as restitution under the Unfair Competition Law (Business & Professions Code § 17200 *et seq.*) ("UCL"), thus negating arguments that an even more generous four-year statute of limitations might apply.

Factual Background

Plaintiff Jorge Pineda was employed by Bank of America. He resigned giving two weeks' notice, effective on May 11, 2006. But Bank of America did not pay Mr. Pineda his final wages on his last day of work as required under Labor Code section 202. Rather, he was paid four days later on May 15, 2006.

Mr. Pineda filed a lawsuit on October 22, 2007 seeking to represent a class of former Bank of America employees whose final wages were not timely paid. He asserted causes of action for: (1) failure to timely pay wages under Labor Code sections 201 and 202, seeking penalties under section 203; and (2) violation of the UCL, seeking restitution of unpaid section 203 penalties.

The Trial and Appellate Court Decisions

Before the trial court, Bank of America filed a motion for judgment on the pleadings, arguing that a one-year statute of limitations applied to Mr. Pineda's case because he was seeking only section 203 penalties, and, therefore, his case was time-barred. The trial court agreed, and further concluded that section 203 penalties were not recoverable as restitution under the UCL.

The California Court of Appeal affirmed the trial court's decision in all respects. The California Supreme Court granted Mr. Pineda's petition for review.

Analysis

The California Supreme Court concluded that section 203's plain language, its legislative history, and its public purpose compel the conclusion that a three-year statute of limitations for pursuing section 203 penalties applies, irrespective of whether it is accompanied by an underlying claim for unpaid wages.

The court first looked at the statutory language of subsections 203(a) and 203(b).

The court determined that if subsection (a) of section 203 had constituted the entirety of the statute, a suit to recover penalties would undoubtedly be subject to a one-year statute of limitations because: (1) it governs recovery of a penalty; and (2) Code of Civil Procedure section 340(a) provides that a one-year statute of limitations applies to "[a]n action upon a statute for a *penalty* or forfeiture . . . ." However, the court acknowledged the Legislature's ability to prescribe a different statute of limitations to govern specific civil actions under Code of Civil Procedure section 312.

With this in mind, the court next turned to subsection (b) of section 203, which provides:

> Suit 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.

Actions for final wages not timely paid under sections 201 and 202 are governed by a three-year statute of limitations under Code of Civil Procedure section 338(a) (as "[a]n action upon a liability created by statute, other than a penalty or forfeiture"). From this, the court concluded that the Legislature intended to alter the statute of limitations that would have otherwise applied to actions to recover section 203 penalties.

Second, the court determined that the only plausible inference that could be drawn from the reference in section 203(b) to "the statute of limitations on an action for the wages from which the penalties arise" was an intent that the statute of limitations for section 203 penalties track the limitations period governing actions for unpaid wages, specifically three years.

Third, the court further reviewed the use of the indefinite articles "a" or "an" and the definite article "the" in the statute itself. The court determined that the use of the article "the" before "statute of limitations" and the indefinite article "an" before "an action for the wages" could only be interpreted as requiring that one limitations period would be applicable to all suits for unpaid wages, as opposed to a separate limitations period for unpaid final wages.

Next, the court engaged in a practical analysis as to the complications stemming from having two limitations periods, one for claims solely for section 203 penalties and one for claims seeking unpaid wages *and* section 203 penalties. The court again concluded that a single, three-year statute of limitations period should apply to both such claims, disapproving a previous appellate court decision.[1]

Thereafter, the court engaged in a brief analysis of the legislative history of section 203, finding that the Legislature enacted section 203(b) to eliminate the variance of related claims being governed by different limitations period.

The court also determined that because the failure to pay wages injures not only the employee, but the public at large, a three-year statute of limitations would serve as an incentive for employers to timely pay final wages, thus supporting California's fundamental policy in favor of prompt payment of an employee's earned wages.

Finally, the court concluded that section 203 penalties were not recoverable as restitution under the UCL, which would have triggered an even longer, four-year statute of limitations. The court noted at the outset that the goal of restitution is to restore the plaintiff to the "status quo ante."

With this in mind, the court analyzed the distinction between vested ownership interests in unpaid wages, on the one hand, and penalties on the other. First, the court determined that unpaid wages are the property of the employee once they are earned; meaning, once the work is performed. Therefore, seeking restitution of unpaid wages is appropriate under the UCL because it restores the employee to his or her appropriate position.

Second, the court determined that penalties are not designed to compensate employees for work performed. Rather, they are designed to encourage employers to timely pay final wages and to punish the employer that fails to do so. Therefore, it is the employer's action that gives rise to section 203 penalties. In contrast, it is the employee's action that gives rise to the vested interested in unpaid wages.

Ultimately, the court found that employees have no comparable vested interest in section 203 penalties until they are awarded by a relevant body. In sum, section 203 penalties cannot be recovered as restitution under the UCL.

Conclusion

The California Supreme Court's decision reiterates California's protection of employee rights. While the court viewed its decision as simply bringing clarity and consistency to the time for an employee to bring an action to recover section 203 penalties, its decision significantly increases the potential exposure for waiting time penalties in currently pending and future wage and hour claims and class actions. Therefore, more than ever, California employers must be cognizant of their final pay practices as mandated by the California Labor Code.

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[1] *McCoy v. Superior Court*, 157 Cal. App. 4th 225 (2007).