

## California WageHour NewsbreakWaitingTime Penalties Not Recoverable Under Unfair

December 16, 2010

California employers may be subject to substantial "waiting-time" penalties for failing to pay an employee his or her final wages immediately upon separation. **In an important opinion on November 18, 2010, the California Supreme Court held in *Pineda v. Bank of America, N.A.*, that a single three-year statute of limitations period applies to all claims for waiting-time penalties under the California Labor Code.** In its decision, the *Pineda* court rejected an employee's attempt to recover waiting-time penalties for the four-year limitations period applicable to California's unfair competition law (UCL).

### The *Pineda* decision

*Pineda* involved claims filed as a class action against Bank of America for failure to timely pay final wages to employees who quit or were terminated. The class sought to recover waiting-time penalties under the California Labor Code and restitution of unpaid waiting-time penalties under the UCL.

The *Pineda* court held that because employees do not have a vested property interest in waiting-time penalties, they cannot recover them as restitution under the UCL. Unlike wages, which compensate employees for work performed, waiting-time penalties are designed to encourage employers to pay final wages on time. Thus, the extended four-year statute of limitations period in the UCL does not apply to claims for waiting-time penalties.

*Pineda* also clarified that a single three-year statute of limitations period applies to claims for waiting-time penalties under the Labor Code. Bank of America paid the named plaintiff his final wages four days after his last day of employment. Because *Pineda* did not seek unpaid wages, Bank of America urged the court to apply a one-year limitations period that generally governs actions for penalties under the Labor Code. The *Pineda* court unanimously held that a three-year statute of limitations period applies to claims for waiting-time penalties, even if the employee does not seek unpaid wages.

### The bottom line—payment upon voluntary discharge or termination

*Pineda* simplifies the analysis for determining the limitations period for waiting-time penalties. Regardless of whether unpaid wages are claimed, a single three-year limitations period applies to all claims for waiting-time penalties.

**As a practical matter, California employers should pay employees all wages due immediately upon voluntary discharge or termination.** If an employee is terminated or gives 72 hours notice of his or her intention to quit, the employer must pay all wages earned and unpaid immediately upon separation. If an employee quits without providing 72 hours advance notice, his or her wages are due within 72 hours after the notice of quitting.

For every calendar day an employer is late, the employee is entitled to a day's wages at his or her ordinary rate as a waiting-time penalty until paid, up to a total of 30 calendar days of pay. Employers must remain diligent in monitoring compliance with their policies under California substantive law. This can minimize the likelihood that waiting-time penalty class action litigation will be filed against them.

Our team has a great deal of experience on the forefront of these counseling and class action litigation issues. If you would like to discuss these issues further or have questions about this *Alert*, please contact one of the attorneys listed above.

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