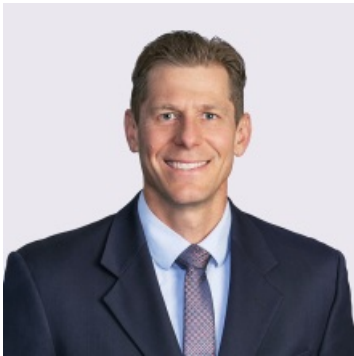


# Colorado Law Claims for Unpaid Wages Limited to Two or Three Years Prior to Termination

By Ryan P. Lessmann

March 8, 2018

## Meet the Authors



### Ryan P. Lessmann

(He/Him)

Office Managing Principal  
303-225-2418

Ryan.Lessmann@jacksonlewis.com

## Related Services

Construction  
Employment Litigation  
Energy and Utilities  
Entertainment and Media  
Financial Services  
Government Contractors  
Healthcare  
Higher Education  
Hospitality  
Insurance  
Life Sciences  
Manufacturing  
Real Estate  
Retail  
Technology  
Transportation and Logistics  
Wage and Hour

Under the Colorado Wage Claim Act (CWCA), a terminated employee's right to seek unpaid wages or compensation at termination is subject to the two- or three-year statute of limitations found in the CWCA, the Colorado Supreme Court has held. *Hernandez v. Domenico Farms, Inc.*, 2018 CO 15 (Mar. 5, 2018).

The Court also clarified that the statute of limitations begins to run when the wages or compensation first become due and payable.

### Background

The plaintiff-employees filed suit in the U.S. District Court for the District of Colorado alleging, in pertinent part, their employer violated overtime wage requirements under the CWCA.

On cross-motions for partial summary judgment, the plaintiffs and the defendant presented an issue to the District Court regarding how far back in time a terminated employee's unpaid wage claims can reach. As Colorado courts had yet to consider this issue, the District Court certified the following question for resolution to the Colorado Supreme Court:

Does the CWCA Section 109 (wage payments upon termination) permit a terminated employee to sue for wages or compensation that went unpaid *at any time* during the employee's employment, even when the statute of limitations has run on the cause of action the employee could have brought for those unpaid wages under Section 103 (wage payments during employment)?

(Emphasis added.)

To answer this question, the Supreme Court examined three provisions of the CWCA:

1. Section 103, requiring employers to pay employees at regular intervals *during their employment* (C.R.S. § 8-4-103);
2. Section 109, requiring employers to pay employees upon termination for unpaid wages or compensation (C.R.S. § 8-4-109); and
3. Section 122, the statute of limitations, which states that "all actions" must be commenced within two years (three years for willful violations) "*and not after that time*" (C.R.S. § 8-4-122).

The plaintiffs argued the statute of limitations on a Section 109 claim begins to run "only upon the termination of the employment relationship," and thus, upon termination, they could "seek any unpaid wages or compensation earned during the course of their employment." The employees asserted that, even if they would be time-barred from bringing a claim under Section 103 (wage payments during employment), Section 109 (wage payments upon termination) would nevertheless "revive" a terminated employee's

right to seek those unpaid Section 103 wages upon termination.

Conversely, the defendant argued that Section 109 “allow[ed] a terminated employee to collect wages only due as part of the final paycheck.”

### Claims Limited by Statute of Limitations

The Supreme Court agreed with the plaintiffs that Section 109 allows employees to seek wages and compensation that (1) “only become due and payable” when an employee terminates his or her employment, and (2) “had previously become due and payable.”

The Court, however, disagreed with the plaintiffs’ “revival” argument. It held that Section 109 allows terminated employees to pursue claims for unpaid wages that could have been brought under Section 103 during their employment, *subject to the statute of limitations in Section 122.*

### Begin to Run on Date Each Set of Wages Became Due and Payable

The Court further held that “[a]lthough a terminated employee may bring a claim under [S]ection 109 for previously earned yet unpaid wages, the statute of limitations for those wages -begins to run on the date that each set of wages first became due and payable — not on the date of separation.”

The Court clarified that Section 103 “wages that had previously been earned but remain[ed] unpaid” had indeed “become due and payable on the payday after the close of the pay period in which they were earned.” Thus, the Section 122 statute of limitations would bar an employee’s pursuing a claim to receive those unpaid wages “more than two (or three) years after those wages were due and payable.” In other words, “[t]hose wages are no longer due to the employee, and [S]ection 109 does nothing to make these extinguished claims due and payable again.”

As the Court explained, following the employees’ interpretation of the CWCA would create an unusual result because their version of the statute “would in effect create an indefinite period for a statute of limitations,” which was not the intention of the General Assembly.

\*\*\*

Employers should be careful to pay their employees the wages they earn when they are due. Employers should consult with employment counsel to determine whether and how the Supreme Court’s decision affects their policies and practices. Please contact your Jackson Lewis attorney with any questions.

©2018 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on labor and employment law since 1958, Jackson Lewis P.C.'s 1000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged, stable and diverse, and share our clients' goals to emphasize inclusivity and respect for the contribution of every employee. For more information, visit <https://www.jacksonlewis.com>.