



# Oregon Supreme Court Decision Reinforces Importance Of Reacting Quickly To Wage Claim Demands

Insights

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In a New Year's Eve decision, the Oregon Supreme Court stripped employer-defendants of a powerful litigation tool in wage claim litigation. In a 5-2 decision, the Supreme Court held that an offer of judgment made pursuant to ORCP 54 does *not* cut off an employee-plaintiff's right to collect attorneys' fees. Based on the *Mathis v. St. Helen's Auto Center* decision, employers must pay any unpaid wages within 48 hours of receiving a demand or face liability not only for the unpaid wages but also for the reasonable attorneys' fees incurred by the employee seeking to collect those wages. This decision highlights the importance for Oregon employers to quickly seek the advice of counsel and respond to wage demands in a timely manner.

## Background: What Employers Need To Know About ORCP 54 Offers of Judgment

Federal and Oregon employment laws generally provide for recovery of attorneys' fees by employees if they prevail in any employment litigation. The same is not true for employers – it is incredibly difficult for employers to recover the fees they incur if they prevail, and very rarely does it happen. This being the case, employment litigation is often driven by the exposure to fees, which can easily and quickly dwarf any actual damages at issue.

In order to level the playing field, if only to a degree, employer-defendants often seek to employ a procedural tool known as an offer of judgment. This rule of procedure found at ORCP 54 E allows a defendant to offer to allow the plaintiff to take a judgment against the defendant at an amount chosen by the employer. If the plaintiff accepts the offer, the plaintiff obtains a judgment for the amount offered and the lawsuit ends. If the plaintiff does not accept the offer, then the litigation continues – but at a risk for the plaintiff. If they do not recover more at trial than the amount the defendant offered, the plaintiff cannot recover attorney fees incurred after the date the offer of judgment was made.

This procedural mechanism can impose some measure of risk on a plaintiff (and their attorney) of a drastically diminished recovery. Otherwise, if the employee is awarded any amount of recovery by a court or a jury, the employee would generally be entitled to collect reasonable attorneys' fees they incurred in bringing the claim. It is not uncommon for attorneys' fees awards in typical Oregon wage and hour disputes to rise to \$150,000 – or more.

## Employees Can Recover Their Attorneys' Fees In Oregon Wage Claim Litigation

There's one final piece of the puzzle to understand before we analyze the recent Oregon Supreme Court decision and explain its significance. State law ([ORS 652.200](#)) provides that employee-plaintiffs may recover their reasonable attorneys' fees incurred in prosecuting claims for wages.

The statute provides that such fees are recoverable if the wages owed are not paid within 48 hours (excluding Saturdays, Sundays, and holidays) after the employee makes a demand for such wages. The plaintiff-employee is entitled to recover their attorneys' fees unless the employee willfully violated the contract of employment or the plaintiff-employee's attorney unreasonably failed to give a written notice of the wage claim before filing the action.

### **Oregon Supreme Court: Offers Of Judgment Do Not Cut Off Recovery In Certain Cases**

Which brings us to the *Mathis v. St. Helen's Auto Center* decision. The Oregon Supreme Court determined that the legislature intended to allow plaintiff-employees to recover attorneys' fees if the defendant-employer failed to pay wages owed *before* the filing of a lawsuit. The Court determined that this intent conflicted with ORCP 54, which allows defendants to avoid liability for fees for offers made *after* a lawsuit was filed.

Faced with this conflict, the Court decided that the more particular statute, ORCP 652.200, controls the day. Therefore, in its view, such offers of judgment would not serve to cut off the right of a plaintiff in a wage claim to recover their attorneys' fees. The Court did recognize that settlement offers made by defendants can limit, or potentially even cut off, plaintiff attorneys' fees under ordinary principals of determination what fees are "reasonable." State law lists the factors that courts are to consider when deciding whether to award fees and in what amounts, and "objective reasonableness" and the "diligence of the parties in pursuing settlement of the dispute" are among those factors. But under new Supreme Court precedent, ORCP 54 offers of judgment do not, as a matter of law, cut off the entitlement.

### **Oregon Employer Takeaways**

*Mathis* stands as a strong reminder of the importance of paying employee wages on time and correctly. It also is a warning regarding the importance of quickly investigating and responding to wage demands.

In most wage claim litigation, the major exposure is to attorneys' fees, not the actual demanded wages. Therefore, taking appropriate action to cut off that exposure is vitally important. With only 48 hours to do so, it is incumbent on employers to ensure that the importance of prompt analysis and response to wage demands is understood by whatever personnel will be fielding those demands.

We will continue to monitor the ramifications of this decision and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' Alert System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney or any attorney in [our](#) Portland office.

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*This Legal Alert provides an overview of a specific Oregon Supreme Court decision. It is not intended to be, and should not be construed as, legal advice for any particular situation.*

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