



# Colorado Supreme Court Just Halved the Timeframe to Bring Minimum Wage Act Claims: What Employers Need to Know About This Major Win

Insights

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The Colorado Supreme Court just gave employers significant relief from minimum wage lawsuits. Last week, in *By the Rockies v. Perez*, the court ruled that the applicable limitations period for a Minimum Wage Act (MWA) violation is two years (or three years for willful violations) – rather than the six-year timeframe sought by the plaintiff in the case. We'll explain what happened and how this decision impacts Colorado employers.

## Quick Background

Colorado's MWA gives employees who receive less than the minimum wage a right to sue and recover any unpaid amounts owed by the employer – but it is silent as to the applicable limitations period for bringing such claims. Therefore, prior to the *Perez* decision, claimants, employers, and courts were left to speculate about how long employees had to bring any minimum wage claims. The Colorado Supreme Court has now conclusively answered that question.

## *Perez v. By the Rockies*

In 2022, Samuel Perez sued By the Rockies, LLC (BTR), under the MWA, claiming that his former employer had failed to provide him and other employees with required meal and rest breaks during their shifts at the fast-food restaurant in 2016 and 2017. BTR asked the court to dismiss the case, arguing that Perez brought his lawsuit too late.

- **The Arguments.** BTR argued that the court should apply the two-year limitations period (three years for willful violations) for claims set out in the state's Wage Claim Act (WCA) because the MWA and WCA "are part of a comprehensive scheme addressing the same subject matter (the payment of wages) and serving consistent purposes (the recovery of allegedly unpaid wages)." Perez, on the other hand, argued that WCA's limitation period did not extend to the MWA, and that the state's default six-year limitations period under C.R.S. § 13-80-103.5 should therefore apply.
- **The Lower Courts.** The district court agreed with BTR and dismissed the case. However, the appeals court sided with Perez – putting the case back in play.
- **The Colorado Supreme Court.** In a unanimous decision issued on September 15, the state's high court held that the two- or three-year limitations period set forth in the WCA also applies to MWA

claims. In reaching this conclusion, the court said it would be “illogical” to allow a plaintiff to reach back only two years for wage claims under the WCA but six years for claims under the MWA. That would be “out of sync” with the limitations periods contemplated by the rest of the state’s labor code, as well as the federal Fair Labor Standards Act. The court also recognized that state law requires employers to retain payroll records for three years – suggesting that the Colorado legislature “intended that an employee could reach back no further than three years to recover wages that were previously unpaid.” The court therefore sent the case back to the district court and directed it to reinstate its order dismissing the case.

Fisher Phillips submitted an amicus brief in support of *By the Rockies*.

## **What Does This Mean for Colorado Employers?**

Colorado employers can breathe a sigh of relief, as this ruling will have significant implications for both pending and future lawsuits brought by employees for MWA violations. A shorter limitations period has the potential to cut liability for MWA claims *in half*, a welcome reprieve – especially for employers facing costly class-action lawsuits.

However, we do not expect this ruling to stem the rising tide of wage claims and class actions against Colorado employers. Even under a shortened limitations period, the costs of a class action can be staggering.

Now that liability exposure for older violations is cut off, employers should focus on compliance audits and updating policies and procedures, particularly with respect to meal and rest breaks. This can help ensure that your business doesn’t become the next target.

## **Conclusion**

We will continue to monitor developments in this area and provide updates as warranted, so make sure you are subscribed to [Fisher Phillips’ Insight System](#) to get the most up-to-date information directly to your inbox. If you have questions, please contact your Fisher Phillips attorney, the authors of this Insight, any member of our [Wage and Hour Practice Group](#), or any attorney in our [Denver office](#).

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