Employers Can Be Held Individually Liable For Unpaid Wages In Colorado

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The Colorado Court of Appeals recently held that the Colorado Wage Claim Act does not categorically bar individual liability for unpaid wages, rejecting arguments that a 2003 Colorado Supreme Court decision precluded any and all such claims. In other words, managers may now be personally on the hook for unpaid wage claims brought by current or former employees. The decision highlights the need for employers to create best practices to ensure the state's wage and hour laws are followed, and should spur managers to take a specific interest in confirming compliance at their workplaces (*Paradine v. Goei*).

Dismissed Claim Against Company Executive Revived By Court Of Appeals

Robert Paradine worked as the Chief Financial Officer and Vice President of Administration for Aspect Technologies, Inc. Upon his departure from the company, he filed a lawsuit that included a claim under Colorado's Wage Claim Act, alleging that Aspect owed him approximately $8,100 in unpaid wages. The lawsuit also included claims for fraud and breach of contract, which turned out to be a pivotal legal maneuver. But the lawsuit didn't just name Aspect as a defendant; it also named Esmond Goei, the company's Chief Executive Officer.

The CEO filed a motion to dismiss the claims against him personally, and the trial court granted that motion. It relied upon language found in the 2003 Colorado Supreme Court decision in *Leonard v. McMorris* which seemed to suggest that there was a complete bar preventing an individual from being held liable for such claims. Paradine appealed the decision, and the Colorado Court of Appeals reversed the dismissal and resurrected his claims in an April 19 ruling.

Court Of Appeals: Plaintiffs Can "Pierce" The "Corporate Veil" Due To Fraud And Contract Breach Claims

The court of appeals recognized that officers and directors cannot be held personally liable for the debts of a corporation merely because of the position they hold. However, the court ruled that an exception may apply that would permit a plaintiff to seek recovery directly from a corporate executive if they can "pierce the corporate veil." In order to do so, the court held, a plaintiff would need to prove:

1. the corporation is the "alter ego" of the officer;
2. the officer used the corporation to perpetrate a fraud; and

3. an equitable result will be achieved by disregarding the corporate form and holding the officer personally liable.

In this case, Paradine alleged that Goei, the CEO, used corporate income for personal expenses. He claimed that Goei used Aspect's money for an apartment lease and vehicle payments, commingled bank accounts and credit cards, and paid personal credit card expenses with corporate income. These allegations, the court said, raised a plausible fraud claim and permitted Paradine to proceed with his claim through a "piercing-the-corporate-veil" theory.

Further, Paradine argued that Goei participated in negotiations and entered into the employment agreement he signed with Aspect, and then willfully breached that agreement by failing to pay the required wages. By including allegations in the lawsuit that the corporation acted through its agent —Goei, its CEO—the court concluded that Paradine also stated a potential breach of contract claim.

Goei argued that the 2003 Colorado Supreme Court case should have prevented Paradine from maintaining any sort of claim against him personally for unpaid wages. But the appeals court said that the *Leonard v. McMorris* case only concerned a claim for unpaid wages brought under the Colorado Wage Claim Act, and therefore does not apply to wage claims that included fraud or breach of contract components.

The Colorado Court of Appeals reversed and remanded the case to the trial court, and Paradine will now have an opportunity to prove the claims against Goei. If he is successful, he may collect a judgment for unpaid wages directly from Goei himself.

What Does This Mean For Colorado Managers?
Whatever the outcome on remand, the decision serves as a good reminder to corporate officers and directors of the risks of mixing the personal with the corporate. Corporate accounts should be audited periodically for compliance with corporate ethics policies and with best practices and appropriate action taken to separate out any personal expenses. Also, you must ensure that your organization pays out compensation that is earned, vested, and determinable when an employee separates from employment. When your organization terminates the relationship, compensation generally is due immediately. When the employee quits or resigns, compensation is due the next regular payday.

For more information about how this decision might impact your workplace, contact the author or any attorney in our Denver office at 303.218.3650.

This Legal Alert provides an overview of a recent Colorado state court decision. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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