



By Christina Harris Schwinn

# Unpaid Wage Claims In Florida

A recent decision issued by Florida's Second District Court of Appeals<sup>1</sup> is a powerful reminder to employers that former employees employed in Florida have a statutory right to recover unpaid wages separate and apart from filing a claim under the Fair Labor Standards Act (the federal statute that governs the payment of overtime and minimum wage) or Florida's Minimum Wage Act.<sup>2</sup>

On March 18, 2009, the Second District Court of Appeals issued its opinion in Valerie M. Hingson v. MMI of Florida, Inc.<sup>3</sup> upholding the circuit court's ruling in favor of Ms. Hingson's claim for unpaid commissions. In addition to seeking unpaid commissions, Ms. Hingson was also seeking an award of attorney's fees and costs pursuant to Florida Statute § 448.08. Ms. Hingson alleged that she was owed unpaid commissions and bonus in an amount in excess of \$200,000. She ultimately received

an award of approximately \$31,000. While there were many issues that were tried in this case and MMI of Florida had affirmative defenses and claims against Ms. Hingson which it prevailed on, at the end of the day, she prevailed on a portion of her unpaid wage claim<sup>4</sup>, but was awarded only half of her attorney's fees in the Circuit Court action. She appealed her case to the Second District Court of Appeals and the Second District ruled that she was entitled to receive full reimbursement of her attorney's fees of \$112,000 plus pre-judgment interest and sent the case back to the Circuit Court on remand with instructions to enter a final judgment awarding Ms. Hingson all of her attorney's fees, costs and pre-judgment interest. In its ruling, the Second District clarified that to prevail on a claim to recover unpaid wages the amount of the ultimate award is not the determining factor of whether the plaintiff is a prevailing party. The award on an unpaid wage claim, in and of itself, determines whether the plaintiff prevailed on her claim to recover unpaid wages.

The decision is a powerful reminder because Florida Statute § 448.08 refers to wages and does not

distinguish between individuals who would be considered non-exempt or salaried exempt under the Fair Labor Standards Act. This Section of the Florida Statutes protects individuals who are not covered by either Statute referenced herein.

In addition to a statutory right to recover unpaid wages separate and apart from filing a claim under the Fair Labor Standards Act or Florida's Minimum Wage Act, Florida employers should be conscious of the fact that there are three, distinct statute of limitation periods which may apply when an individual brings a claim to recover unpaid wages.<sup>5</sup> The first of which provides for a two-year statute of limitations<sup>6</sup> in an action to recover unpaid wages. The second statute of limitations period is a four-year statute of limitation which applies to violations, other than willful violations, of Florida's Minimum Wage Act.<sup>7</sup> The third statute of limitations period is the longest and it provides for a five-year statute of limitations for a willful violation of Florida's Minimum Wage Act.<sup>8</sup> An example of a willful violation would be a situation where an employer knew that it was liable to the employee for the wages, but refused to pay such wages. Note that claims brought to recover unpaid wages under the two-year statute of limitation period do not require a showing that a provision of Florida's Minimum Wage Act was violated.

Florida employers are well served to determine the entire amount of compensation owed to an employee who is being terminated, to pay it, and to note that, with few exceptions, an employer is not entitled to deduct from a non-exempt employee's final paycheck any amounts that result from an employee's failure to return property to the employer or if the employer suspects the employee of having stolen property from the employer. Under Florida law, there is no requirement to pay a terminated employee such owed amounts the day the employee is terminated. Absent

a voluntary agreement between the parties governing when payment will be made which complies with the law, the terminated employee should be paid no later than the next regularly scheduled payroll.

**A note to the reader:** This article is intended to provide general information and is not intended to be a substitute for competent legal advice.

Questions regarding the content of this column or past columns may be e-mailed to Christina Harris Schwinn at [christinaschwinn@paveselaw.com](mailto:christinaschwinn@paveselaw.com). To view past columns written by Ms. Schwinn please visit the firm's website at [www.paveselaw.com](http://www.paveselaw.com). Ms. Schwinn is an experienced employment law attorney with the Pavese Law Firm, 1833 Hendry Street, Fort Myers, FL 33901; Telephone: (239) 336-6228; Telecopier: (239) 332-2243.

**(Endnotes)**

1. Note that Lee County is subject to the jurisdiction of the Second District court of Appeals. As such, this decision is controlling of employer's action towards employees in Lee County.

2. Valerie M. Hingson v. MMI of Florida, Inc. issued on March 18, 2009 by the Second District Court of Appeals (34 Fla. L. Weekly D588a).

3. Note that references to claims for unpaid wages includes overtime, damages and penalties as provided for in Florida Statute § 448.08.

4. Under Florida law, unpaid commissions constitute wages (citation omitted).

5. Florida Statute § 95.11(3)(a).

6. Florida Statute § 95.11(4)(c).

7. Florida Statute § 95.11(3)(q).

8. Florida Statute § 95.11(2)(d).

## BUILDING REVIEW

Lee Building Industry Association ■ www.bia.net ■ May 2009

**PUBLISHED BY**

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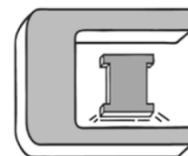
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