

Employee May Recover Colorado Wage Claim Penalty And FLSA Liquidated Damages

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An employee may not recover double damages for the same wage claim under both state and federal law. But, an employee may be awarded both the penalty under the **Colorado Wage Claim Act (CWCA)** and liquidated damages under the **Fair Labor Standards Act (FLSA)**, raising the potential liability for willful wage violations for Colorado employers.

Unpaid Wage Claims Under State and Federal Wage Law

An employee asserting a claim for unpaid wages may be able to sue his or her employer under both the CWCA and the FLSA. In a recent case decided by the Tenth Circuit Court of Appeals (whose decisions apply to Colorado employers), truck driver William Evans sought to recover unpaid wages from his employer, an auto transport company, by asserting both state and federal wage claims. [Evans v. Loveland Auto. Inv., Inc.](#), No. 15-1049 (10th Cir. Dec. 10, 2015). Because the FLSA does not preempt the CWCA, Evans was entitled to assert claims under both statutes.

Despite being properly served with the complaint, Evan's employer failed to file a response. The district court granted Evans a default judgment in his favor on both his FLSA and CWCA claims.

No Double Damages Allowed

The issue then became what damages could be awarded to Evans under both state and federal wage law. Established law in the Tenth Circuit provides that where a federal claim and a state claim arise from the same set of operative facts, the court may not award identical damages under both laws as that would constitute double recovery.

The district court concluded that it should award damages only under the statute that provided the greater relief, which it deemed was the CWCA. The court awarded Evans \$7,248.75 in unpaid wages, \$12,685.31 as the CWCA penalty of 175% of the unpaid wages due to his employer's willful violation, \$1,077.18 in prejudgment and postjudgment interest, and attorney fees and costs.

FLSA Liquidated Damages Serve Different Purpose

Despite the award in his favor, Evans appealed to the Tenth Circuit arguing that he was also entitled

to FLSA liquidated damages in addition to the CWCA penalty. The Tenth Circuit had not previously addressed whether the CWCA penalty and FLSA liquidated damages duplicate one another.

The CWCA imposes a penalty on an employer who fails to pay wages due to an employee within the statutory time period. That penalty begins at 125% of the amount of wages owed, but is increased to 175% if the employer's failure to pay is willful.

FLSA liquidated damages, on the other hand, can be awarded at 100% of the amount of wages owed and are authorized unless the employer shows that it acted in good faith and had reasonable grounds for believing that it did not violate the FLSA. These liquidated damages are considered compensatory, designed to compensate the employee for the delay in receiving wages because of the employer's FLSA violation. They are not considered a penalty.

The Tenth Circuit agreed with Evans and other jurisdictions in concluding that an award of both a state penalty and FLSA liquidated damages would not amount to a double recovery. The appellate court sent the case back to the district court to determine if FLSA liquidated damages were warranted in Evan's case.

No Prejudgment Interest If FLSA Liquidated Damages Awarded

Because prejudgment interest is meant to compensate the employee for the delay in receiving the wages owed to him – the same purpose articulated for FLSA liquidated damages – the Tenth Circuit stated that an employee may not recover both liquidated damages and prejudgment interest under the FLSA. Consequently, if the district court grants Evans liquidated damages, it must eliminate its award of prejudgment interest to avoid the double recovery.

Increased Wage Claim Liability

Colorado employers need to consider the increased liability that may result from a single wage claim when brought under both the CWCA and the FLSA. If the employer is willful in its failure to pay wages, the combination of both the 175% CWCA penalty and the 100% FLSA liquidated damages award will raise the stakes for wage claims significantly. These two multipliers can turn a relatively small wage claim into a much larger award in a hurry. Take steps to review your payroll processes so that you pay all wages due and owing within the statutory time periods and make good faith efforts to resolve any disputes regarding the amount of wages owed.

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