Departing Executives and the Wage Payment Act

The Illinois Wage Payment and Collection Act isn't just for hourly wage earners. It's a powerful tool for departing executives who feel they haven't been properly compensated.

Demands for increased profits commonly lead to management housecleaning and corporate restructuring. As a result, high-level corporate employment is far from secure. Departing executives – rightly or wrongly – often feel that they have not been properly compensated at the time of their departure. Over the past few years, Illinois courts have made it clear that the Illinois Wage Payment and Collection Act[1] is a powerful tool for such individuals.

Many employers are surprised to learn of the types of final wages and compensation for which they can be held liable under the Wage Payment Act. Moreover, a related statute provides for attorneys' fees for victorious Wage Payment Act claimants.[2] Remaining executives can even be held *personally* liable for the departing employee's damages and attorneys' fees. Thus, an understanding of this remedy is essential to employers considering changes in executive personnel, departing executives seeking final compensation and attorneys for both.

The elements of a Wage Payment Act claim

To establish a typical Wage Payment Act claim, a former employee must demonstrate 1) that he or she was an "employee," 2) that his or her former employer is in fact an "employer" for purposes of the Act, and 3) that the employer has violated an "agreement" by denying the claimant some portion of wages or final compensation.[3]

Establishing "employee" status. The Act defines the term "employee" broadly as "any individual permitted to work by an employer in an occupation."[4] The employee must work in Illinois,[5] though it is irrelevant whether the employee is a resident of Illinois.[6] For years, courts applied the Act in cases involving a wide range of executive positions – including an associate attorney at a law firm,[7] a regional manager,[8] a vice-president[9] and even a president[10] – without explicitly considering whether the Act's definition of employee applied to them.

In 2004, the first district decided a case involving a vice-president, *Anderson v First American Group of Companies, Inc*. That court explicitly held that the definition of "employee" includes executive employees and refused to read an exception for executives into the statute.[11] Since *Anderson*, other courts have followed suit and applied the Act to executives and professionals such

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1. 820 ILCS 115/1 et seq (the "Wage Payment Act" or the "Act").
2. Attorneys Fees in Wage Actions Act, 705 ILCS 225/1 (the "Fees Act").
3. For example, *Landers-Scelfo v Corporate Office Sys, Inc*, 356 Ill App 3d 1060, 1067, 827 NE2d 1051, 1058 (2d D 2005) (discussing elements of Wage Payment Act claim).
4. 820 ILCS 5/1.3. The Wage Payment Act provides one exception to the definition of employee for independent contractors. 820 ILCS 115/2.
5. *Glass v Kemper Corp*, 133 F3d 999, 1000 (7th Cir 1998) (employee who worked in Spain for Illinois corporation not protected by statute).
6. *Adams v Catrambone*, 359 F3d 858, 862 (7th Cir 2004) (holding that the Act protects non-residents of Illinois working in Illinois).
7. *Shramuk v Snyder*, 278 Ill App 3d 745, 748-49, 663 NE2d 468, 471 (2d D 1996) (considering attorneys' fees award under Fees Act).
8. *Stafford v Puro*, 63 F3d 1436, 1439 (7th Cir 1995).
9. *Adams*, 359 F3d at 861; *In re Handy Andy Home Improvement Centers, Inc*, 1997 WL 401583, at *1 (Bankr N D Ill 1997).
10. *Byung Moo Soh v Target Marketing Sys, Inc*, 353 Ill App 3d 126, 128, 817 NE2d 1105, 1106 (1st D 2004).
11. 353 Ill App 3d 403, 411, 818 NE2d 743, 750 (1st D 2004).

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as arbitrage fund managers[12] and sales account executives.[13] In short, courts have held that employees are covered by the Act regardless of whether they are hourly wage earners or corporate officers.[14]

Establishing "employer" status. As one would expect, the term "employer" covers a wide range of entities. It encompasses "any individual, partnership, association, corporation, limited liability company, business trust, employment and labor placement agenc[y]....or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee."[15]

A corporate officer or agent can sometimes be held jointly and severally liable with the employer for the compensation and attorneys' fees awarded to a departing employee.

Therefore, this element of a Wage Payment Act claim is easily met in the vast majority of cases.[16] However, for the Act to apply, it appears employers must be located in Illinois, as courts consistently hold that the Act provides no cause of action against out-of-state employers.[17]

Establishing a violation of an "agreement" to pay compensation. To prevail on a claim, a departing employee must prove that he or she has been denied compensation in violation of an "agreement" with the employer.[18] The striking aspect of the Wage Payment Act is that the "agreement" need *not* be a written employment contract. The "agreement" can be entirely implicit in the pattern or practice between the employee and employer.[19] In other words, a pattern of payment for past work can establish the terms of an employment agreement.

According to the courts, the Act provides broader relief than that afforded by contract law because it uses the term "employment agreement" rather than "employment contract." One court explained, "[a]n 'agreement' is broader than a contract and requires only a manifestation of mutual assent on the part of two or more persons; parties may enter into an 'agreement' without the formalities and accompanying legal protections of a contract."[20]

Hence, a plaintiff need only allege that the employer paid him or her according to "a demonstrable formula for work done" to plead mutual assent to employment agreement terms.[21] Nevertheless, written disclaimers in employee handbooks can defeat a claim of mutual assent asserted by an employee.[22]

A departing executive's testimony alone as to the agreed terms of employment can be enough to plead, and ultimately win, a Wage Payment Act case. Indeed, in *Zabinsky v Gelber Group, Inc*, the court affirmed a jury verdict awarding a bonus payment to the manager of an arbitrage fund where the plaintiff's only evidence was his testimony.[23] The court held the "[p]laintiff's trial testimony was sufficient to establish his right to the bonus under the Act, as well as to the amount of the bonus, and defendants' liability therefor."[24]

"Final compensation" covers many forms of remuneration

Pursuant to the Act, a claimant may seek "final compensation." "Final compensation" is defined as "wages, salaries, earned commissions, earned bonuses, and the monetary equivalent of earned vacation and earned holidays, and any other compensation."[25]

Courts hold that "any other compensation" includes *any* compensation provided pursuant to an agreement between employee and employer not specifically enumerated in the statute. Consequently, courts have held that "final compensation" under the Act includes bonuses,[26] stock options,[27] vacation pay,[28] severance pay,[29] commissions[30] and pension contributions.[31] Conversely, courts will not read *unenumerated forms* of compensation into the statute which are not otherwise provided for by agreement, such as payment for unused sick days.[32]

The Act will allow an employer to make deductions from an employee's compensation that are, e.g., required by law, made pursuant to a wage deduction order, for the benefit of the employee, or made with the written consent of the employee at the time the deduction was made.[33]

In *Kim v Citigroup, Inc*, a financial consultant brought a class action against his former employer. He sought certain stock options he allegedly forfeited, pursuant to the terms of a capital accumulation plan (the "plan"), when he terminated his employment.[34] Among the relief sought was a declaration that the plan violated the Act and that its forfeiture provision was void as a matter of public policy.

Pursuant to the plan, in which the plaintiff elected to participate, a portion of each paycheck was deducted to purchase stock options at a discount. However, the stock options had a two-year vesting period; any unvested options were forfeited upon separation for cause or voluntary departure of the employee.[35]

Citing Section 9 of the Act, the court

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12. *Zabinsky v Gelber Group, Inc*, 347 Ill App 3d 243, 246, 807 NE2d 666, 669 (1st D 2004).
13. *Landers-Scelfo* at 1061, 827 NE2d at 1054.
14. Illinois courts, however, have not addressed whether part owners of a business are employees. Thus, for example, it has not been determined whether a partner in a law or accounting firm is an employee.
15. 820 ILCS 115/2.
16. *Landers-Scelfo* at 1067, 827 NE2d at 1058.
17. *Porter v Time4Media, Inc*, 2006 WL 3095750, at *5-6 (ND Ill 2006) (collecting cases); *Khan v Van Remmen, Inc*, 325 Ill App 3d 49, 61, 756 NE2d 902, 913 (2d D 2001).
18. *Landers-Scelfo* at 1067-68, 827 NE2d at 1059.
19. Id at 1067, 827 NE2d at 1058.
20. *Zabinsky* at 249, 807 NE2d at 671.
21. *Landers-Scelfo* at 1067, 827 NE2d at 1058.
22. *Skelton v American Intercontinental Univ Online*, 382 F Supp 2d 1068, 1075 (ND Ill 2005).
23. *Zabinsky* at 248, 807 NE2d at 670-71.
24. Id at 248, 807 NE2d at 670.
25. 820 ILCS 115/2.
26. *Handy Andy,* 1997 WL 401583 at *5; *Zabinsky* at 248, 807 NE2d at 670; *Camillo v Wal-Mart Stores, Inc*, 221 Ill App 3d 614, 621-22, 582 NE2d 729, 734 (5th D 1991).
27. *Kim v Citigroup, Inc*, 368 Ill App 3d 298, 306, 856 NE2d 639, 646 (1st D 2006).
28. *Golden Bear Family Restaurants, Inc v Murray*, 144 Ill App 3d 616, 626, 494 NE2d 581, 589 (1st D 1986).
29. *Handy Andy*, 1997 WL 401583, at *5; *Kulins v Malco, a Microdot Co*, 121 Ill App 3d 520, 526, 459 NE2d 1038, 1044 (1st D 1984).
30. *Landers-Scelfo* at 1068, 827 NE2d at 1059-60.
31. *Shramuk* at 750-51, 663 NE2d at 472. It is worthy of note, however, that the Act is preempted by ERISA to the extent it applies to employee benefit plans. *Baker v Caravan Moving Corp*, 561 F Supp 337, 342 (ND Ill 1983).
32. *Grant v Bd of Ed of the City of Chicago*, 282 Ill App 3d 1011, 1022-23, 668 NE2d 1188, 1196 (1st D 1996) (holding that pay for unused sick days was not recoverable under the Act because it was not provided for in the Act or by agreement).
33. 820 ILCS 115/9.
34. *Kim* at 299, 856 NE2d at 641.
35. Id at 300; 856 NE2d at 641-42.

held that the wage deductions under the plan were for the benefit of the employee and made with his *consent*, and as a result allowable under the Act.[36] The court further held that the forfeiture provision comported with public policy because the employees voluntarily elected to participate in the plan, and agreed to the forfeiture provision.[37]

Vacation pay must be awarded pro rata, even when contrary to employer policy. The Act specifically requires that departing employees must be paid the monetary equivalent of earned, but unused, paid vacation time.[38] Further, the Act *forbids* an employment agreement or an employment policy which results in the forfeiture of earned vacation upon separation.[39] Courts have interpreted this provision to mean that vacation pay must be awarded *pro rata* as it accrues, even if an employer's written policy states otherwise.[40]

For instance, the employer's policy in *Golden Bear Family Restaurants, Inc v Murray* stated that employees were not entitled to vacation pay for one year unless they were employed into the following calendar year. Under the policy, employees terminated ten-and-a-half months and eleven-and-three-quarters months through the year were given no vacation pay.[41] The *Golden Bear* court held that this policy violated the Act because the right to vacation pay vests as the employee renders services just like the right to regular pay vests.[42]

This means that it is a violation of the Act for employers to condition the right to vacation pay on being employed on a specific date or fail to pay employees for earned but unused vacation.[43] Vacation policies, in the words of one court, must be an "inducement for future services" and not "confer vacation benefits as payment for past services."[44] Consequently, the *Golden Bear* plaintiffs were entitled to a pro rata share – ten-and-a-half months and eleven-and-three-quarters months worth – of paid vacation time.

Earned bonus is sometimes awarded pro rata despite an agreement to do otherwise. In contrast to earned vacation, the Act does not expressly forbid an employment contract or policy that results in the forfeiture of *earned bonus*. However, at least one court has treated an earned bonus like earned vacation. The court in *Camillo v Wal-Mart Stores, Inc* held that if a bonus is provided for by agreement, it must be awarded pro rata, and an employer's policy may not require its forfeit.[45]

There, an assistant manager sued for a pro rata share of a yearly bonus that was awarded to all Wal-Mart assistant managers pursuant to Wal-Mart policy. Bonuses were awarded on January 31, but plaintiff was terminated on December 31. The policy provided that if an assistant manager was not employed on January 31, the bonus was forfeited.[46]

Applying the rationale from *Golden Bear*, the court held that an "earned bonus" should be treated the same as an "earned vacation" under the Act, i.e., that it must be awarded pro rata.[47] Therefore, because the plaintiff worked eleven months, the court found that he was entitled to 11/12ths of the bonus he would have earned had he worked the entire year, despite the terms of Wal-Mart's policy dictating otherwise.[48]

The *Camillo* court was cautious to limit its holding to the facts of that case, stating that it did not desire to create a "chilling" effect on "true 'bonuses,'" which are "consideration or premium paid in addition to what is strictly due" or a "gratuity to which the recipient has no right to make a demand."[49] Still, that court found that the plaintiff was "entitled" to a bonus because it formed part of his compensation package and induced the plaintiff to continue work.[50] What is more, the court found that Wal-Mart had made it impossible to fulfill the condition precedent to his bonus by terminating him before it was awarded to him according to its policy.[51]

Courts have been reluctant to extend *Camillo*, distinguishing it most frequently because the plaintiff was not terminated or there was no agreement providing for a bonus.[52] Indeed, the Department of Labor regulations, which are not binding on the courts, provide that "[a] claim for an earned bonus arises when an employee performs the requirements for a bonus set forth in a contract or an agreement between the parties."[53] Illinois courts have not fully explored the extent to which an agreement exists regarding a bonus, but it should be recalled that, in the context of the Act, an "agreement" requires only a "mutual assent" of the parties.[54]

That said, in *Stark v PPM America, Inc*, a federal trial court held that past practice by an employer is *insufficient* to establish an agreement regarding bonuses between an employer and employee.[55] Interestingly, the *Stark* court emphasized the need to establish a "contractual" right to the bonus just after citing the Act and stating that it requires only an "agreement" between the parties.[56] To date, it appears that the *Stark* court's more formal approach has not been followed.

In all events, departing executives may be entitled to various types of damages under the Act. In addition to stock options, vacation pay, bonus, severance and commissions that have been held recoverable, the courts' adoption of a broad definition for compensation suggests that various kinds of other executive compensation, such as shared profits, *may* be recoverable.

But benefits based on their employer's profits may be difficult to calculate. For instance, it is not clear whether such profits would be calculated at the time of the employee's departure, the end of the year or some other time.

Personal liability under the Act

A corporate officer or agent can be held jointly and severally liable, with the employer,[57] for the compensation and attorneys' fees awarded to a departing employee under certain circumstances.[58] The Act states that "[a]ny officers of a

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36. Id at 306; 856 NE2d at 646-47.
37. Id at 309; 856 NE2d at 648-49.
38. 820 ILCS 115/5.
39. Id.
40. *Arrez v Kelly Servs, Inc*, 2007 WL 3170118, *3 and *4 (ND Ill 2007); *Prettyman v Commonwealth Edison Co*, 273 Ill App 3d 1090, 1093, 653 NE2d 65, 68 (1st D 1995).
41. *Golden Bear* at 625, 494 NE2d at 587.
42. Id at 626, 494 NE2d at 589.
43. *Prettyman* at 1093, 653 NE2d at 68.
44. *Ill Dept of Labor v General Electric Co*, 347 Ill App 3d 72, 87, 806 NE2d 1143, 1155 (1st D 2004).
45. 221 Ill App 3d 614, 621-22, 582 NE2d 729, 734 (5th D 1991) (employee entitled to promised bonus for eleven months of work where separation occurred one month before bonus vested according to employer policy).
46. Id at 616, 582 NE2d at 730-31.
47. Id at 621-22, 582 NE2d at 734.
48. Id at 623, 582 NE2d at 735.
49. Id.
50. Id at 621-22, 582 NE2d at 734.
51. Id at 622, 582 NE2d at 734.
52. For example, *In re Comdisco, Inc*, 2003 WL 685645, *6 (ND Ill 2003).
53. 56 Ill Adm Code 300.500(a).
54. *Landers-Scelfo* at 1067-68, 827 NE2d at 1059, relying on *Zabinsky* at 249, 807 NE2d at 671.
55. 2002 WL 31155083, *9 (ND Ill 2002).
56. Id.
57. *Catania v Local 4250/5050 of Communications Workers of America*, 359 Ill App 3d 718, 728-29, 834 NE2d 966, 975-76 (1st D 2005).
58. *Andrews v Kowa Printing Corp*, 217 Ill 2d 101, 109, 838 NE2d 894, 899-900 (2005); *Stafford*, 63 F3d at 1441; *Zabinsky* at 250, 807 NE2d at 672.

corporation or agents of an employer who *knowingly permit* such employer to violate the provisions of this Act shall be deemed to be employers of the employees of the corporation."[59]

Case law indicates that, in order to incur *personal* liability, a corporate officer located in Illinois[60] need only (i) have knowledge of the compensation arrangement between the departing executive and the employer and (ii) knowingly permit the corporation to wrongfully deny some amount of compensation by participating in the decision to do so.[61]

This requirement appears to be astonishingly easy to meet. In *Stafford v Puro*, the seventh circuit found that because the plaintiff originally reported to the owner-officer, and that person often signed the plaintiff's checks, the owner-officer had knowledge of the compensation arrangement between the owner-officer's business and the plaintiff.[62]

The court also held that the owner-officer's awareness of the non-payment of the debt was established by (i) memoranda that the plaintiff wrote to the owner-officer and (ii) letters sent by the plaintiff's attorney to the owner-officer. Because the owner-officer took no action after learning of the debt, other than asking the plaintiff's supervisor about the allegations, it was found that he permitted the violation to occur.[63] Accordingly, he was held *personally* liable.

The Illinois Supreme Court has stated, however, that personal liability is limited to "individual decision makers" who knowingly permit violations of the Act.[64] In fact, in *Corso v Suburban Bank & Trust Co*, a federal court held that for personal liability to attach, the officer must be involved in the decision to deny final compensation.[65]

In *Corso,* the plaintiff attempted to establish personal liability against two bank directors. The evidence revealed that a committee had made the decision to deny plaintiff her bonus. The defendants were not on the committee. They also were not present at the committee's meetings and they did not communicate with the committee members regarding plaintiff's bonus. Because defendants were not in a position to affect the decision to withhold the bonus, they were held *not* to be personally liable.[66]

Due to the limited number of decisions regarding personal liability, important questions remain unanswered. For instance, it is not clear whether a board member who dissents from a decision to deny compensation could be held personally liable, i.e. whether voting *for* the decision to deny compensation "permits" the violation, or simply being at the board meeting permits the decision. In all events, the relative ease with which an officer can be held *personally* liable cautions prudence when terminating employees.

Waivers may not protect employers

Signed waivers obtained at the time of termination may *not* protect an employer from a Wage Payment Act claim. Section 9 of the Act states: "The acceptance by an employee of a disputed paycheck shall not constitute a release as to the balance of his claim and any release or restrictive endorsement required by an employer as a condition to payment shall be a violation of this Act and shall be void."[67]

Further, two federal courts have held that releases under the Act are void as a matter of public policy, without even considering Section 9.[68] Consistent therewith, a departing executive may be able to pursue claims under the Act even if he or she signed a release.

Attorney fees for Wage Payment Act claims

The Fees Act, which is separate from the Wage Payment Act, provides successful Wage Payment Act claimants with a means to recover their attorneys' fees if certain conditions are met. The Fees Act states that if "[a] mechanic, artisan, miner, laborer, servant or employee" brings a successful Wage Payment Act claim and demands, in writing: (a) a "sum" *not exceeding* the amount awarded by the judge or jury; (b) at least *three days* before the action was filed; (c) attorneys' fees *shall* be awarded.[69]

Courts interpret the Fees Act strictly because it is in derogation of the common law.[70] Hence, the Fees Act must be "'complied with in every particular to entitle the plaintiff to recover attorney fees.'"[71] Failing to write a letter or otherwise notify the employer in writing of the specific amount of the claim prior to filing the action is fatal.[72] Likewise, demanding more than the amount ultimately awarded is fatal to a claim for attorneys' fees.[73]

In *Catania v Local 4250/5050 of the Communications Workers of America*, the plaintiff wrote a letter to her employer stating that she sought six weeks of severance pay, compensation for unused vacation and any other benefits due under her employment contract. The court held that she could not recover her attorneys' fees because the letter did not specify a sum sought. The court reasoned that the legislature's use of the word "sum" indicated that claimants must demand a specific amount due. The plaintiff's argument that the sum was "easily calculable" proved unavailing.[74]

While there are differences in the way courts apply the Fees Act, nearly all executives are likely to be covered regardless of where in Illinois their case is filed.[75] This fact, combined with the Fees

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59. 820 ILCS 115/13 (emphasis added).

60. Federal courts in Illinois consistently have held that they have no personal jurisdiction over out-of-state corporate officers who engage in the allegedly tortious conduct outside Illinois. *Chen v Quark Biotech, Inc*, 2003 WL 22995163, *3-4 (ND Ill 2003) (collecting cases).

61. *Andrews* at 109, 838 NE2d at 899-900; *Stafford*, 63 F3d at 1440-41; *Zabinsky* at 249-50, 807 NE2d at 671-72.

62. *Stafford*, 63 F3d at 1440-41.

63. Id at 1441.

64. *Andrews* at 109, 838 NE2d at 899.

65. 2006 WL 418655, *7 (ND Ill 2006).

66. Id at *8.

67. 820 ILCS 115/9.

68. *O'Brien v Encotech Consr Services, Inc*, 183 F Supp 2d 1047, 1049 (ND Ill 2002); *Ladegaard v Hard Rock Concrete Cutters, Inc*, 2001 WL 1403007, *6 (ND Ill 2001).

69. 705 ILCS 225/1.

70. *Anderson* at 412, 818 NE2d at 750-51.

71. *Catania* at 725, 834 NE2d at 974, quoting *Caruso v Bd of Tr of the Pub School Teachers' Pension and Retirement Fund of Chicago,* 129 Ill App 3d 1083, 1087, 473 NE2d 417, 420 (1st D 1984).

72. *Zabinsky* at 251, 807 NE2d at 673 (filing a written wage claim with the Department of Labor is sufficient to satisfy the three-day notice requirement under the Fees Act); *Schackleton v Federal Signal Corp*, 196 Ill App 3d 437, 446, 554 NE2d 244, 251 (1st D 1989) (same).

73. *Anderson* at 414-15, 818 NE2d at 752.

74. *Catania* at 727-28, 834 NE2d at 974-75; see also *Handy Andy*, 1997 WL 401583 at *7 (filing proof of claim in bankruptcy court is not submission of written demand and proof of claim demanded more than would be recoverable at trial).

75. Courts have split on how to interpret the use of "mechanic, artisan, miner, laborer, servant or employee." The first district reads the broad definition of "employee" from the Wage Payment Act *into* the Fees Act. *Anderson* at 413, 818 NE2d at 743. The first district formerly required that the employee must be engaged to do the same work as a "mechanic, artisan, miner, laborer or servant" in order to recover fees. *Lites v Jackson*, 70 Ill App 3d 374, 377, 387 NE2d 1118, 1118 (1st D 1979). However, recent second district authority reads the common law definition of "employee" into the Fees Act, requiring the employee to demonstrate the employer had control over the manner and method of the employee's work, among other factors. *Landers-Scelfo* at 1071, 827 NE2d at 1062. But see *Shramuk* at 750, 663 NE2d at 472 (adopting Wage Payment Act definition of employee for purposes of the Fees Act); *Johnson v Figgie International, Inc, Rawlings Sporting Goods Div*, 151 Ill App 3d 496, 508, 502 NE2d 797 (2d D 1986). Still, it seems nearly all executives would also meet this definition, as even presidents and CEOs often are subject to the direction of a board of directors.

Act's mandatory requirement that fees be awarded when a plaintiff has complied with it, means that executives have a significant weapon at their disposal if they are not properly compensated when terminated.

The timing of a Wage Payment Act claim

In contrast to Title VII and other employment actions, claimants are not required to exhaust any administrative remedies before bringing a Wage Payment Act claim in court.[76] Although claimants may choose to pursue a wage claim before the Illinois Department of Labor, any action by the Department is generally considered investigative only.[77] Therefore, the result of any investigatory action taken by the Department is not reviewable by the court, nor is it binding.[78]

Because an executive may immediately demand final compensation upon separation, causes of action under the Act accrue at the time of separation.[79] As dictated by the Code of Civil Procedure, if the employment agreement or contract is unwritten, a Wage Payment Act claim must be asserted within five years.[80] Of course, if the claim is based on a written contract, it is likely subject to a 10-year statute of limitation.[81] The Wage Payment Act is a statutory proceeding unknown at common law, so there is no right to trial by jury under the Act.[82]

Conclusion

The Wage Payment Act, together with the Fees Act, require the attention of both employers and departing executives for several reasons.

- The Act gives a former employee the ability to collect virtually any form of final compensation.
- Relief under the Act does not require proving the existence of a written employment contract.
- The Act grants an employee rights that are not easily waived.
- The Act provides for personal liability for corporate officers who knowingly allow their corporation to violate the Act.
- The Fees Act provides a means for a departing executive to litigate with a former employer with minimal litigation costs.

In sum, the Wage Payment Act provides departing executives with a powerful remedy and their former employers with a fresh set of challenges to carefully consider. ■

76. *Walters v Dept of Labor*, 356 Ill App 3d 785, 789, 826 NE2d 979, 983 (1st D 2005).
77. 820 ILCS 115/11; *Walters* at 789-90, 826 NE2d at 983. There is an exception for orders the Department elects to issue pursuant to 820 ILCS 115/9 of the Act, which concerns deductions from wages. *Walters* at 793-94, 826 NE2d at 986.
78. Id at 794-59; 826 NE2d at 986-87.
79. *Armstrong v Hedlund Corp*, 316 Ill App 3d 1097, 1104, 1107, 738 NE2d 163, 169, 171 (1st D 2000).
80. 735 ILCS 5/13-205; *Armstrong* at 1104, 738 NE2d at 169.
81. 735 ILCS 5/13-206.
82. *Porter*, 2006 WL 3095750 at *6; *Catania* at 725, 834 NE2d at 973.

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