



Supreme Court of Virginia: No Individual Liability Under Virginia Wage Payment Act

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On October 13, 2022, the Supreme Court of Virginia decided that individuals may not be held liable as employers under the recently amended Virginia Wage Payment Act, Va. Code § 40.1-29 (VWPA). The VWPA was amended effective in July 2020 to allow employees to file private enforcement actions, either individually, jointly, or on behalf of similarly situated employees as a collective action consistent with the collective action procedures of the federal Fair Labor Standards Act. Va. Code § 40.1-29(J).

In *Cornell et al. v. Benedict et al.*, filed in February 2021, two former employees of Christian Psychotherapy Services (CPS) tested the scope of the amended VWPA by filing a collective action against not only CPS, but also two individual former board members of CPS in their individual capacities. The plaintiffs alleged that CPS and the individual defendants jointly violated the VWPA by, among other things, failing to pay the employees' final wages when the company ceased operations. Plaintiffs argued that the VWPA defines employer consistent with the FLSA. The Virginia Circuit Court for the City of Virginia Beach disagreed and dismissed the claims against the two individual defendants, finding that the VWPA's definition of employer is narrower than that of the FLSA.

The Supreme Court of Virginia upheld the Circuit Court's ruling and held that the VWPA does not provide for liability against individuals for actions taken on behalf of an employer entity. The Court reviewed the definition of employer in Va. Code § 40.1-2 and found a conspicuous difference in statutory language between the two statutes. Unlike the FLSA, which defines employer as including any person acting directly or indirectly in the interest of an employer in relation to an employee, the Virginia statute does not use the word person and instead defines employer with reference to entities only. The Court interpreted this conspicuous difference to represent a conscious decision with deliberate implications. Examining the dictionary definitions of entity, the Court further reasoned that natural persons or individuals could not be entities. Thus, unlike the FLSA, the VWPA does not provide for private actions against individuals.

Due to the recency of the amendments, there has been little guidance or case law interpreting employees' enforcement rights under the VWPA. This holding is one of the first to interpret Virginia's recent amendments to its wage and hour statutes, as employers and employees in the Commonwealth continue to grapple with the scope and limitations of these new employee protections.

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