

Personal Liability for Wage Claims? Virginia Says ‘No,’ but Other States Say ‘Yes’

In October 2022, the Supreme Court of Virginia ruled that an individual cannot face personal liability as an "employer" under the Virginia Wage Payment Act (VWPA). The decision both clarifies Virginia law and serves as an important reminder for employers (and their managers and supervisors) that many states can impose personal liability on individuals for wage-and-hour claims.

In *Cornell v. Benedict*, two former employees of Christian Psychotherapy Services (CPS) filed a collective action against both CPS and two former board members in their individual capacities, alleging each defendant failed to pay final wages when the company ceased operations. The plaintiffs argued that the VWPA defines "employer" consistent with the federal Fair Labor Standards Act (FLSA), which states that "any person acting directly or indirectly in the interest of an employer in relation to an employee" constitutes an employer. The Virginia Supreme Court disagreed with the plaintiffs, holding that the VWPA does not provide for liability against individuals for actions taken on behalf of an employer entity. The court found a "conspicuous difference in statutory language" between the two statutes. Unlike the FLSA, the Virginia statute does not use the term "person" and instead defines "employer" with reference to entities only. Building on this difference, the court further reasoned that natural persons or individuals could not be "entities." Thus, unlike the FLSA, the VWPA does not provide for personal liability.

Many other states do provide for personal liability in wage claims, however. Specifically, directors, officers, managers, supervisors, shareholders, and/or other agents of employers may face wage claim liability in California, Illinois, Kansas, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, South Carolina, Texas, Utah, and Washington. The circumstances in which personal liability will attach—and the requisite standards of proof—vary from state to state. Because wage protections afforded employees under these state laws are often more generous than under the FLSA, and because penalties for violations can often greatly exceed those under the FLSA, employers and their key personnel should take this opportunity to ensure compliance with wage-and-hour law.

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