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COURT MANDATES PREVAILING WAGE PENALTIES

If you violate the prevailing wage statute, expect to pay dearly for it. The Ohio Supreme Court's ruling earlier this month in *Bergman v. Monarch Construction Co.* now mandates the payment of penalties equal to the amount of back pay a plaintiff can receive for an employer's failure to pay prevailing wage.

In *Bergman*, a subcontractor failed to pay prevailing wage on a state university construction project. The subcontractor had misrepresented to the general contractor (Monarch) that the prevailing wage was in fact being paid (perhaps a valuable lesson to keep in mind). The plaintiff employees filed suit. The trial court found Monarch liable for back pay (\$368,266.34), but denied the plaintiffs' request to penalize Monarch an additional 25 percent penalty of the back wages owed as allowed by Ohio law. The court held the 25 percent penalty was discretionary under the statute. The court also refused to impose a penalty equal to 75 percent of the back wages owed to the employees, which, under the statute, is to be paid to the director of the Department of Commerce. The appellate court affirmed on appeal and the Ohio Supreme Court took the case.

In a 5-2 decision, the Ohio Supreme Court reversed and held that the phrase "may recover" in the statute does not give the trial court discretion to award a 25 percent penalty but instead pertains to the choice the underpaid employee has to enforce his right to recover wages. Instead, the majority found that the payment of a 25 percent penalty to the employee was mandatory in addition to the payment of the 75 percent penalty to the director of the Department of Commerce. The dissenting opinion by Justice Evelyn Lundberg Stratton, however, interpreted the "may recover" language in the statute to mean that the 25 percent penalty was discretionary. Because of the new ruling, employers not only will pay back wages, but also 100 percent of the back wages in the form of penalties.

For a copy of the opinion, click [here](#).

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