WAGE & HOUR CLAIMS

Volunteer Lawyers Project CLE Series

RYAN HYMORE

Labor Lawyer

Mangano Law Offices

STEPHEN CLEGG

Chief

Wage and Hour Administration

Division of Industrial Compliance

Ohio Department of Commerce

WHERE'S MY MONEY?

- **Alice**: *I didn't get my last paycheck*
- **Bob**: *I never got paid at all*
- **Carol**: *I'm working but stopped getting paid*
- **Dave**: *My last check was missing money*

Q&A: *FIRST CONTACT*

1. Imagine a current or former employee has hired an attorney to raise a wage claim against you or your firm. How would you prefer the first notice of the alleged claim to arrive?

   a. By phone call
   b. By mailed letter
   c. By email
   d. By formal complaint

TYPICAL SITUATIONS

Alice:

I didn't get my last paycheck

- Alice worked 30 hours in her last week of work before she was terminated.
- Alice called her manager several times about the check, and he is no longer answering her calls. He did text her once stating he was in a meeting and would call her back.
- Six weeks have gone by with no payment or call back.
- Alice is seeking representation to obtain her wages in the amount of $300.00 (i.e., 30 hours at $10.00 per hour).

TYPICAL SITUATIONS

Bob:

I never got paid at all

- Bob worked three weeks and quit after not getting paid.
- Bob called his supervisor, the general manager, and corporate headquarters several times to complain.
- Corporate said they were looking into it, but they could not find Bob in the payroll system and needed to discuss the issue with the general manager.
- Bob is seeking representation to obtain his wages in the amount of $810.00 (i.e., 90 hours at $9.00 per hour).

TYPICAL SITUATIONS

Carol:

I'm working but stopped getting paid

- Carol has done carpentry work for a construction company for several years. Her union contract specifies she is to be paid $30.00 per hour in wages plus $11.35 per hour in fringe benefits.
- Carol has worked at the same construction site for about six months, but she stopped getting paid three weeks ago.
- Carol's boss told her the site owner hasn't paid the general contractor for several months but asked her to keep working because Carol will eventually get paid.
- Carol would like to know her rights.

TYPICAL SITUATIONS

Dave:

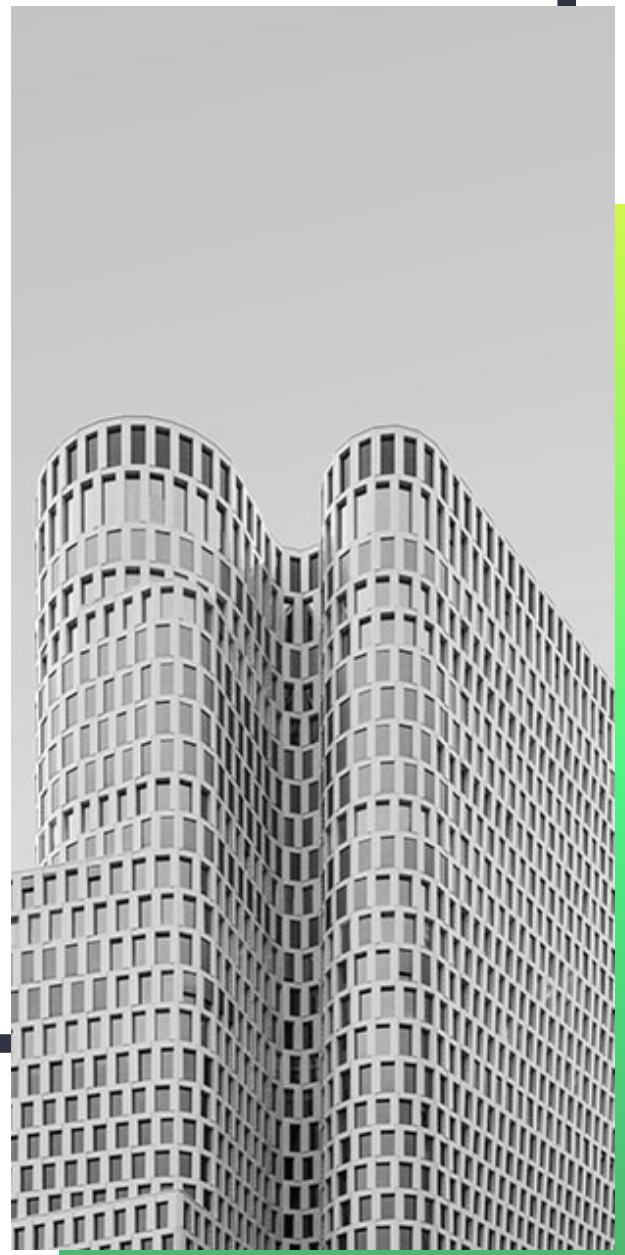
My last check was missing money

- Dave worked at a company for 20 years but was just recently terminated due to COVID-19 downsizing.
- Although Dave was granted 80 hours of paid vacation per year, he only used 70 hours per year.
- Dave believes he has accrued 200 hours of vacation pay.
- Dave's last paycheck did not include pay for his accrued vacation time, and the company refuses to pay him.
- Dave would like to know his rights.

WHAT NEXT?

Private Action

- Search for an authoritative point of contact (e.g., Google, LinkedIn, etc.)
- Send a written demand with a draft complaint/lien/bond claim
- File a civil action
- File a lien
- File a surety bond claim



Administrative Complaints

- File a minimum wage complaint
- File a prevailing wage complaint

PRIVATE ACTION

Demand Letter Anatomy

- Ask and you may receive
- Calculate the damages
- Demand an amount certain and itemize it
- Request pay information under R.C. 4111.14(G)
    - *"name, address, occupation, pay rate, hours worked for each day worked, and each amount paid"*
- Give a reasonable and firm deadline
- Attach a draft complaint, lien, or bond claim

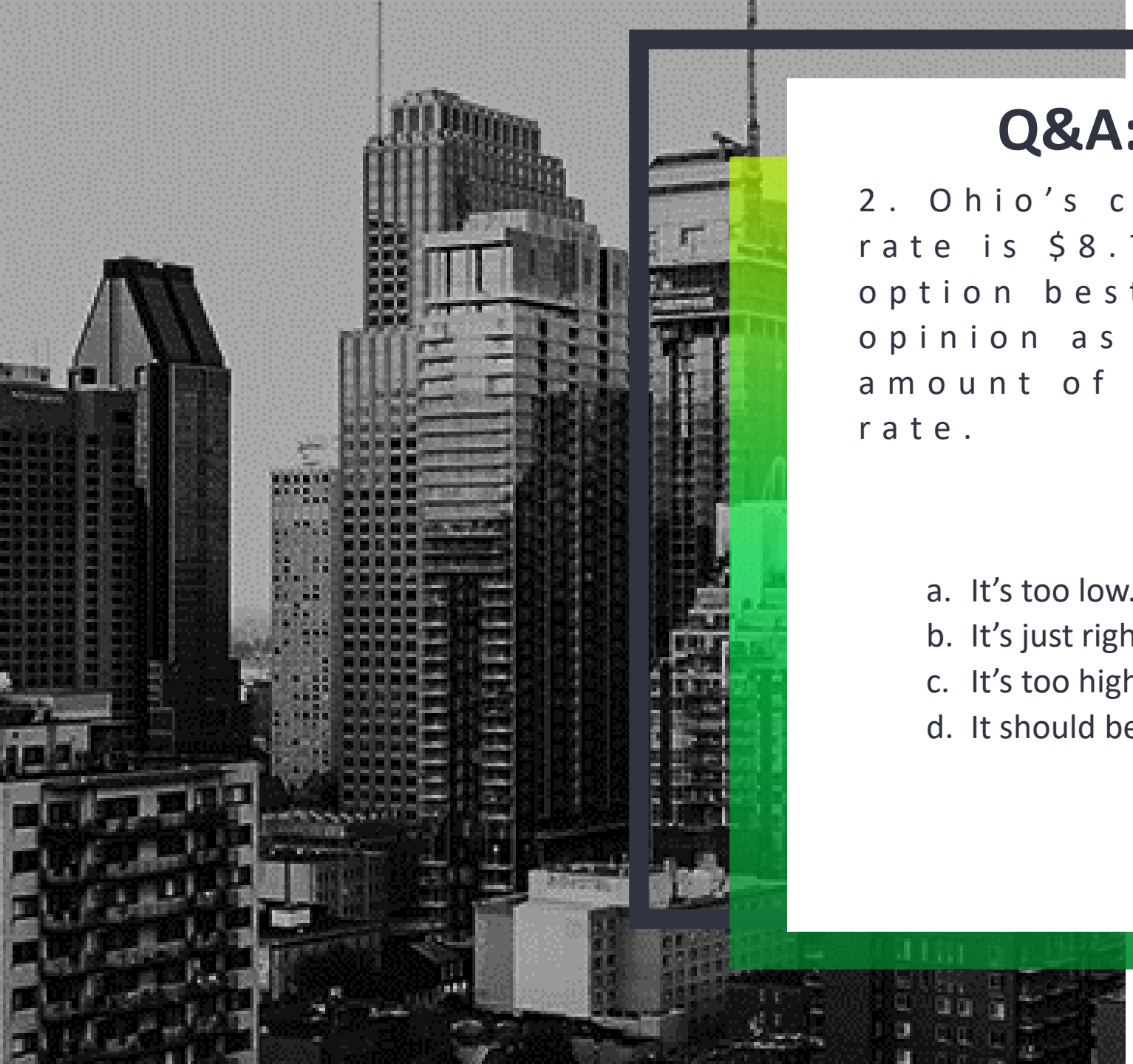
2020

MINIMUM WAGE

RATES

OHIO: $8.70/HOUR

FEDERAL: $7.25/HOUR



Q&A: *MINIMUM WAGE?*

2. Ohio's current minimum wage rate is $8.70 per hour. Which option best reflects your opinion as it relates to the amount of the minimum wage rate.

a. It's too low.
b. It's just right.
c. It's too high.
d. It should be abolished.

PRIVATE ACTION

Complaint Anatomy

- Pick the Court
  - Federal
  - State
- Pick the Claims
  - Federal (MW, OT)
  - State (MW, OT, Prompt Pay, Common Law)
- Damages
  - Back Pay
  - Liquidated Damages
  - Attorneys' Fees and Court Costs

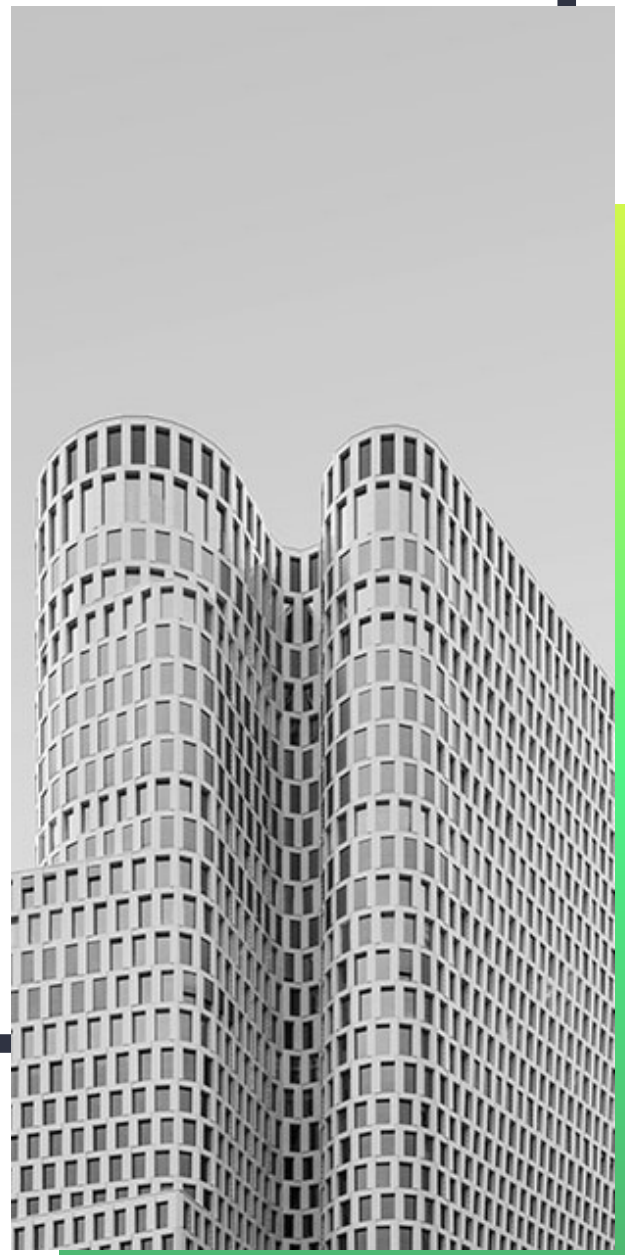
ALICE'S DAMAGES

- Back Pay
  - R.C. 4113.15 (agreed upon rate)
    - 30 hours x $10.00 per hour
  - Total: $300.00
- Stacked Liquidated Damages
  - 29 U.S.C. § 216(b) (like amount of MW)
    - 30 hours x $7.25 per hour = $217.50
  - R.C. 4111.14(J) (2x MW back pay)
    - 30 hours x $8.70 per hour x 2 = $522.00
  - R.C. 4113.15(B)
    - Greater of 6% of wages or $200.00 = $200.00
  - Total: $939.50
- Attorneys' Fees and Court Costs

WAGE LAWS

R.C. 4113.15

- Prompt Pay Statute deals with timing of payment of uncontested amounts due
- Pay agreed upon wages at least twice monthly, unless contract or industry practices dictate otherwise
- Liquidated damages apply if payment is not made within 30 days of regularly scheduled pay day
- Greater of 6% or $200.00 of unpaid, uncontested wages
- R.C. 4113.61 is the construction-industry statute with 18% per annum interest
- Six-year limitations period



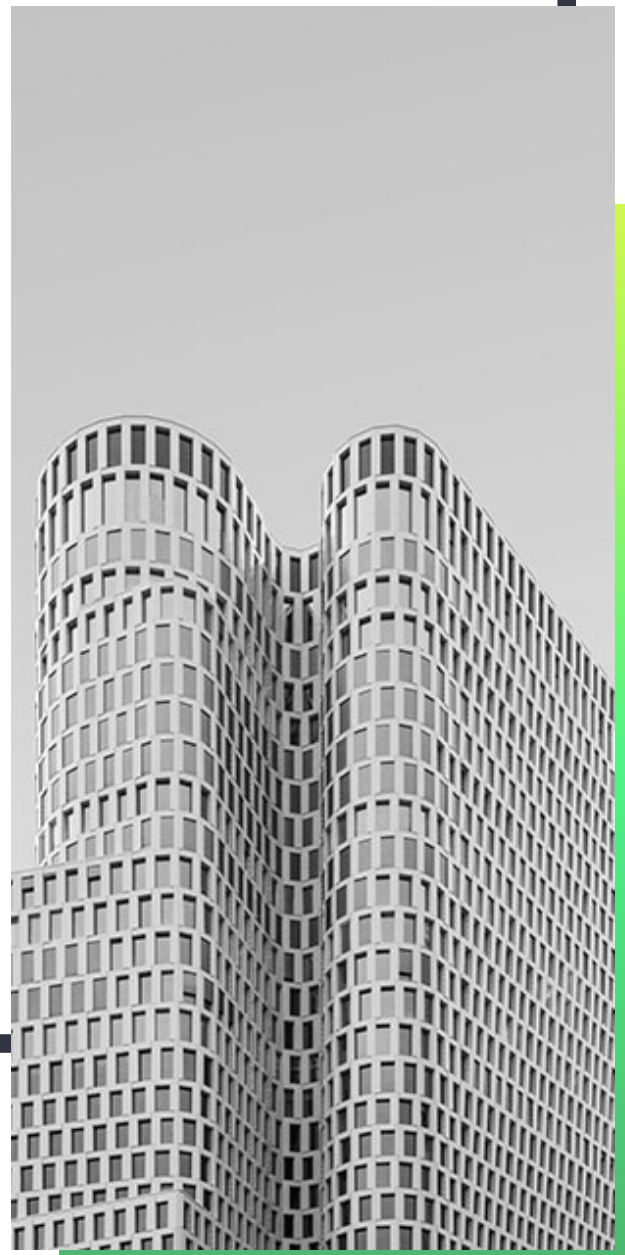
29 U.S.C. § 206

- Federal Minimum Wage Law
- Pay at least $7.25 per hour to covered employees
- Overtime covered by 29 U.S.C. § 207
- Allows collection of minimum wage rates, a like amount in liquidated damages, court costs, and attorneys' fees (29 U.S.C. §216(b))
- Two-year limitations period (three years if willful)

MORE WAGE LAWS

R.C. 4111.02, .14
Ohio Const., Art. II, Sec. 34a

- Ohio Minimum Wage Law
- Pay at least $8.70 per hour (2020), adjusted annually
- Overtime covered by R.C. 4111.03
- Allows collection of minimum wage rates, an additional two times back wages in liquidated damages, court costs, and attorneys' fees
- Three-year limitations period under the Constitution



Common Law Claims

- Breach of Contract
- Quantum Meruit
- Promissory Estoppel
- Conversion

Prevailing Wage Laws

- Federal, State, and Local
- Building, Residential, Heavy Highway
- Generally applies to public improvements
- Primarily processed through administrative complaints

PRIVATE ACTION

Laborers' Lien Anatomy

- R.C. 1311.34 - .36
- Effective if the employer owns real property
- Must be filed with the county recorder "within thirty days from the expiration of three months from the performance thereof"
- Must include "an itemized statement, verified by affidavit, of the amount, kind, and value of the labor performed within such period, with all credits and offsets and the amount then due the employee therefor."
- Operates as a lien for one year only

BOB'S DAMAGES

- Back Pay
  - R.C. 4113.15 (agreed upon rate)
    - 90 hours x $9.00 per hour
  - Total: $810.00

- Stacked Liquidated Damages
  - 29 U.S.C. § 216(b) (like amount of MW)
    - 90 hours x $7.25 per hour = $652.50
  - R.C. 4111.14(J) (2x MW back pay)
    - 90 hours x $8.70 per hour x 2 = $1,566.00
  - R.C. 4113.15(B)
    - Greater of 6% or $200.00 = $200.00
  - Total: $2,418.50

- Attorneys' Fees and Court Costs

PRIVATE ACTION

Mechanics' Lien Anatomy

- Two types: private property and public property
- Applies to "any mechanic, worker, artisan, or other individual who performs labor or work in furtherance of any improvement."
- Very strict timing, filing, and service requirements depending on financing and type of construction (60, 75, or 120 days)
- Must include property's legal description for private lien
- Public liens attach to public funds owing on a project

CAROL'S RIGHTS

- Recall Carol is working under a union contract with stipulated wage and fringe benefit rates. She hasn't been paid at all for several weeks on a publicly funded prevailing wage project.
- Carol could:
  - File a grievance under her union contract
  - File an unfair labor practice charge with the National Labor Relations Board
  - File a laborers' lien
  - File a mechanics' lien
  - File a claim against a surety bond
  - File a civil lawsuit
  - File an administrative prevailing wage complaint

PRIVATE ACTION

Bond Claim Anatomy

- R.C. 153.54, .56; R.C. 5525.16
- Most publicly funded projects require the general contractor to post a payment and performance bond
- Among other things, it protects all workers on site against non-payment of wages and benefits
- Must be filed within 90 days of completion/acceptance of a public project

CAROL'S RIGHTS (CONT.)

- Now imagine Carol is an at-will employee working on a privately funded project.
- Carol could:
  - File a laborers' lien
  - File a mechanics' lien
  - File a claim against a surety bond, if any
  - File a civil lawsuit
  - File an administrative complaint with the State of Ohio

PRIVATE ACTION

Accrued Benefits Primer

Under Ohio law, accrued personal time off is considered an earned benefit to which an employee has legal entitlement, absent a clear policy stating otherwise. *Korsnak v. CRL, Inc.*, 8th Dist. No. 84403, 2004-Ohio-6116; *Straughn v. Dillard Dept. Store*, 5th Dist. No. 95CA0294, 1996 Ohio App. LEXIS 1234; and *Shuler v. USA Tire, Inc.*, 12 Dist. No. CA90-08-171, 1991 Ohio App. LEXIS 2814.

DAVE'S RIGHTS

- Recall Dave was just laid off and was under the impression he was owed 200 hours for accrued vacation time. Assume he is an at-will employee.
- Dave should:
  - Review his company's written policies; and
  - Review all employee handbooks
- If there is a clear company policy stating benefits do not accrue or roll over, then there is no cause of action.

OTHER ISSUES

- Personal Liability
- Common Overtime Issues (Regular Rate/Nonpayment)
- Employer in Receivership
- Employer in Bankruptcy
- Client in Bankruptcy
- Independent Contractor
- Domestic Employees
- Untrustworthy Client
- Unlawful Deductions
- Counterclaims

COLLECTIONS

- Bank Garnishments
- Certificate of Judgment
- Judgment Debtor Exam
- Creditor’s Bill
- Charging Order

RECAP: WHERE'S MY MONEY?

- **Alice**: *I didn't get my last paycheck*
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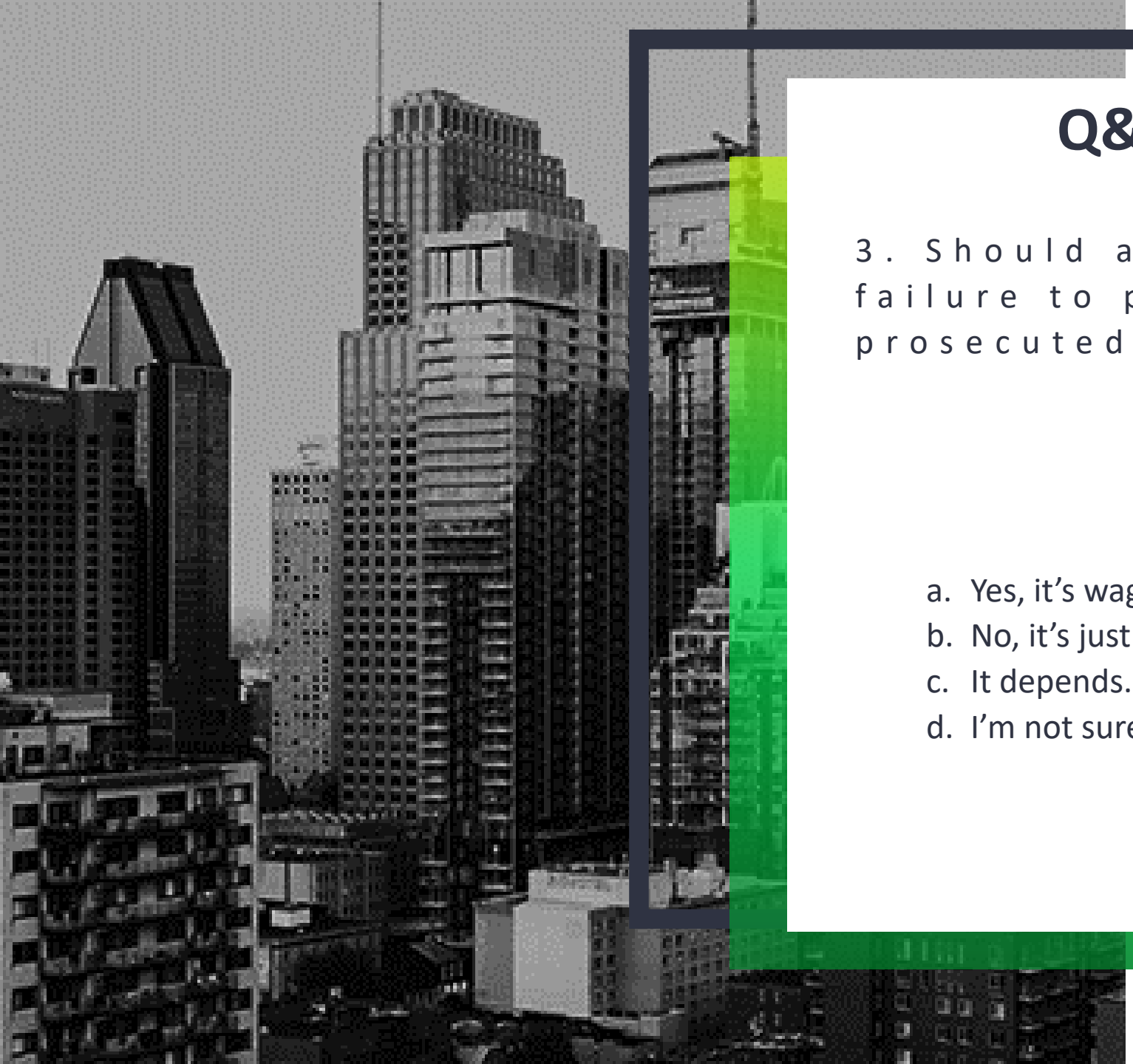


Q&A: *WAGE THEFT?*

3. Should an employer's knowing failure to pay wages be prosecuted as a theft crime?

a. Yes, it's wage theft.
b. No, it's just a bad business practice.
c. It depends.
d. I'm not sure.

WHERE'S MY MONEY?

ALICE	BOB	CAROL	DAVE
Last Paycheck	Failure to Onboard	Cash Flow Issues	Accrued Benefits
Straightforward damages	Straightforward damages	Straightforward damages	Straightforward damages
Usually an underlying reason	Low wage/high turnover industries	Huge warning signs	Hinges on policy language, if any
Fee-shifting statutes	Fee-shifting statutes	Fee-shifting statutes	No Fee-shifting statute
State or Federal Court	State or Federal Court	State or Federal Court	State Court
8 – 15 hours to litigate	8 – 15 hours to litigate	25 – 40 hours to litigate	10 – 20 hours to litigate

MOST COMMON EMPLOYER RESPONSES

- Alice damaged employer/customer property
- Alice did not give two weeks of notice
- Alice did not return company property
- Bob never turned in his orientation paperwork
- Bob never turned in his time sheets
- Carol's work was shoddy
- Carol walked off the job
- Carol was an independent contractor
- My business has no money to pay

ADMINISTRATIVE COMPLAINTS

Minimum Wage, Overtime, Minor Labor, and Prevailing Wage Laws

ADMINISTRATIVE COMPLAINT PROCESS

- Bureau Basics
- Enforcement Authority
- Anatomy of a Complaint
- Investigative Process
- Determination and Resolution
- Frequently Asked Questions

https://ohio.gov/wps/portal/gov/site/help-center/faqs/labor-law/labor-law

Q&A: *DOMESTIC WORKERS*

4. Imagine you have a nanny work 45 hours per week watching your children in your home. Your nanny does not live in your house. Should you pay your nanny time and one half for hours worked after forty in each workweek?

a. Yes.
b. No.
c. I don't know.

https://www.dol.gov/agencies/whd/fact-sheets/79b-flsa-live-in-domestic-workers

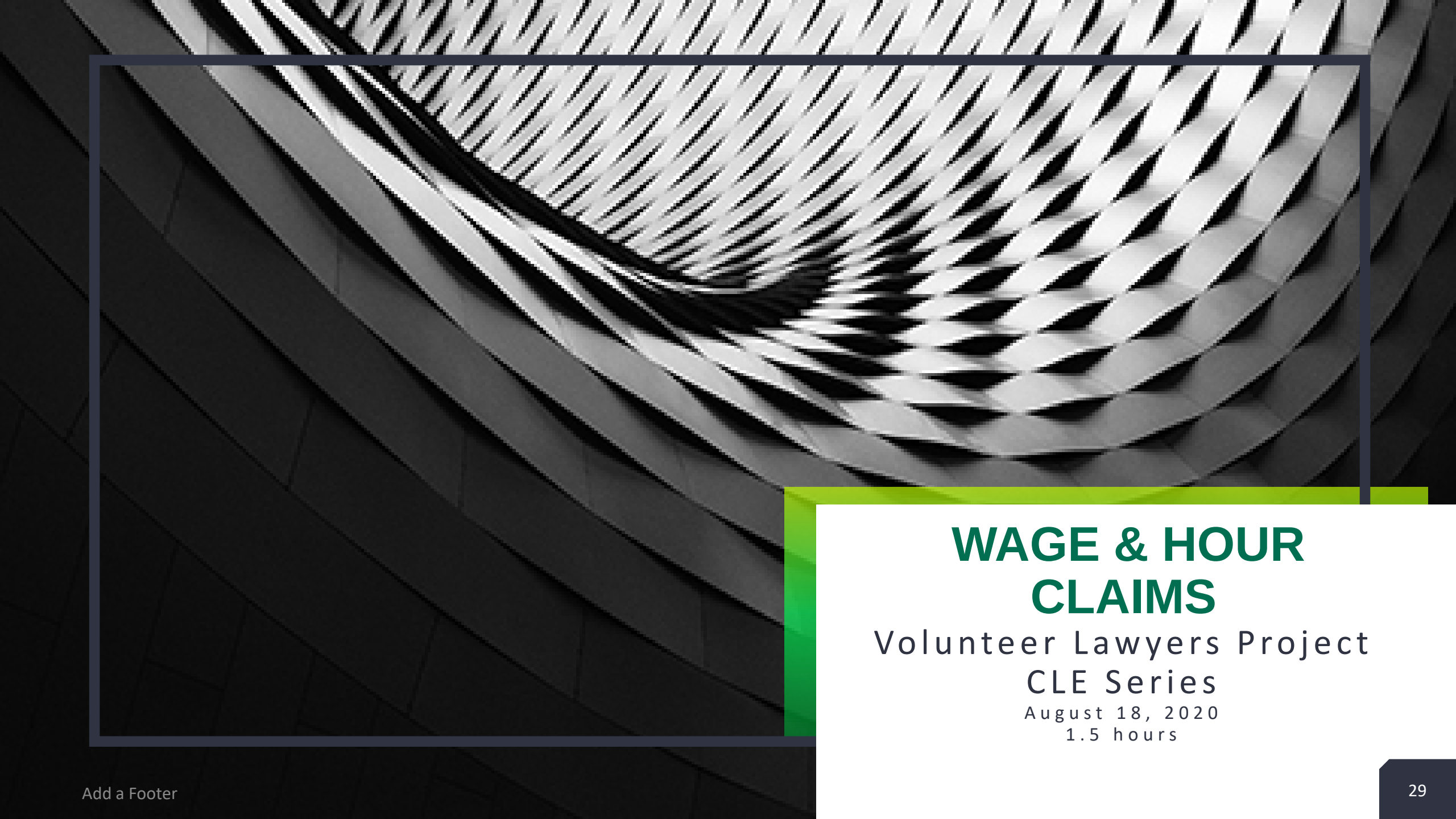
Minimum Wage, Overtime, Minor Labor, and Prevailing Wage Laws

RYAN HYMORE

RKHYMORE@BMANGANOLAW.COM

STEPHEN CLEGG

STEPHEN.CLEGG@COM.STATE.OH.US



WAGE & HOUR CLAIMS

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1.5 hours