

## "Standing on Less Shaky Ground: 'Guthrie' Decision Impact on NY Wage and Hour Matters," by Aaron Solomon and Alisha Talati, published in the New York Law Journal, 11-13-2024

Standing on Less Shaky Ground: 'Guthrie' Decision Impact on NY Wage and Hour Matters

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The U.S. Court of Appeals for the Second Circuit's recent decision in *Guthrie v. Rainbow Fencing*, 2024 WL 3997427 (2d Cir. Aug. 30, 2024) will make it more difficult for employees to allege Article III standing in federal court to pursue claims under the New York Wage Theft Prevention Act (WTPA). Further, even though Guthrie addressed WTPA claims, it will also have broader implications with respect to the burden that must be satisfied to establish Article III standing. In fact, Guthrie not only increases the threshold for establishing "concrete harm" for standing purposes, it also notes that the mere fact that a person's ability to pursue enforcement of a statutorily guaranteed right does not automatically confer standing in other matters.

By way of background, pursuant to the WTPA, which is part of the New York Labor Law, employers are required to provide wage notices to employees at time of hire and wage statements with each payment of wages. See NYLL Sections 195(1), and 195(3). Noncompliance can result in lawsuits that can be quite costly for employers. An employer's failure to provide wage statements results in a maximum \$5,000 civil penalty per employee plus attorney's fees. An employer's failure to provide wage notices also results in a maximum \$5,000 civil penalty per employee plus attorney's fees. Thus, if both wage statements and wage notices violations exist, an employer can face the possibility of liability for civil penalties of up to a maximum of \$10,000 per employee plus attorney fees. An employer has two possible affirmative defenses to wage statement and wage notice claims. Under New York Labor Law Sections 198(1-b) and 198(1-d), an employer can avoid liability if it can prove that it made complete and timely payment of all wages due or that it reasonably believed in good faith that it was not required to provide employees with wage statements and notices. However, these defenses are difficult to prove, especially in a class action.

In federal court, WTPA claims can be asserted on a class action basis if standing under Article III is established. Because each member of the class could recover civil penalties individually, the exposure associated with WTPA claims can dwarf the amount of unpaid wages that the entire class could recover. However, New York state courts have held that these claims cannot be asserted in state court on a class basis because Article 9 of the Civil Practice Law and Rules (CPLR) precludes the recovery of penalties. Therefore, the plaintiffs bar is keenly interested in ensuring that Article III standing for WTPA claims can be easily established and the defense bar certainly wants to make sure that the burden to establish standing for wage statement and wage notice claims is more significant.

In *TransUnion v. Ramirez*, 141 S. Ct. 2190, 2205 (2021) the U.S. Supreme Court reshaped the analysis of standing under Article III when it held that a mere deprivation of information to which a Plaintiff claims entitlement, without more, is not a concrete harm for standing purposes. Specifically, a purported "informational injury that causes no adverse effects" does not satisfy Article III's injury-in-fact requirement. Instead, a plaintiff must allege "'downstream consequences' from failing to receive the allegedly required information."

The Second Circuit previously applied *TransUnion's* analysis in *Maddox v. Bank of New York Mellon Trust*, 19 F.4th 58 (2d Cir. 2021) outside the context of employment-related claims. In *Maddox*, a putative class of mortgagors brought an action against a mortgagee, Mellon Trust Company, N.A. (Mellon), alleging, amongst other claims, that Mellon's failure to timely record the mortgagors' satisfaction of mortgages after discharge of the mortgage violated New York's mortgage-satisfaction recording statutes. There, the Second Circuit found that the mortgagors lacked Article III standing to pursue statutory penalties in federal court. Specifically, although the mortgagors identified

several potential harms that could occur because of delayed recording, the mortgagors failed to sufficiently plead that they suffered any actual injury and thus, there no standing was conferred.

In the years following *TransUnion*, courts in the Second Circuit applied the Supreme Court's analysis to WTPA claims in divergent ways. Some courts followed *TransUnion* by determining that the failure to provide wage statements and notices are nothing more than "informational injuries," which are insufficient to establish Article III standing. Other courts held that standing existed if it was alleged that the employer's failure to provide the documents deprived the plaintiff of the ability to advocate for unpaid wages. Certain courts even held that a separate, concrete injury is not required in order to establish Article III standing for WTPA claims.

In the pivotal decision of *Guthrie*, the Second Circuit finally provided some measure of clarity by applying *TransUnion* to hold that a plaintiff must connect an employer's failure to comply with the WTPA to some articulable downstream harm to establish standing. Otherwise, the Plaintiff merely alleges an insufficient "informational injury." The Second Circuit specifically held that merely alleging that an employer failed to provide notices and wage statements or claiming that said failure deprived the employee's ability to "advocate" for their unpaid wages does not articulate "downstream harm." To articulate such harm, the employee must allege a "plausible theory as to how the employee was injured by the defendants' failure to provide the requisite documents." Notably, *Guthrie* does not explicitly determine what constitutes "downstream harm" sufficient to establish standing for WTPA claims. However, *Guthrie* does take note of certain district court decisions addressing alleged "downstream harm" including one case where it was claimed that the failure to provide accurate wage statements deprived an employee of the ability to determine the precise number of hours for which the employee should have been paid. Therefore, the employee was apparently harmed by being deprived of income for longer than the employee would have been had the employee been able to timely raise their concerns about underpayment earlier.

Although *Guthrie* will surely have significant impact on wage and hour litigation because it forces plaintiffs to connect a WTPA violation to a discrete harm, its reach may not end there. For example, *Guthrie* also indicates that Article III standing does not automatically exist just because a statute grants a person a right and purports to authorize the person to sue to enforce that right. In addition, *Guthrie* establishes that general harm that might be experienced from a statutory violation is insufficient. In other words, "possible injuries" are not good enough. Even though *Maddox* reflects the same conclusion, *Guthrie* further increases or clarifies the burden for establishing Article III standing. Simply put, *Guthrie* may impact many kinds of litigation. However, it remains to be seen how far the Second Circuit's game-changing decision in *Guthrie* will extend and practitioners should take note of its effect on the analysis of Article III standing.

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