

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

September 2023 Term

No. 22-0185

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

JAYSON NICEWARNER, et al.,
Petitioners,

v.

THE CITY OF MORGANTOWN,
Respondent.

Appeal from the Circuit Court of Monongalia County
The Honorable Phillip D. Gaujot, Judge
Civil Action No. 19-C-167

AFFIRMED, IN PART, REVERSED, IN PART,
AND REMANDED

Submitted: September 13, 2023
Filed: November 8, 2023

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JUSTICE HUTCHISON delivered the Opinion of the Court.

JUSTICE WOOTON concurs, in part, and dissents, in part, and reserves the right to file a separate opinion.

SYLLABUS BY THE COURT

1. “Interpreting a statute or an administrative rule or regulation presents a purely legal question subject to *de novo* review.” Syl. Pt. 1, *Appalachian Power Co. v. State Tax Dep’t of W. Va.*, 195 W. Va. 573, 466 S.E.2d 424 (1995).

2. “The primary rule of statutory construction is to ascertain and give effect to the intention of the Legislature.” Syl. Pt. 8, *Vest v. Cobb*, 138 W. Va. 660, 76 S.E.2d 885 (1953).

3. “When a statute is clear and unambiguous and the legislative intent is plain, the statute should not be interpreted by the courts, and in such case it is the duty of the courts not to construe but to apply the statute.” Syl. Pt. 5, *State v. Gen. Daniel Morgan Post No. 548, Veterans of Foreign Wars*, 144 W. Va. 137, 107 S.E.2d 353 (1959).

4. Under West Virginia Code § 8-15-10a (2004), firefighters are entitled to either additional pay or time off, as chosen by their employer, for each legal holiday equal to the hours worked during the holiday or, when a legal holiday falls on a firefighter’s regular scheduled day off, for the hours that he or she would have worked.

HUTCHISON, Justice:

The petitioners in this case are fifty-four current and former firefighters employed by the respondent, the City of Morgantown, West Virginia (“the City”).¹ The firefighters brought this case seeking an interpretation of West Virginia Code § 8-15-10a (2004) (“Section 10a”), which requires the City to provide extra compensation to firefighters for those days designated by the West Virginia Legislature as legal holidays.

The circuit court granted summary judgment, in part, to the firefighters finding that the City had incorrectly calculated the firefighters’ compensation under Section 10a. However, the circuit court also granted summary judgment, in part, to the City, finding that the compensation required by Section 10a was not a “fringe benefit” or “wage” covered by the Wage Payment and Collection Act (“the WPCA”). In so doing, the circuit court reduced the period of time, from five years to two years, that currently employed firefighters could recover improperly calculated compensation. Moreover, the circuit court imposed the doctrine of laches, thereby depriving former firefighters of any past compensation.

As set forth below, we affirm the circuit court’s order, in part, finding the City incorrectly interpreted Section 10a. However, we reverse the circuit court’s order, in

¹ The lead petitioner, Jayson Nicewarner, is a fire department lieutenant and the former president of the firefighter’s union, International Association of Firefighters Local #313.

part, because we find that Section 10a created a fringe or wage benefit for firefighters that is protected by the WPCA. Hence, the doctrine of laches does not apply, and the claims by all firefighters are limited to the five-year period usually available under the WPCA.

I. Factual and Procedural Background

West Virginia state law specifies that “the members of a paid fire department” may be required to work a maximum of twenty-four hours per day, up to a maximum of 112 hours every fourteen days. W. Va. Code § 8-15-10. For time immemorial, firefighters employed by the City have worked twenty-four-hour shifts that start daily at 8:00 in the morning. Hence, a firefighter starting his or her day at 8:00 a.m. will work sixteen hours that calendar day, and then finish the shift by working eight hours, from midnight to 8:00 a.m., the following calendar day.

The City employs three rotating shifts of firefighters. Under this schedule, a full-time City firefighter, on average, would be scheduled to work fifty-six hours per week, 112 hours every two weeks. Firefighters are paid a standard wage for the first forty hours worked in a week, and time-and-a-half the standard wage for the remaining sixteen hours.

This case concerns “legal holidays.” The West Virginia Legislature has designated twelve days, such as Memorial Day or Christmas, as “legal holidays.” The Legislature has also designated as legal holidays most election days and those days proclaimed as “a day for the general cessation of business” by the Governor or President.

See W. Va. Code 2-2-1(a) (2006).² *See generally Mitchell v. City of Wheeling*, 202 W. Va. 85, 502 S.E.2d 182 (1998) (determining that a Presidential order or proclamation

² West Virginia Code § 2-2-1(a) designates the following as “legal holidays”:

- (1) January 1 is “New Year’s Day”;
- (2) The third Monday of January is “Martin Luther King’s Birthday”;
- (3) The third Monday of February is “Presidents’ Day”;
- (4) The last Monday in May is “Memorial Day”;
- (5) June 20 is “West Virginia Day”;
- (6) July 4 is “Independence Day”;
- (7) The first Monday of September is “Labor Day”;
- (8) The second Monday of October is “Columbus Day”;
- (9) November 11 is “Veterans’ Day”;
- (10) The fourth Thursday of November is “Thanksgiving Day”;
- (11) The day after Thanksgiving Day is “Lincoln’s Day”;
- (12) December 25 is “Christmas Day”;
- (13) Any day on which a general, primary or special election is held is a holiday throughout the state, a political subdivision of the state, a district or an incorporated city, town or village in which the election is conducted;
- (14) General election day on even years shall be designated Susan B. Anthony Day, in accordance with the provisions of subsection (b), section one-a of this article; and
- (15) Any day proclaimed or ordered by the Governor or the President of the United States as a day of special observance or

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commemorating the death of a former President was not a “legal holiday” as defined in W. Va. Code § 2-2-1). Most West Virginia government employees do not work on legal holidays. However, for the safety and security of the public, there must be firefighters on duty all day and every day. Hence, firefighters must work, according to their schedule, whether or not those days are designated as legal holidays.

Because firefighters “are required to work on a holiday when most employees are off,” the Legislature adopted Section 10a to provide firefighters with “enhanced benefits.” *Pullano v. City of Bluefield*, 176 W. Va. 198, 204-05, 342 S.E.2d 164, 171 (1986). Section 10a provides that if a firefighter either is required to “work during a legal holiday,” or if the legal holiday falls on the firefighter’s regular scheduled day off, then the City must provide extra compensation to the firefighter. The parties agree that, under Section 10a, the City chooses the form of extra compensation: it may compensate a firefighter with either “equal time off” or by the payment of extra wages “at a rate not less than one and one-half times his or her regular rate of pay[.]”³

Thanksgiving, or a day for the general cessation of business, is a holiday.

³ West Virginia Code § 8-15-10a provides, in full:

From the effective date of this section, if any member of a paid fire department is required to work during a legal holiday as is specified in subsection (a), section one, article two, chapter two of this code, or if a legal holiday falls on the member’s regular scheduled day off, he or she shall be allowed equal time off at such time as may be approved by the chief executive officer of

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In this case, the City chose to afford its firefighters “equal time off” for legal holidays. However, the City did not calculate each firefighter’s time off based upon their actual hours “work[ed] during a legal holiday” or the time they were scheduled off for the holiday. Instead, at the beginning of every year, the City would grant each firefighter 156 hours of leave equivalent to the thirteen legal holidays anticipated to occur in the upcoming year (except in years with primary or general elections, each firefighter received 168 hours). A firefighter could “bank” the extra paid time off and use it throughout the year, including using the extra leave before the occurrence of the holiday.

In effect, for each legal holiday, the City afforded each firefighter twelve hours of time off irrespective of the firefighter’s work schedule. As a result, a firefighter who worked on a legal holiday for eight hours (midnight to 8:00 a.m.) and a firefighter who worked sixteen hours (8 a.m. to midnight) would each receive twelve hours of leave time at the beginning of each year. The compensation system also failed to account for firefighters working overtime on a legal holiday. The record suggests that this compensation system for legal holidays has been in effect for decades, given that the

the department under whom he or she serves or, in the alternative, shall be paid at a rate not less than one and one-half times his or her regular rate of pay: Provided, That if a special election of a political subdivision other than a municipality falls on a Saturday or Sunday, the municipality may choose not to recognize the day of the election as a holiday if a majority of the municipality’s city council votes not to recognize the day of the election as a holiday.

firefighters' union sent letters asking the City to alter its legal holiday pay system in 1985, 1990, 1997, 2000, and 2002.

On June 7, 2019, fifty-four current and former firefighters sued the City of Morgantown in a three-count complaint regarding their statutory compensation for legal holidays. The firefighters generally asserted that, under Section 10a, the City was required to compensate firefighters for the entire legal holiday – that is, for twenty-four hours of time off (or, alternatively, twenty-four hours of pay at time-and-a-half). In the first count, the firefighters argued that the City had failed to afford them the proper amount of holiday compensation under the statute, and they demanded to be compensated in cash and interest for the amounts they failed to receive. In the second count, the firefighters alleged the City's failure to correctly compensate them violated the WPCA, W. Va. Code § 21-5-1 to -18, entitling the firefighters to remedies under the WPCA. In count three, the firefighters sought a declaratory judgment that they were entitled to one-and-a-half times their regular rate of pay for legal holidays, and they asked for the appointment of a commissioner to calculate the past compensation due under Section 10a.⁴

After discovery and several failed mediations, the parties moved for summary judgment. In a final order dated February 9, 2022, the circuit court granted

⁴ In February of 2020, after the filing of this lawsuit, the Morgantown City Council adopted a resolution simplifying its employment policies and establishing that, at the beginning of every year, firefighters would receive or be “banked” twenty-four hours of leave time for every legal holiday anticipated to occur in that year. Because of this change in City policy, the firefighters sought no damages beyond February 2020.

summary judgment on some questions to the City, and summary judgment to the firefighters on other questions.⁵ As to count one, the circuit court rejected the firefighters’ demand for cash damages. Because Section 10a grants municipalities the option of affording firefighters with either “equal time off” or pay “at a rate not less than one and one-half times his or her regular rate of pay” for legal holidays, and the City had chosen the option to grant time off for legal holidays, the circuit court determined the firefighters had no right to extra pay in the form of cash damages. This ruling applied to both current and former firefighters. Accordingly, the circuit court dismissed count one.

Count two concerned the application of the WPCA to the compensation required by Section 10a. The WPCA defines “wages” as “compensation for labor or services rendered by an employee,” but also as “accrued fringe benefits capable of calculation and payable directly to an employee[.]” W. Va. Code § 21-5-1(c) (2021).⁶ The circuit court determined that the “real issue in dispute is not ‘wages,’” largely because nothing in Section 10a or the City’s “longstanding practice of granting time off for holidays

⁵ The circuit court entered a tentative summary judgment order on September 28, 2021. However, after holding a hearing to receive objections from the firefighters, the circuit court entered the February 9, 2022, final order currently on appeal.

⁶ The firefighters’ claims for “fringe benefits” under the WPCA appear to have arisen under versions of West Virginia Code § 21-5-1(c) that were adopted by the Legislature in 1987 and 2015. See *1987 Acts of the Legislature*, ch. 73; *2015 Acts of the Legislature*, ch. 152. The statute was amended in 2021, but the parties direct us to no changes in the statute that affect the outcome of this case.

rather than [affording] premium pay” entitled the firefighter to additional “wages” under the WPCA. Accordingly, the circuit court dismissed count two.

In assessing count three, the circuit court rejected the firefighters’ claim that they were entitled to compensation for twenty-four hours for the entire legal holiday. The circuit court also rejected the City’s claim that it had fairly compensated the firefighters by automatically affording them twelve hours of leave time for every legal holiday at the beginning of the year, irrespective of the firefighter’s schedule. Instead, the circuit court found a middle ground, ruling that Section 10a was clear that firefighters “are entitled to time off for each legal holiday equal to the hours worked during the holiday or, when a holiday falls on a [firefighter]’s regular scheduled day off, for the hours that he or she would have worked.” Hence, the court determined that firefighters were generally entitled to either eight hours or sixteen hours of extra time off for each legal holiday, depending on a firefighter’s schedule.

As a part of count three, the circuit court weighed the applicable statute of limitation to determine how far back in time to calculate the firefighters’ additional time off. The firefighters argued for the five-year statute of limitation under the WPCA claiming they were deprived of a fringe benefit under an unwritten contract. *See* W. Va. Code § 55-2-6 (1923). However, having already determined the WPCA did not apply, the circuit court applied the general two-year statute of limitation. *See* W. Va. Code § 55-2-12 (1923). Furthermore, the circuit court concluded that the firefighters had known of their claims as early as 1985 and that any firefighter’s “claim[] for retroactive monetary relief, including

any claims for money damages by a [firefighter] who has separated employment with Morgantown and cannot recover time off” is barred by the equitable doctrine of laches. *See Maynard v. Bd. of Educ. of Wayne Cnty.*, 178 W. Va. 53, 357 S.E.2d 246 (1987).

Accordingly, the circuit court granted judgment partly in favor of the firefighters on count three and appointed a commissioner to calculate any additional time off that might be due to firefighters still working for the City, based on uncompensated legal holidays for the two years before the firefighters filed their suit. As for those firefighters who had retired or otherwise separated from employment with the City, the circuit court found they were barred from monetary relief because they could not be compensated with paid time off.

The firefighters now appeal the circuit court’s order.

II. Standard of Review

Our review of the circuit court’s final summary judgment order is *de novo*. Syl. Pt. 1, *Painter v. Peavy*, 192 W. Va. 189, 451 S.E.2d 755 (1994) (“A circuit court’s entry of summary judgment is reviewed *de novo*.”); Syl. Pt. 3, *Cox v. Amick*, 195 W. Va. 608, 466 S.E.2d 459 (1995) (“A circuit court’s entry of a declaratory judgment is reviewed *de novo*.”); Syl. Pt. 1, *Findley v. State Farm Mut. Auto. Ins. Co.*, 213 W. Va. 80, 576 S.E.2d 807 (2002) (“This Court reviews *de novo* the denial of a motion for summary judgment, where such a ruling is properly reviewable by this Court.”). Further, we review the circuit court’s interpretation of Section 10a and the Wage Payment and Collection Act *de novo*.

Syl. Pt. 1, *Appalachian Power Co. v. State Tax Dep't of W. Va.*, 195 W. Va. 573, 466 S.E.2d 424 (1995) (“Interpreting a statute or an administrative rule or regulation presents a purely legal question subject to *de novo* review.”).

III. Discussion

On appeal, the firefighters raise four assignments of error.

First, the firefighters assign as error the circuit court’s finding that Section 10a mandated that the City compensate firefighters for only the hours they worked “during a legal holiday” or for the hours that he or she would have worked. The firefighters assert that the focus should be on the day and not the hours. When a firefighter is scheduled to work the day of a legal holiday or is scheduled to be “off” on the day of a legal holiday, the firefighters contend that the workday or day off begins at 8:00 a.m. on the legal holiday and continues for a complete day totaling twenty-four hours. Hence, firefighters assert they are entitled, under Section 10a, to compensation equivalent to twenty-four hours for starting their shift on a legal holiday.

The City responds by pointing to an opinion from the Attorney General interpreting Section 10a for several local governments shortly after its 1976 adoption by the Legislature,⁷ and it notes that the firefighters’ argument is directly contrary to that opinion. “Although an opinion of the attorney general is not binding upon this Court it is

⁷ See 1976 Acts of the Legislature, c. 80.

persuasive when it is issued rather contemporaneous with the adoption of the statute in question.” *Walter v. Ritchie*, 156 W. Va. 98, 109, 191 S.E.2d 275, 282 (1972).⁸ On August 19, 1977, the Attorney General addressed a question about the application of Section 10a to the situation of a firefighter who worked a twenty-four-hour shift, only part of which overlapped a legal holiday. The Attorney General rendered the following opinion:

[W]hen a regularly scheduled duty shift . . . , or any part of such shift, falls on or within the 24-hour period of a legal holiday . . . by virtue of Code 2-2-1, each fireman working that shift or each off-duty fireman, on whose regularly scheduled day off the holiday has occurred, is entitled to be credited, as time off, with the number of off-duty hours equivalent to the number of duty hours worked by him (or which would have been worked by him in the case of an off-duty fireman) which fall within the 24-hour holiday period or, in lieu thereof, to receive pay at the rate of not less than one and one-half times his regular rate of pay for each such duty hour embraced within the 24-hour holiday period. As an example, if the legal holiday falls on a Sunday, the following Monday will be taken as the legal holiday (Code 2-2-1) and firemen working on a regularly scheduled duty shift commencing at 6:00 p.m. on Monday and ending at 6:00 p.m. on Tuesday will be entitled to 6 hours of credited time off, or, in lieu thereof, to not less than one and one-half their regular rate of pay for 6 hours, whereas those firemen whose shift had ended at 6:00 p.m. on that Monday (the day taken as the holiday) would be credited with 18 hours

⁸ To be clear, while opinions of the Attorney General may carry a measure of persuasiveness, those opinions are not binding on this Court. See Syl. Pt. 2, *Hoover v. Blankenship*, 199 W. Va. 670, 487 S.E.2d 328 (1997) (“Opinions of the attorney general are not precedential or binding upon this Court. . . .”); *State v. Wassick*, 156 W. Va. 128, 133, 191 S.E.2d 283, 287 (1972) (“Opinions of the Attorney General are not considered as precedent to be followed by this Court.”); *Mohr v. County Court of Cabell County*, 145 W. Va. 377, 406, 115 S.E.2d 806, 821 (1960) (Haymond, J., dissenting) (“The opinion of the attorney general . . . though entitled to weight and consideration, is merely the individual official view of that high executive legal advisor and law enforcement officer of this State, and is not in any sense authority binding upon this Court.”).

of time off, or, in lieu thereof, to not less than one and one-half times their regular rate of pay for 18 hours.

Chauncey H. Browning, Jr., William F. Carroll, 57 W. Va. Op. Att’y Gen. 171, *3 (1977).

The Attorney General concluded with this interpretation of Section 10a:

When a regular shift falls within the 24 hour period of a legal holiday, a member of a paid fire . . . department is entitled to be credited, as time off, with the number of hours worked by him or, if on off-duty status, within such period, with the time he would have worked[.]”

57 W. Va. Op. Att’y Gen. 171 at *1. The City contends that it and other municipalities have attempted to comply with this opinion for nearly five decades.⁹

This Court has long held that “[t]he primary rule of statutory construction is to ascertain and give effect to the intention of the Legislature.” Syl. Pt. 8, *Vest v. Cobb*, 138 W. Va. 660, 76 S.E.2d 885 (1953). To that end, “[w]hen a statute is clear and unambiguous and the legislative intent is plain, the statute should not be interpreted by the courts, and in such case it is the duty of the courts not to construe but to apply the statute.” Syl. Pt. 5, *State v. Gen. Daniel Morgan Post No. 548, Veterans of Foreign Wars*, 144 W. Va. 137, 107 S.E.2d 353 (1959). By adopting Section 10a, the Legislature clearly intended to provide firefighters with compensation for time that they worked, or were regularly scheduled off, “during a legal holiday.” Accordingly, we hold that, under Section 10a,

⁹ We also note that, after the Attorney General’s 1977 opinion on the 1976 version of Section 10a, the Legislature did not change the language at issue. The only revision to the relevant language in Section 10a occurred in 2004 when the Legislature amended and reenacted the statute to make it gender neutral. *See 2004 Acts of the Legislature*, ch. 184 (replacing “he” and “his” with “he or she” and “his or her”).

firefighters are entitled to either additional pay or time off, as chosen by their employer, for each legal holiday equal to the hours worked during the holiday or, when a legal holiday falls on a firefighter's regular scheduled day off, for the hours that he or she would have worked.

Because the City chose to compensate firefighters with extra time off, the circuit court correctly found that the City's firefighters were entitled to time off equal to the hours worked during a legal holiday, or for the hours the firefighter would have worked but for being regularly scheduled off. In general, the City's firefighters would be eligible for either eight or sixteen hours of extra time off, rather than the blanket twelve hours provided by the City for legal holidays. A firefighter's compensation under Section 10a is tethered to each firefighter's actual schedule during the legal holiday. Conversely, there is nothing in Section 10a to support the City's decision to afford firefighters generic compensation of twelve hours for each legal holiday irrespective of how firefighters' hours are scheduled "during a legal holiday," and there is likewise nothing to support the firefighters' suggestion that the City must automatically compensate them for twenty-four hours. Thus, we find no error in this holding by the circuit court.

The firefighters' second assignment of error challenges the circuit court's finding that the enhanced compensation afforded by Section 10a does not constitute a "wage" under the WPCA. "The West Virginia Wage Payment and Collection Act is remedial legislation designed to protect working people and assist them in the collection of compensation wrongly withheld." *Mullins v. Venable*, 171 W. Va. 92, 94, 297 S.E.2d

866, 869 (1982). The WPCA requires employers to settle with current employees “at least twice every month . . . and pay them the wages due[.]” W. Va. Code § 21-5-3(a) (2022). When an employee is discharged, quits, or resigns, the WPCA provides that the employer “shall pay the employee’s wages due for work that the employee performed prior to the separation of employment[.]” W. Va. Code § 21-5-4(b) (2022).

The question presented here is whether the enhanced compensation provided to firefighters by Section 10a is considered “wages” under the WPCA. The circuit court held that the enhanced compensation was not wages. We find that holding to be in error. As we noted earlier, “wages” are defined by the WPCA as “compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission, or other basis of calculation.” W. Va. Code § 21-5-1(c). However, the term “wages” also incorporates fringe benefits afforded by an employer: “[T]he term ‘wages’ shall also include then accrued fringe benefits capable of calculation and payable directly to an employee[.]” *Id.* We have said that “whether fringe benefits have then accrued, are capable of calculation and payable directly to an employee so as to be included in the term ‘wages’ are determined by the terms of employment” Syl. Pt. 5, in part, *Meadows v. Wal-Mart Stores, Inc.*, 207 W. Va. 203, 530 S.E.2d 676 (1999) (emphasis added).

Hence, *Meadows* dictates that to determine if the enhanced compensation created by Section 10a qualifies as a “fringe benefit” sufficient to meet the definition of wages, we must assess whether Section 10a is part of the firefighters’ “terms of employment.” We find this question answered by our precedent, as we have often said that

“[a] statute is treated as a contract when the language and circumstances evince a legislative intent to create private rights of a contractual nature.” *Dadisman v. Moore*, 181 W. Va. 779, 789, 384 S.E.2d 816, 826 (1988) (making clear that a public employee’s statutory pension rights are contractual rights); *see also Adams v. Ireland*, 207 W. Va. 1, 9, 528 S.E.2d 197, 205 (1999) (“[O]ur public employees’ retirement statutes are contract rights that are enforceable and cannot be impaired or diminished by the State.”); Syl. Pt. 1, in part, *Hartman v. Bd. of Educ. of Cnty. of Min.*, 194 W. Va. 539, 460 S.E.2d 785 (1995) (“A bonus established by a county board of education under the provisions of West Virginia Code § 18A-4-10a (Bonus for unused days of personal leave) can become a part of the teachers’ continuing contracts of employment . . . by operation of statutory law manifesting a specific legislative intent that the bonus become an element of the teachers’ contracts[.]”).

By adopting Section 10a, we believe that the Legislature manifested a clear intention to create a contractual right for firefighters to receive enhanced compensation for legal holidays. After the occurrence of a legal holiday, the compensation required by Section 10a is a fringe benefit that has accrued, is capable of calculation, and is payable directly to the firefighter and is, accordingly, a “wage” as defined by the WPCA. *See* W. Va. Code § 21-5-1(c). For current employees of the City, that compensation is in the form of extra time off that can eventually be used by the firefighter and converted to cash wages. For retired employees, under City policies, the remedy is the cash equivalent to vacation pay due at the time of their separation from employment. Hence, we find that the circuit court erred in its holding that the firefighters’ claims were not governed by the WPCA.

The firefighters' third and fourth assignments of error regard the circuit court's assessment of the time period for which firefighters could recover under Section 10a. For the current firefighters, the circuit court applied the general statute of limitation and limited current firefighters to damages (in the form of extra time off) for the two years preceding the filing of their lawsuit. *See* W. Va. Code § 55-2-12. As for the retired and other separated firefighters, the circuit court barred them from a monetary recovery under the doctrine of laches. We find both decisions to be in error.

Because the claims fall within the ambit of the WPCA, and concern an unwritten agreement, they are governed by the five-year statute of limitation found in West Virginia Code § 55-2-6. "[T]his court has consistently held that suits brought under the West Virginia Wage Payment and Collection Act are governed by the five year statute of limitations for contract actions." *Jones v. Tri-County Growers, Inc.*, 179 W. Va. 218, 221, 366 S.E.2d 726, 729 (1988); *see also* Syllabus, *Western v. Buffalo Min. Co.*, 162 W. Va. 543, 251 S.E.2d 501 (1979) ("A suit by employees for recovery of money allegedly obtained under a wage assignment that violates W.Va. Code, 21-5-3, is one based on contract and the five-year statute of limitations provided for in W.Va. Code, 55-2-6, is applicable."). We have said that a five-year statute of limitation applies because the WPCA "is not drafted with great precision, [and] we feel the legislature intended discharged employees to have access to this statutory remedy as if under contract." *Lucas v. Moore*, 172 W. Va. 101, 102, 303 S.E.2d 739, 741 (1983).

Regarding the circuit court's application of laches, "[l]aches applies to equitable demands where the statute of limitation does not." Syl. Pt. 2, in part, *Condry v. Pope*, 152 W. Va. 714, 166 S.E.2d 167 (1969). Those firefighters separated from employment with the City must seek money damages because they cannot be compensated with extra time off. It is axiomatic that where the form of relief is money damages, the monetary award is ordinarily characterized as a legal, not equitable, remedy. *See Thompson v. Town of Alderson*, 215 W. Va. 578, 581 n.5, 600 S.E.2d 290, 293 n.5 (2004); *Realmark Devs., Inc. v. Ranson*, 214 W. Va. 161, 164, 588 S.E.2d 150, 153 (2003). Because the claims raised are legal in nature, they are governed by the statute of limitation and not the equitable doctrine of laches. The circuit court erred in holding otherwise.

IV. Conclusion

The circuit court correctly found, under West Virginia Code § 8-15-10a, that the City was required to compensate its firefighters with extra time off equivalent to the number of hours worked (or which would have been worked in the case of a firefighter regularly scheduled to be off) which fall within the 24-hour legal holiday period, and no party challenges the court's decision to employ a commissioner to calculate that remedy. We affirm the circuit court's rulings on these points. However, we find that all of the firefighters' claims are governed by the Wage Payment Collection Act and by the five-year

statute of limitation, and we conclude that the rulings of the circuit court to the contrary are reversed. We remand the case to the circuit court to reconsider the firefighters' claims.

Affirmed, in part, reversed, in part, and remanded.