2012


Sean Dillon Whatley

Follow this and additional works at: http://open.mitchellhamline.edu/wmlr

Recommended Citation

Available at: http://open.mitchellhamline.edu/wmlr/vol39/iss1/15
CONTRACTS: WILL WORK FOR PROMISES: WAGE PAYMENTS DO NOT RESET THE STATUTE OF LIMITATIONS FOR BREACHES OF POLICY IN EMPLOYMENT CONTRACTS IN MINNESOTA—

PARK NICOLLET CLINIC V. HAMANN

Sean Dillon Whatley†

I. INTRODUCTION ................................................................. 372
II. HISTORY ........................................................................ 374
   A. Statutes of Limitations in General .............................. 374
   B. Origin and Background ............................................ 375
   C. Development in the United States ......................... 376
   D. Development in Minnesota ................................. 377
III. THE PARK NICOLLET DECISION ...................................... 382
   A. Facts and Procedural Posture ................................. 382
   B. The Court of Appeals Decision ............................ 385
   C. The Minnesota Supreme Court Decision ............ 386
IV. ANALYSIS ....................................................................... 389
   A. Eligibility Requirements May Lead to Inconsistent and
      Inequitable Application of the Statute of Limitations ........ 390
   B. Withholding Demand for Benefits May Postpone the
      Start of the Limitations Period ............................. 394
V. CONCLUSION ................................................................... 397

I. INTRODUCTION

In Minnesota, most actions for breach of employment contracts are governed by a two-year statute of limitations for the

† J.D. Candidate 2014, William Mitchell College of Law; B.S., Economics, University of Saint Thomas, 2010. I would like to thank my editor Mike Tsoi and the members of the William Mitchell Law Review for their help and guidance, Professor James Hogg for his advice and valuable contribution to this note, and especially my family for their unwavering support, encouragement, and patience throughout this process.
recovery of wages.\textsuperscript{1} The application of the statute, however, has often been complicated by the ongoing wage payments typically associated with employment contracts.\textsuperscript{2} Disputes arising out of the employment relationship very often affect the periodic wage payments associated with most occupations.\textsuperscript{3} As a result, Minnesota courts have been faced with the question of whether subsequent paychecks issued after a breach reset the limitations period.\textsuperscript{4} The courts' decisions regarding how pay periods affect breaches of employment contracts have led to a less than uniform application of the statute of limitations.\textsuperscript{5}

In \textit{Park Nicollet Clinic v. Hamann},\textsuperscript{6} the Minnesota Supreme Court clarified the standard for applying the statute of limitations in wage recovery claims. The court was confronted with the question of whether reduced salary payments, occurring as a result of an employer's termination of a company policy more than three years prior, started separate two-year limitations periods each time payment became due but was not paid.\textsuperscript{7} The court unanimously held that reduced wage payments resulting from a failure to honor a policy that alters job responsibilities do not constitute separate causes of action with distinct accrual dates and thus do not start separate limitations periods.\textsuperscript{8} The \textit{Park Nicollet} decision resolves some uncertainty surrounding the effect that wage payments have on the accrual of breach of employment contract actions, but, in so doing, may have adversely impacted employees' future ability to recover benefits owed under revoked or terminated policies.

This note begins by reviewing statutes of limitations in terms of their purpose, origin, and historical development, both generally

\begin{itemize}
  \item \textsuperscript{1} \textsc{Minn. Stat.} § 541.07(5) (2011).
  \item \textsc{See infra} Part II.D.
  \item \textsc{See infra} Part II.D.
  \item \textsc{See infra} Part II.D.
  \item \textsc{Compare} McGoldrick v. Datatrak Int'l, Inc., 42 F. Supp. 2d 893, 897–98 (D. Minn. 1999) (holding that when the claim is based on an ongoing nonpayment of wages, the cause of action accrues separately each time a payment is due but not paid), and Levin v. C.O.M.B. Co., 441 N.W.2d 801, 803 (Minn. 1989) (holding that each failure to pay commission payments when they were due constituted a new cause of action from which a separate limitations period would run), \textit{with} Medtronic, Inc. v. Shope, 135 F. Supp. 2d 988, 992 (D. Minn. 2001) (holding that an employer's cancellation of stock certificates was not an anticipatory repudiation and distinguishing the holding in Levin as only applying to an anticipatory repudiation of a future obligation, not to a breach of a present obligation).
  \item 808 N.W.2d 828 (Minn. 2011).
  \item \textit{Id.} at 832.
  \item \textit{Id.} at 837.
\end{itemize}
and in the State of Minnesota specifically. Following the general and historical review, this note discusses the facts and arguments raised in *Park Nicollet*, and then analyzes the decision reached by the Minnesota Supreme Court with an emphasis on future issues that the decision potentially raises. This note concludes by arguing that the *Park Nicollet* decision may unfairly restrict employees’ ability to recover benefits owed to them under policies that are revoked by employers before employees become eligible to receive them.

II. HISTORY

A. Statutes of Limitations in General

Statutes of limitations are legislatively enacted time periods within which various legal actions must be commenced and certain rights may be enforced. They generally deprive a party of the opportunity, after a certain time, to invoke public power in support of an otherwise legitimate claim against another. The purpose behind limiting the time in which to bring an otherwise valid cause of action is primarily to prevent the prosecution of stale claims where “evidence has been lost, memories have faded, and witnesses have disappeared.” Accordingly, policy considerations behind such legislation have historically involved weighing the importance of providing plaintiffs with a fair and reasonable opportunity to litigate their claims against countervailing interests of fairness to defendants.

9. See infra Part II.
10. See infra Part III.
11. See infra Part IV.
12. See infra Part V.
14. Developments in the Law: Statutes of Limitations, 63 HARV. L. REV. 1177, 1185 (1950) [hereinafter Statutes of Limitations]; see also Simington v. Minn. Veterans Home, 464 N.W.2d 529, 530 (Minn. Ct. App. 1990) (“Summary judgment based on a statute of limitations is a decision on the merits and as res judicata, it bars relitigation of the same issue.” (citing Nitz v. Nitz, 456 N.W.2d 450, 452 (Minn. Ct. App. 1990))); Harry B. Littell, A Comparison of the Statutes of Limitations, 21 IND. L.J. 23, 23 (1945) (“Anglo-American jurisprudence always has been cautious in cutting off claims on bases which do not go to the merit of the action.”).
16. Statutes of Limitations, supra note 14, at 1185 (“The primary consideration underlying [statutes of limitations] is undoubtedly one of fairness to the
B. Origin and Background

Generally, codified time limitations on actions were established in early Roman law and then spread throughout Continental Europe. In England, early limitations periods prohibited actions based on seisin that occurred prior to a notable or well-known date, like the coronation of King Henry II. Eventually, the use of arbitrary dates to limit actions became ineffective at reducing the influx of stale claims and gave way to the use of fixed time periods, starting with the statute of 32 Henry 8 in 1540, which limited the time for bringing certain actions pertaining to realty.

England continued to refine its limitations system to meet the needs of a growing society. In a further effort to keep inconsequential and stale claims out of the King’s courts, England enacted the Limitations Act of 1623, which, for the first time, placed fixed time limits for bringing certain personal actions. The Limitations Act established different limitations periods for different types of claims, but generally prescribed a six-year time period for the bringing of most personal actions. Ultimately, the Limitations Act of 1623 marked the beginning of modern defendant.”); see also Johnson v. Ry. Express Agency, Inc., 421 U.S. 454, 463–64 (1975) (“[T]he period allowed for instituting suit inevitably reflects a value judgment concerning the point at which the interests in favor of protecting valid claims are outweighed by the interests in prohibiting the prosecution of stale ones.”).


18. See 2 Frederick Pollock & Frederic William Maitland, The History of English Law 81 (2d ed. 1898) (discussing that as early as 1236, England enacted statutes that prohibited real property actions based on seisin prior to the coronation of Henry II); see also Wood, supra note 13, § 2, at 6 (“[T]he legislature did not at first fix any certain and progressive period within which actions should be commenced, but from time to time chose for that purpose certain notable times . . . [such as] the beginning of the reign of King Henry the First, the return of King John from Ireland, the journey of Henry the Third into Normandy, and the coronation of King Richard the First . . . .”).

19. Statutes of Limitations, supra note 14, at 1177 n.4 (stating that the statute of 32 Henry 8 limited seisin claims to thirty to sixty years from last seisin of claimant or ancestor); see also Wood, supra note 13, § 2, at 6.

20. For further information on the development of statutes of limitations in England, see Statutes of Limitations, supra note 14, at 1177–78.

21. Id. at 1178.

22. Limitations Act, 1623, 21 Jac 1, c. 16 (prohibiting actions to recover land more than twenty years after the accrual of the right).

23. Id.
limitations on personal actions.\textsuperscript{24} The substance of the Act, including the six-year time period, was eventually copied by many of the early American colonies\textsuperscript{25} and eventually served as the foundation for the limitations system of the United States.\textsuperscript{26}

C. Development in the United States

The proliferation of U.S. statutes limiting both civil and criminal actions continued to evolve from the system inherited from England.\textsuperscript{27} As no uniform federal statute of limitations has ever been enacted to standardize the time in which to bring various state claims,\textsuperscript{28} the time for bringing most actions is governed by individual statutes found in every state.\textsuperscript{29} Initially, the various state statutes prescribed relatively long limitations periods and only differentiated between a few types of actions, leaving most actions governed by a “general” statute of limitations.\textsuperscript{30} Gradually, however, individual states began to increase the number of categorical distinctions between actions in an effort to tailor specific limitations periods to address the particular concerns of different claims.\textsuperscript{31} Ultimately, the state level transition to more specific limitations periods also resulted in shorter time periods in which to bring most actions.\textsuperscript{32}

The continuing shift by judicial and legislative refinement from longer to shorter limitations periods\textsuperscript{33} is also believed to be

\textsuperscript{24} Statutes of Limitations, supra note 14, at 1178.
\textsuperscript{25} See, e.g., The Acts and Resolves of Province of Massachusetts Bay for 1770–71 (providing a period of six years for personal accounts and for debt under contract not under seal); The Colonial Laws of New York for 1664–1719, v. 1, p. 155 (providing a six-year period for all personal actions of account and upon the case).
\textsuperscript{26} John R. Mix, Comment, State Statutes of Limitations: Contrasted and Compared, 3 ROCKY MTN. L. REV. 106, 107 (1931) (“The substance of [the Limitations Act] was copied early in the history of the American Colonies.”).
\textsuperscript{27} See, e.g., N.J. REV. LAWS 263 (1820) (limitations statute enacted in 1796).
\textsuperscript{28} For an analysis of the potential advantages of adopting uniform limitations periods under a federal statute of limitations, see Mix, supra note 26, at 116–17.
\textsuperscript{29} For a detailed analysis and comparison of early state statutes of limitations, see Littell, supra note 14, and Mix, supra note 26.
\textsuperscript{30} See Littell, supra note 14, at 32 (“A general limitation is essential since a legislature cannot foresee all statutory actions which subsequently will be enacted.”).
\textsuperscript{31} Id. at 24.
\textsuperscript{32} Id.
\textsuperscript{33} Id.
consistent with the purpose for which statutes of limitations were first enacted. In general, statutes of limitations are based on the idea that defendants should not be called on to defend claims after “papers may be lost, facts forgotten, or witnesses dead.” The length of time prescribed by statute is arbitrary and does not differentiate between just and unjust claims. By barring claims after a certain period, the statutes compel the settlement of disputes within a reasonable time, and the legislature’s codification of what constitutes a reasonable time reflects an inherent value judgment as to the importance that the state places on the expedient resolution of those sorts of disputes.

D. Development in Minnesota

As with most state statutes of limitations around the turn of the century, the early limitations statute in Minnesota did not distinguish between employment wage claims and general claims arising under a contract. The early statute simply provided a general limitations period of six years that applied to most actions. It was not until 1945 that the Minnesota legislature adopted and codified a separate two-year limitations period for the

34. See supra Part II.A; see also Chase Sec. Corp. v. Donaldson, 325 U.S. 304, 314 (1945) (“Statutes of limitation find their justification in necessity and convenience rather than in logic. They represent expediencies, rather than principles. They are practical and pragmatic devices to spare the courts from litigation of stale claims . . . .”); Statutes of Limitations, supra note 14, at 1185 (“The primary consideration underlying [statutes of limitations] is undoubtedly one of fairness to the defendant.”).

35. Bachertz v. Hayes-Lucas Lumber Co., 201 Minn. 171, 176, 275 N.W. 694, 697 (1937) (acknowledging that “[a] statute of limitation is based to a great extent on the proposition that if one person has a claim against another . . . it would be inequitable for him to assert such claim after an unreasonable lapse of time, during which such other has been permitted to rest in the belief that no such claim existed.”); see Order of R.R. Telegraphers v. Ry. Express Agency, Inc., 321 U.S. 342, 349 (1897).

36. Chase Sec. Corp., 325 U.S. at 314 (“[Statutes of limitations] are by definition arbitrary, and their operation does not discriminate between the just and the unjust claim, or the voidable and unavoidable delay. They have come into the law not through the judicial process but through legislation. They represent a public policy about the privilege to litigate.” (footnotes omitted)).

37. WOOL, supra note 13, § 5.


39. See id. The six-year limitations period codified in the early state statutes was inherited from the original English Limitation Act of 1623. Mix, supra note 26, at 108–09.
recovery of wages specifically. The adoption of a separate, shorter period for wage recovery claims, in Minnesota and elsewhere, was likely prompted by growing public concern over strained judicial resources caused by significant increases in so-called “portal-to-portal actions” following Congress’ enactment of the Fair Labor Standards Act of 1938. The codification of a separate time period may also have been a response to the pending changes in a large number of government employment contracts near the end of World War II.

The newly introduced statutory provision governing the recovery of wages greatly reduced the time period for bringing employment contract disputes. The statute defines “wages” broadly to include “all remuneration for services or employment, including commissions and bonuses and the cash value of all remuneration in any medium other than cash, where the relationship of master and servant exists.” Prior to the 1945 amendment, these sorts of employee contract claims were governed by the six-year period for general contract disputes. Minnesota courts extended the statute’s reach even further by expressly

40. Act of Apr. 23, 1945, ch. 513, § 1, 1945 Minn. Laws 1006, 1006–07 (codified as amended at MINN. STAT. § 541.07(5) (1945)).

41. “Portal-to-portal action” refers to employee claims for wages associated with certain preliminary work activities consistent with the payment requirements set forth in the Fair Labor Standards Act of 1938 (FLSA). The term stems from the groundbreaking 1946 Supreme Court decision in Anderson v. Mt. Clemens Pottery Co., dubbed the “portal-to-portal case,” in which the Court held that preliminary work activities are properly included as working time under the FLSA. 328 U.S. 680, 692–93 (1946). In response to the Supreme Court decision, Congress subsequently amended the FLSA with the Portal-to-Portal Act of 1947, which defined preliminary and postliminary work activities as those exclusively arising out of contract, custom, or practice. 29 U.S.C.A. § 252 (1947).


43. Kohout v. Shakopee Foundry Co., 281 Minn. 401, 404, 162 N.W.2d 237, 239 (1968) (“We can only speculate that the statute may have been prompted by the pending renegotiation of great numbers of government contracts.”).

44. Compare MINN. STAT. § 541.05 (1941) (prescribing a general limitations period of six years for general actions under contract), with MINN. STAT. § 541.07(5) (1945) (prescribing a two-year limitations period for the recovery of wages specifically).

45. MINN. STAT. § 541.07(5) (2010).

46. See MINN. STAT. § 541.05 (1941) (containing no provision governing the recovery of wages specifically).
holding that actions for breaches of most employment contracts were essentially actions for the recovery of wages and were subject to the two-year limitations period,\textsuperscript{47} thus eliminating any distinction between the recovery of wages already earned and future wages due under contract.

In 1984, an exception was included in the limitations statute for wage recovery that increased the limitations period from two years to three where the employer’s withholding of wages was found to be “willful.”\textsuperscript{48} This exception was presumably enacted as a means of further punishing deliberate employer misconduct, but establishing whether or not the conduct was willful required that the issue be submitted to a fact finder, presumably after some period of litigation.\textsuperscript{49} Whereas most limitations statutes are intended to dispose of claims summarily before trial, the inclusion of the willful conduct exception means that some wage recovery claims accruing more than two years prior to the commencement of an action may be fully litigated before determining whether the plaintiff had a right to bring suit in the first place.\textsuperscript{50}

Beyond the 1984 exception, the separate limitations statute for wage recovery claims has remained substantively unchanged since

\textsuperscript{47}See, e.g., Kulinski v. Medtronic Bio-Medicus, Inc., 112 F.3d 368, 371 (8th Cir. 1997) (“Minnesota courts consistently hold that all damages arising out of the employment relationship are subject to § 541.07(5).” (citations omitted) (internal quotation marks omitted)); Homewood Theatre, 101 F. Supp. at 77 (stating that the legislative history behind the enactment of section 541.07(5) shows that the statute was intended to limit all actions for wages, damages, and penalties arising out of the employer-employee relationship); Worwa v. Solz Enters., Inc., 307 Minn. 490, 492-93, 238 N.W.2d 628, 631 (1976) (holding that an action for breach of an oral contract of employment was essentially an action for wages and was subject to the two-year limitations period set by Minnesota statutes section 541.07(5)); Roaderick v. Lull Eng’g Co., 296 Minn. 385, 387-88, 208 N.W.2d 761, 763 (1973) (holding that the portion of the claim which had accrued more than two years before the commencement of an action based on quantum meruit for the recovery of the reasonable value of services performed under an unenforceable oral contract was barred by the limitations period in Minnesota statute section 541.07(5)).

\textsuperscript{48}Act of May 2, 1984, ch. 608, § 4, 1984 Minn. Laws 1450, 1454 (providing a three-year limitations period for actions where nonpayment of wages was “willful”).

\textsuperscript{49}See Levin v. C.O.M.B. Co., 441 N.W.2d 801, 805 (Minn. 1989) (“Whether there has been ‘willful’ nonpayment of wages within the meaning of section 541.07(5) is not in this case amenable to summary disposition.”).

\textsuperscript{50}See id. (“Unlike other statutes of repose, which are designed to dispose of stale claims summarily, the two tiered limitation provided in section 541.07(5) seems almost certainly to demand submission of the question of willfulness to the fact finder so that it can be decided which limitation, two years or three, is applicable.”).
its enactment. Consistency in statutory language, however, did not prevent issues in the statute’s application. Once a court ascertained the applicable limitations period, it would then have to determine exactly when the limitations period started. Minnesota’s statute provides that the limitations period begins when “the cause of action accrues.” In the context of wage recovery and employment contract disputes, however, determining when a cause of action accrues has been somewhat complicated by the ongoing payments typically associated with employment contracts. This is because many disputes arise and continue for an indefinite period during an existing employment relationship. Most employees experience breaches in the effect the disputes have on their wage payments.

The complexity has boiled down to whether pay periods following an initial breach reset the two-year statute of limitations. More specifically, the issue is whether a single breach occurs at the

52. Though the legislature has expressly codified that the limitations period begins to run when the cause of action accrues, no statute specifically defines exactly when that accrual occurs. MacRae v. Gnp. Health Plan, Inc., 753 N.W.2d 711, 716 (Minn. 2008). This has left courts with the burden of ascertaining exactly when a particular cause of action accrues. See, e.g., Dalton v. Dow Chem. Co., 280 Minn. 147, 152–53, 158 N.W.2d 580, 584 (1968) (holding that a cause of action accrues when all of the elements of the action have occurred and the claim would survive a motion to dismiss for failure to state a claim under Minnesota Rules of Civil Procedure 12.02(e)). Courts thus have been given some discretion in the application of the statute of limitations based on when they determine a claim could survive a motion to dismiss for failure to state a claim. See Herbert v. City of Fifty Lakes, 744 N.W.2d 226, 229 (Minn. 2008) (“When reviewing a case dismissed . . . for failure to state a claim . . . the question before [the reviewing] court is whether the complaint sets forth a legally sufficient claim for relief.”).
53. Park Nicollet Clinic v. Hamann, 808 N.W.2d 828, 832 (Minn. 2011).
54. Minn. Stat. § 541.01 (2010); see also Bachertz v. Hayes-Lucas Lumber Co., 201 Minn. 171, 176, 275 N.W. 694, 697 (1937) (“It is also a well-established rule that the statute ‘commences to run against a cause of action from the time it accrues—in other words from the time an action thereon can be commenced.’”)
55. In the context of wage recovery, the two-year limitations period is applied whenever “the gravamen of the action is the breach of an employment contract.” Portland v. Golden Valley State Bank, 405 N.W.2d 240, 243 (Minn. 1987).
56. See Statutes of Limitations, supra note 14, at 1205 (discussing four possible results stemming from the application of the statute of limitations to continuing or repeated wrongs).
57. See Pitts v. City of Kankakee, 267 F.3d 592, 595 (7th Cir. 2001) (“Drawing the line between something that amounts to a ‘fresh act’ each day and something that is merely a lingering effect of an earlier, distinct, violation is not always easy.”).
initial wrongful act (starting a single limitations period) or whether affected pay periods following the initial act constitute multiple breaches (starting separate limitations periods with each breach). These competing approaches to ascertaining when a breach has occurred were nicely summarized by the New Mexico Court of Appeals in Tull v. City of Albuquerque.

In Tull, city employees brought an action against the City for breach of employment contract after the City violated a merit system ordinance when it expanded city employees’ job duties without increasing their pay. The City argued that the employees’ action, brought in 1994, was time-barred under New Mexico’s three-year statute of limitations, because the alleged breach occurred only once in 1987, upon the City’s initial failure to give the requisite pay raise. The city employees argued that a new breach of contract occurred with each defective paycheck that did not include the raise to which they were entitled, and as such, they could recover damages for all paychecks that did not include the raise during the three years preceding the filing of their complaint, as well as all defective paychecks issued since the complaint was filed. The New Mexico Court of Appeals coined the term “continuing-wrong theory” to describe the city employees’ argument, and the term “single-wrong with continuing effects” theory to refer to the City’s argument.

With no clarification by the state legislature as to which competing theory applies, Minnesota courts have been left with

58. *See Statutes of Limitations, supra* note 14, at 1205. *Compare* Botten v. Shorma, 440 F.3d 979, 980–81 (8th Cir. 2006) (holding that a separate cause of action for bonuses accrued with each date a bonus was due under agreement), Levin v. C.O.M.B. Co., 441 N.W.2d 801 (Minn. 1989) (holding that each failure to pay yearly commissions constituted a new cause of action from which the limitations period would run), and Wood v. Cullen, 13 Minn. 394, 397 (1868) (holding that a separate limitations period began to run from each missed installment of wages when they became due), *with* Woodland v. Joseph T. Ryerson & Son, Inc., 302 F.3d 839, 842–43 (8th Cir. 2002) (holding that a new cause of action did not accrue for failure to promote following the employer’s earlier wrongful refusal to hire), Press v. Howard Univ., 540 A.2d 733, 734–35 (D.C. Cir. 1988) (holding that continuing damages in the form of lost income flowed from a single breach), and Tull v. City of Albuquerque, 907 P.2d 1010, 1011–12 (N.M. Ct. App. 1995) (finding that lower paychecks were merely damages resulting from a single, actionable wrong).

59. 907 P.2d at 1010.
60. *Id.*
61. *Id.* at 1011.
62. *Id.* at 1010–11.
63. *Id.* at 1011.
considerable discretion when applying the statute. Early Minnesota cases seemed to follow the continuing-wrong theory in wage recovery claims, but some lower courts have distinguished the accrual of claims for the nonpayment of wages from the accrual of other types of contract claims. The judicial tendency to count affected pay periods as separate breaches appeared to continue through to at least 1989, when the Minnesota Supreme Court seemingly reaffirmed application of the continuing-wrong theory in Levin, which serves as the primary point of authority in support of the continuing-wrong argument raised in Park Nicollet.

III. THE PARK NICOLLET DECISION

A. Facts and Procedural Posture

Plaintiff, Arlyn Hamann, M.D., began employment with Defendant, Park Nicollet Clinic, in 1974, as a physician in the Obstetrics and Gynecology Department of Park Nicollet’s Saint Louis Park clinic. Hamann’s duties included occasionally seeing

64. MacRae v. Group Health Plan, Inc., 753 N.W.2d 711, 716 (Minn. 2008) (“Although the limitations period begins to run when the cause of action accrues, the statute does not define when such accrual occurs.”).

65. See Tull, 907 P.2d at 1011 (coining the terms “continuing-wrong” and “single-wrong with continuing effects” to describe the competing arguments for when a breach of employment contract occurs).

66. See, e.g., Wood v. Cullen, 13 Minn. 394, 397 (1868).

67. See, e.g., McGoldrick v. Datatrak Int’l, Inc., 42 F. Supp. 2d 893 (D. Minn. 1999) (holding that when the underlying claim is based on an ongoing nonpayment of wages, the cause of action accrues separately each time a payment is due but not paid); Guercio v. Prod. Automation Corp., 664 N.W.2d 379, 387 (Minn. Ct. App. 2003) (“A breach-of-contract cause of action accrues generally at the time of the breach, even if the damages do not manifest themselves until later . . . . But under Minnesota law, a contractual cause of action for lost wages arises each time a payment is due, but is not paid.” (citations omitted)).

68. Levin v. C.O.M.B. Co., 441 N.W.2d 801 (Minn. 1989) (holding that each failure to pay commissions constitutes a separate breach).

69. See infra Part III.B.

70. Park Nicollet Health Services is a nonprofit, integrated healthcare system located in St. Louis Park, Minnesota, with more than 8200 employees, including more than 1000 Park Nicollet physicians on staff. About: Overview, PARK NICOLLET HEALTH SERVICES, http://www.parknicollet.com/About (last visited Oct. 8, 2012).


72. Park Nicollet Clinic v. Hamann, 808 N.W.2d 828, 830 (Minn. 2011).
obstetrics patients during nights and weekends. These “night call[s]” involved working before or after normal business hours.

In 1995, Park Nicollet adopted a Length of Service Recognition Policy (the “Policy”) that applied to all physicians in the Obstetrics and Gynecology Department, including Hamann. The Policy was intended to encourage physicians to remain with Park Nicollet by rewarding their length of service with the company. The Policy rewarded physicians by exempting them from the night call obligation once they met the Policy’s requirements. To be exempt from taking night calls under the Policy, physicians were required to: “(1) be at least 60 years of age; (2) have at least 15 years of taking OB call; (3) be at least a two-thirds full-time employee; and (4) have the approval of physicians in the call rotation.” Following adoption of the Policy, at least one physician was able to exercise his rights under the Policy and discontinue night calls without a reduction in salary.

Hamann became eligible to receive benefits under the Policy in 2004, but when he informed the department chair of his intent to exercise the Policy, he was convinced to defer exercising his rights until April 2005 because of staffing concerns in the department. When Hamann renewed his request to stop taking night calls in April 2005, the department chair stated that “the

73. Id.
74. Id. at 830 n.1 (“[N]ight call” is the term used by the parties for seeing patients outside of normal business hours.).
75. Id. at 830.
76. By 1995, Hamann had been employed by Park Nicollet for twenty-one years. Id.
77. Id.
78. Id. The Policy was adopted in an effort to encourage department physicians to remain with Park Nicollet for a long period of time so as to promote continuity and help maintain adequate staffing. Brief for Respondent at 4, Park Nicollet, 808 N.W.2d 828 (No. A10-658), 2011 WL 7415272, at *4. The Policy also helped to reduce the costs of physician turnover while ensuring patient needs were met by experienced physicians. Id.
79. See Brief for Respondent, supra note 78, at *4.
80. Id.
81. Park Nicollet, 808 N.W.2d at 830. Dr. Edward Maeder, another physician in Hamann’s department, was allowed to exercise his rights under the Policy when he became eligible upon his sixtieth birthday. Brief for Respondent, supra note 78, at *6.
82. Brief for Respondent, supra note 78, at *6. Hamann became eligible under the Policy upon his sixtieth birthday in 2004, but, in an effort to avoid potential staffing issues, the department chair convinced Hamann to defer exercising his rights until April 2005 because a number of department physicians were on maternity leave. Id.
Policy no longer existed and would no longer be honored,” and if he stopped taking night calls his salary would be cut. Hamann initially elected to continue taking night calls rather than have his salary reduced. Three years later, however, in February 2008, Hamann was ultimately forced to stop taking night calls because of health reasons. In response to Hamann’s withdrawal, and consistent with the terms of the original employment agreement, Park Nicollet reduced his salary.

Following the salary reduction, Hamann brought suit against Park Nicollet in October 2009, more than three years after Park Nicollet’s initial refusal to honor the Policy. The complaint alleged claims for breach of contract, promissory estoppel, and unjust enrichment. In lieu of answering, Park Nicollet filed a motion to dismiss for failure to state a claim on grounds that Minnesota’s two-year statute of limitations for wage recovery had run and the claims were time-barred. The trial court granted Park Nicollet’s motion, holding that Hamann’s claim was barred under either the two- or three-year statute of limitations because Park Nicollet’s breach occurred more than three years prior, in 2005, when Hamann first learned that he would not be permitted to exercise the Policy.

83. Id. at *6–7.
84. Id. at *7. Hamann alleged that he was compelled by the department chair to continue taking night calls and doing so in his early sixties “adversely affected his health.” Id.
85. Id.
86. Id.
88. Id. Hamann also alleged misrepresentation and failure to pay wages, but later voluntarily dismissed those claims. Id.
89. MINN. R. CIV. P. 12.02(e); Hamann v. Park Nicollet Clinic, 792 N.W.2d 468, 470 (Minn. Ct. App. 2010), rev’d, 808 N.W.2d 828 (Minn. 2011).
90. MINN. STAT. § 541.07(5) (2010).
91. Hamann, 792 N.W.2d at 470.
92. Park Nicollet Clinic v. Hamann, 808 N.W.2d 828, 831 (Minn. 2011). Because Hamann’s claims were possibly barred by both the two-year limitations period as well as the three-year exception provided for “willful” nonpayment, the issue of whether Park Nicollet’s alleged behavior was willful was not discussed. Id. at 832 n.3; see also MINN. STAT. § 541.07(5) (providing a three-year limitations period for “willful” nonpayment of wages). For further analysis of the three-year exception for willful nonpayment specifically see Levin v. C.O.M.B. Co., 441 N.W.2d 801, 804 (Minn. 1989).
B. The Court of Appeals Decision

Hamann appealed the trial court’s dismissal, arguing that the limitations period had not run because his claim was based on a series of ongoing breaches that occurred with every reduced paycheck he received.\textsuperscript{94} Hamann further argued that Park Nicollet’s initial refusal to honor the Policy was not an outright breach of any present contractual duty, but rather a repudiation of a future obligation, which does not start the statute of limitations until the time for performance comes due.\textsuperscript{95} Hamann relied extensively on the Minnesota Supreme Court’s prior decision in Levin,\textsuperscript{96} which seemingly endorsed Minnesota’s application of the continuing-wrong theory in wage recovery cases.\textsuperscript{97}

In Levin, the plaintiff had a contract with his employer that stipulated he would be paid a commission, in addition to salary, based on a portion of the company’s annual sales.\textsuperscript{98} In 1982, Levin received his first commission check, but received no commission checks for subsequent years.\textsuperscript{99} When Levin inquired about his unpaid commissions in 1984, his employer made statements that implied none would be paid.\textsuperscript{100} In October 1986, Levin brought an action to recover the outstanding commissions.\textsuperscript{101}

Levin’s employer moved for summary judgment, arguing that the claim was barred by the two-year\textsuperscript{102} statute of limitations.\textsuperscript{103} The district court granted the motion, and the court of appeals affirmed.\textsuperscript{104} Minnesota Supreme Court concluded that the breach stemming from a failure to pay commissions could only occur at the close of a given sales year when the amount of the commission

\textsuperscript{94}. \textit{Hamann}, 792 N.W.2d at 470–71.
\textsuperscript{95}. \textit{Park Nicollet}, 808 N.W.2d at 837; see also Matteson v. Blaisdell, 148 Minn. 352, 355, 182 N.W. 442, 443 (1921) (“A verbal denial of the existence of a contract or a declaration of an intention not to comply with its terms by one of the parties, prior to the time he is required to perform the same and after the other party has fully performed, does not set the statute of limitations running as against the other party.”).
\textsuperscript{96}. \textit{Levin v. C.O.M.B. Co.}, 441 N.W.2d 801 (Minn. 1989).
\textsuperscript{97}. See \textit{Hamann}, 792 N.W.2d at 471.
\textsuperscript{98}. \textit{Levin}, 441 N.W.2d at 802.
\textsuperscript{99}. \textit{Id.} at 803.
\textsuperscript{100}. \textit{Id.}
\textsuperscript{101}. \textit{Id.}
\textsuperscript{102}. \textit{Minn. Stat.} § 541.07(5) (2010).
\textsuperscript{103}. \textit{Levin}, 441 N.W.2d at 803.
\textsuperscript{104}. \textit{Id.}
check could be calculated. The court held that the outstanding commission checks constituted a series of breaches rather than the single breach that Levin’s employer had alleged. Because each failure to pay a given year’s commission created a new cause of action that started a separate limitations period, the court held that Levin’s claim was not time-barred under the statute of limitations.

The court of appeals agreed with Hamann and found Levin to be controlling. Park Nicollet argued that the case was distinguishable because Levin involved an installment contract that came due only at a predetermined date in the future. The appellate court rejected this distinction, concluding that “Park Nicollet had a future obligation to pay or provide specific benefits to Dr. Hamann at certain stated intervals for an indefinite period into the future,” and “fixed due dates were not a critical factor in the Levin court’s analysis.” The appellate court reversed the district court’s dismissal, holding that Hamann’s claim was not time-barred because a new cause of action for the recovery of wages accrued each time a payment was due, but not paid, by Park Nicollet.

C. The Minnesota Supreme Court Decision

Park Nicollet appealed the reversal. On appeal, the Minnesota Supreme Court was faced with the question of whether each paycheck issued after an alleged breach of contract resets the two-year limitations period for wage recovery claims. The question required the court to expand on its analysis in Levin and to specifically weigh in on the competing single-wrong and continuing-wrong theories used by lower courts in applying the statute of limitations to employment contract disputes.

105. Id.
106. Id.
107. Id.
109. Id. at 472.
110. Id.
111. Id.
112. Id.
113. Park Nicollet Clinic v. Hamann, 808 N.W.2d 828, 830 (Minn. 2011).
114. Id. at 832.
116. See supra Part II.D.
The Minnesota Supreme Court rejected the court of appeals’ holding that each paycheck created a separate cause of action under the continuing-wrong theory.\footnote{Park Nicollet, 808 N.W.2d at 837.} The court acknowledged and endorsed its application of the continuing-wrong theory in \textit{Levin}, but found the facts of the case to be distinguishable,\footnote{Id. at 835.} emphasizing that, unlike Hamann’s salary, the commission payment obligation in \textit{Levin}, if any, was distinct from that in any other year because it could only be determined at the close of a given sales year.\footnote{Id.} The court focused on the distinction between present and future contractual obligations—a distinction that the court of appeals did not believe to be critical\footnote{Hamann v. Park Nicollet Clinic, 792 N.W.2d 468, 472 (Minn. Ct. App. 2010) (“[F]ixed due dates were not a critical factor in the \textit{Levin} court’s analysis.”).} and held that the continuing-wrong theory applies only where an employer has an ongoing future obligation to an employee.\footnote{Park Nicollet, 808 N.W.2d at 835 (“In contrast to \textit{Levin}, the obligation at issue in this case was not something that Park Nicollet was contractually or otherwise required to perform on an ongoing basis.”).}

The court concluded that the wrongful conduct alleged by Hamann was Park Nicollet’s decision to require physicians over age sixty to take night call.\footnote{Id. (“The wrongful conduct at issue here, according to the complaint, is Park Nicollet’s decision to require that physicians over age 60 take night calls.”).} Beyond the promise contained within the Policy itself, Hamann alleged no other contractual provision or obligation binding Park Nicollet to the night call exemption. Accordingly, the court found that Park Nicollet’s stated refusal to honor the Policy in 2005 constituted a breach of a present obligation because Park Nicollet’s performance became due immediately upon Hamann’s request to exercise.\footnote{Id. at 836.} The subsequent reductions in Hamann’s salary represented damages stemming from a single actionable breach and not separate breaches in themselves.\footnote{Id. at 837.}

In responding to Hamann’s repudiation argument, the court was similarly unconvinced.\footnote{Id. (“An anticipatory repudiation . . . occurs when a promisor renounces a contractual duty [at some point] before the time for performance has arrived.”); Id. at 836.} Hamann argued that Park Nicollet’s refusal in 2005 constituted a repudiation of a future obligation to

\begin{itemize}
  \item \textit{Park Nicollet}, 808 N.W.2d at 837.
  \item Id. at 835.
  \item Id.
  \item Id.
  \item Id. at 836.
  \item Id. at 837.
  \item Id. (“An anticipatory repudiation . . . occurs when a promisor renounces a contractual duty [at some point] before the time for performance has arrived.”); Id. at 836.
\end{itemize}
pay wages.\textsuperscript{128} His theory was that Park Nicollet’s performance was not due until he ceased taking night call, at which point Park Nicollet would have an obligation not to reduce his salary.\textsuperscript{129} Hamann’s repudiation argument was also based on the \textit{Levin} decision, in which the court found that the employer’s statement that he would not pay further commissions constituted an anticipatory repudiation of that employer’s future obligation to pay commissions.\textsuperscript{130}

The Minnesota Supreme Court rejected Hamann’s repudiation argument, distinguishing \textit{Levin} the same way it did in disposing of Hamann’s continuing-wrong argument.\textsuperscript{131} The commission payment in \textit{Levin} was a future obligation because it could only be calculated at the close of the sales year.\textsuperscript{132} The court held that Park Nicollet’s obligation under the Policy was not a future obligation because it became due at the time Hamann notified Park Nicollet of his intent to exercise the Policy.\textsuperscript{133} The court found that Park Nicollet’s obligation under the Policy was similar to a contract for payment on demand, and as such, performance was due when Hamann first demanded it in 2005, not when he stopped taking night calls in 2008.\textsuperscript{134} Accordingly, the court concluded that Hamann’s cause of action accrued once in

\textit{see also} Levin v. C.O.M.B. Co., 441 N.W.2d 801, 804–05 (Minn. 1989) (“[T]he renunciation and repudiation of a contract by one of the parties does not set the statute of limitation in motion against the other party although it gives the latter an election to sue immediately.” (citing Wold v. Wold, 138 Minn. 409, 415, 165 N.W. 229, 231 (1917))); \textit{Statutes of Limitation, supra} note 14, at 1207–08 (“[W]here the offending conduct precedes the date prescribed for the first performance to be rendered by the offending party . . . it may be desirable to have specially adapted rules.”).

\textsuperscript{128} Park Nicollet, 808 N.W.2d at 837.
\textsuperscript{129} Id. at 838.
\textsuperscript{130} Id. (citing \textit{Levin}, 441 N.W.2d at 804).
\textsuperscript{131} Id. at 837–38.
\textsuperscript{132} Id. at 837 (citing \textit{Levin}, 441 N.W.2d at 804).
\textsuperscript{133} Id. at 838 (“But the breach at issue in this case . . . was not an obligation that would arise at some point in the future; it was an obligation owed to Hamann in April 2005, when Hamann demanded performance.”).
\textsuperscript{134} Id. at 838; \textit{see} Bannitz v. Hardware Mut. Cas. Co. of Stevens Point, Wis., 219 Minn. 235, 237, 17 N.W.2d 372, 375 (1945) (“Where it appears from a contract that it is the intention of the parties that the money or claim which is the subject matter thereof is to be paid upon a demand in fact, the statute of limitations does not begin to run until an actual demand for payment is made.”). \textit{See generally} J. A. Bock, Annotation, \textit{When Statute of Limitations Begins to Run Against Note Payable On Demand}, 71 A.L.R.2d 284 (1960) (discussing contracts for payment on demand).
2005, and his claim, which he filed in 2009, was barred by the statute of limitations. In assessing the application of the single- and continuing-wrong theories, the court instructed lower courts to examine the nature of the alleged wrongful conduct in determining when a cause of action accrues. If the wrongful conduct is itself a failure to pay wages, then a cause of action may accrue, under the continuing-wrong theory, with each failure to pay wages when they become due. However, where wages are affected merely as a consequence of some other wrongful act, the single-wrong theory applies, and an actionable breach accrues only once, no matter how many pay periods are subsequently affected.

IV. ANALYSIS

The Park Nicollet decision narrows the application of the continuing-wrong theory which the court previously endorsed in Levin. In holding that the continuing-wrong theory applies where an employer’s wrongful conduct is the express withholding of wages, but not where wages are effected merely as a consequence of some other breach, the Minnesota Supreme Court seems to effectively separate the breach of an employment contract from the impact it may have on employee’s future wage payments. This rigid separation between cause and effect in breaches of employment contracts might unfairly limit employees’ ability to recover benefits owed to them under certain types of policies that are revoked before employees become eligible or elect to receive benefits.

The potential issues facing employees that arise in the wake of the Park Nicollet decision can be illustrated by examining two elements that might disproportionately affect the beginning of the statute of limitations in breaches of employment contracts: eligibility requirements and the intent to exercise. The eligibility element deals with how conditions precedent to receiving policy benefits affect the accrual of actions for breach of contract. The intent element deals with how the subjective intent of an employee

135. Park Nicollet, 808 N.W.2d at 838.
136. Id.
138. Id. at 837.
139. Id.
140. Id.
in his or her decision not to exercise elective policy benefits affects the accrual of a breach of contract action. Both elements give rise to scenarios that demonstrate the potential problems employees may experience in pursuing future wage recovery claims.

A. Eligibility Requirements May Lead to Inconsistent and Inequitable Application of the Statue of Limitations

In the context of Park Nicollet, the eligibility element is raised by the issue of whether Hamann’s breach of contract action would have accrued if he had not met the Policy’s eligibility requirements at the time Park Nicollet informed him that the Policy would no longer be honored.141 This issue was recognized by the Minnesota Supreme Court but not addressed in the Park Nicollet opinion.142 In attempting to reconcile the issue with the court’s decision, there seem to be two possible alternatives: either Hamann’s cause of action accrued when he became eligible under the Policy’s requirements, or his cause of action accrued upon his notice of the Policy’s termination, regardless of whether he was eligible to receive the benefits.

The first argument may be the most convincing, but seems likely to lead to claims with inconsistent and arbitrary results based on differences in eligibility between employees.143 Because Park Nicollet’s performance under the Policy would not come due until Hamann satisfied the Policy’s eligibility requirements,144 the eligibility requirements can be construed as conditions precedent to Park Nicollet’s performance.145 Termination or revocation of the

141. Such as if Park Nicollet provided a general notice to all employees informing them of the Policy’s revocation.
142. Park Nicollet, 808 N.W.2d at 838 n.7.
143. To be eligible to receive benefits under the Policy, a physician had to: (1) be at least 60 years old; (2) have ‘[a]t least fifteen years of taking OB [night] call;’ (3) be working at least two-thirds of a full-time position; and (4) have the approval of physicians in the ‘call rotation.’” Id. at 830 (alterations in original).
144. See Bachertz v. Hayes-Lucas Lumber Co., 201 Minn. 171, 176, 275 N.W. 694, 697 (1937) (“Of course, ‘when a right depends upon some condition or contingency, the cause of action accrues and the statute runs upon the fulfillment of the condition or the happening of the contingency.’” (quoting 4 DUNNELL MINN. DIGEST, LIMITATION OF ACTIONS § 5602 (2d ed. 1927))); Restatement (Second) of Contracts § 225(1) (1981) (“Performance of a duty subject to a condition cannot become due unless the condition occurs or its non-occurrence is excused.”).
145. See Restatement (Second) of Contracts § 224 (“A condition is an event, not certain to occur, which must occur, unless its non-occurrence is excused, before performance under a contract becomes due.”).
Policy before the conditions were satisfied would constitute a repudiation of Park Nicollet’s obligation and would not start the limitations period running against ineligible employees. On the other hand, eligible employees, like Hamann, would experience an outright breach if the Policy were revoked or terminated, thus starting the limitations period on their claim immediately. Because eligible employees would be forced to sue within the limitations period, while ineligible employees could postpone the start of the limitations period indefinitely by refusing to satisfy any of the Policy’s conditions, different employees could have vastly different periods of time in which to litigate claims arising from the same wrongful conduct.

Allowing some employees more time than others in which to bring a claim based on the same wrongful conduct would undermine the policy rationale behind having a limitations period in the first place. Statutes of limitations are intended to reduce the inequities associated with forcing parties to defend claims after an unreasonable amount of time has passed in which evidence may have been lost or forgotten. Letting some employees bring a claim when it has been barred for others does not address those inequities. An unreasonable amount of time for some employees could be much shorter than it would be others. The fairness to an employer would be based not on the availability of evidence or on the amount of time that has passed since the wrongful conduct occurred, but on whether an employee satisfied arbitrary conditions that do not directly impact the conduct of the employer or the remedies sought by the employee. Such inconsistency

146. Id. § 250 (defining a repudiation as “a statement by the obligor to the obligee indicating that the obligor will commit a breach that would of itself give the obligee a claim for damages for total breach”).

147. See Levin v. C.O.M.B. Co., 441 N.W.2d 801, 804 (Minn. 1989) (holding that where a party to a contract declares “an intention not to comply with its terms prior to the time the declarant must perform,” the statute of limitations does not begin to run); ARTHUR L. CORBIN, CORBIN ON CONTRACTS § 951 (1952) (“[T]he statutory period is held not to begin to run until the day set for the actual performance promised or until the injured party has definitely expressed his intention to regard the repudiation as a breach.”).

148. See Park Nicollet, 808 N.W.2d at 838 (“Hamann, having satisfied the eligibility criteria, triggered that obligation when he informed the Department Chair in April 2005 that he wished to ‘exercise the Policy.’ And Park Nicollet breached the obligation when the Department Chair declined to allow Hamann to do so.”).

149. Id. at 832.
emphasizes the arbitrary nature of limitations periods and does not promote the policy that justifies their use.

The second argument seems like it could lead to even less desirable outcomes. If Hamann’s cause of action accrued regardless of whether the eligibility requirements were satisfied, then he could be forced into a scenario that required him to choose between suing immediately for damages that may be uncertain, nonexistent, or too speculative to be recoverable, or to postpone bringing suit and risk being time-barred under the statute of limitations for waiting until harm actually manifests. In this scenario, ineligible employees, especially those that are many years away from becoming eligible, are the most vulnerable because calculating the exact impact of policy revocation or alteration could be extremely difficult.

Where an employer’s termination of a policy is found to be repudiation to employees who have not satisfied the eligibility requirements, additional factors may further complicate the decision of when to bring suit for promised benefits. Typically, a defendant’s unequivocal repudiation excuses the plaintiff from performing any conditions precedent to the defendant’s promised performance. An employer’s repudiation of its policy obligations

---

150. See Cohen v. Cowles Media Co., 479 N.W.2d 387, 392 (Minn. 1992) (“A party is entitled to recover for a breach of contract only those damages which: (a) arise directly and naturally in the usual course of things from the breach itself; or (b) are the consequences of special circumstances known to or reasonably supposed to have been contemplated by the parties when the contract was made.”); Sloggy v. Crescent Creamery Co., 72 Minn. 316, 318, 75 N.W. 225, 226 (1898) (affirming dismissal of a breach of contract claim because nominal damages alone were insufficient to sustain a cause of action). For a discussion on certainty as a limitation on damages, see generally JOSEPH M. PERILLO, CALAMARI AND PERILLO ON CONTRACTS § 14.8 (6th ed. 2009).

151. See Herrmann v. McMenomy & Severson, 590 N.W.2d 641, 643 (Minn. 1999) (acknowledging that “the running of the statute [of limitations] does not depend on the ability to ascertain the exact amount of damages.”).

152. See Griffin v. Colver, 16 N.Y. 489, 491 (N.Y. 1858) (“It is a well established rule of the common law that the damages to be recovered for a breach of contract must be shown with certainty, and not left to speculation or conjecture . . . .”).

153. See RESTATEMENT (SECOND) OF CONTRACTS § 255 (1981) (“Where a party’s repudiation contributes materially to the non-occurrence of a condition of one of his duties, the non-occurrence is excused.”); CORBIN, supra note 147, § 970 (“If the time for defendant’s promised performance was not definitely fixed in the contract but the defendant promised to perform . . . as soon as the plaintiff should have performed certain conditions precedent, a repudiation by the defendant is regarded by all courts without exception, as a breach of the contract, creating an immediate right of action . . . . All agree . . . that the defendant’s repudiation excuses the plaintiff from performing conditions precedent . . . .”); 13 SAMUEL
could thus be found to discharge any conditions precedent to employees receiving benefits under the repudiated policy, including eligibility requirements. 154 Precedingly ineligible employees may then be able to bring an action immediately to recover promised benefits as if they were currently eligible, presumably increasing the certainty with which they would be able to prove damages. 155

The choice evoked by the second argument alludes to a broader problem. Does the single-wrong theory allow employers to effectively revoke policies with impunity before employees become eligible for the future benefits?  Park Nicollet seems to have left employers with the opportunity to unilaterally alter or terminate employment policies before employees become eligible to exercise them, thus rendering any promised benefits illusory. 156 In the context of other types of benefit policies, the consequences of allowing employers to alter the terms of an existing employment contract without employee assent become more apparent.

As an example, in an at-will employment jurisdiction, 157 employers could attract employees with contract provisions guaranteeing job security. Employers could then unilaterally eliminate the provision, allowing them to terminate the employees at any time, thus undermining the very benefits that the employees were promised initially. Employees would be similarly forced to choose between suing immediately upon notice that the provision has been eliminated, 158 or waiting until they are fired in a way that

---

154. See Corbin, supra note 147, § 970.
155. See generally Perillo, supra note 150, §§ 14.18–19.
156. A promise is illusory where it “appears on its face to be so insubstantial as to impose no obligation at all on the promisor.” E. Allan Farnsworth, Contracts § 2.13, at 75 (4th ed. 2004).
157. The typical employer-employee relationship is terminable at the will of either party, meaning that an employer can dismiss an employee at any time, and the employee is under no obligation to remain at the job. Brown v. Safeway Stores, Inc., 190 F. Supp. 295 (E.D.N.Y. 1960).
158. If an employee is not terminated outright, electing to sue immediately upon notice that the job security provision has been eliminated would likely pose difficulties in damage calculation. See Farnsworth, supra note 156, § 8.20 (“[A]ttempting to estimate damages in an action brought before the time for performance would be a ‘matter of pure speculation and guesswork.’” (quoting Charles Thaddeus Terry, Book Review, 34 Harv. L. Rev. 891, 894 (1921))).
is counter to the terms of the original employment agreement. By leaving the question of whether eligibility affects the accrual of a cause of action unanswered, the Minnesota Supreme Court may force some future employees to make a choice between recovering nominal damages immediately or not having a claim in the future.

Both of the arguments pertaining to the eligibility element demonstrate the substantial issues that could be raised in future wage recovery claims in the wake of *Park Nicollet*. On the one hand, some employees could arbitrarily postpone satisfying certain conditions, like eligibility requirements, in order to indefinitely maintain a cause of action. On the other hand, employers may be able to render promised policy benefits illusory by unilaterally revoking them before employees become eligible to receive them. Together, the issues highlight the important equitable considerations that must be weighed in establishing any kind of rigid standard for the application of the statute of limitations, should the Minnesota Supreme Court be called on to resolve the eligibility issue in the future.

B. Withholding Demand for Benefits May Postpone the Start of the Limitations Period

In addition to the substantial effect that eligibility requirements seem to have on the accrual of wage recovery actions, whether an employee intends to exercise those benefits after becoming eligible to receive them may also have important implications. If Hamann was eligible for benefits under the Policy

---

159. If an employee is terminated more than three years after first receiving notice of the job security provision’s elimination, they may risk having their claim barred by the statute of limitations.

160. Sloggy v. Crescent Creamery Co., 72 Minn. 316, 318, 75 N.W. 225, 226 (1898) (affirming dismissal of a breach of contract claim because nominal damages alone were insufficient to sustain a cause of action).

161. *See* Park Nicollet Clinic v. Hamann, 808 N.W.2d 828, 837 (Minn. 2011) (discussing eligibility requirements under the Policy).

162. *See* WOOD, supra note 13, § 5.

163. *See* Chase Sec. Corp. v. Donaldson, 325 U.S. 304, 313 (1945) (weighing the practical benefits of the statute of limitations against constitutional considerations); *see also* Johnson v. Ry. Express Agency, Inc., 421 U.S. 454, 463–64 (1975) (“[T]he period allowed for instituting suit inevitably reflects a value judgment concerning the point at which the interests in favor of protecting valid claims are outweighed by the interests in prohibiting the prosecution of stale ones.”).
in April 2005 but opted not to exercise his rights, perhaps because he enjoyed taking night call or due to the needs of his patients, would the breach action still have accrued in 2005? This element was touched on in the court’s rejection of Hamann’s repudiation argument, and its significance is illustrated in the way the court characterized the Policy as being similar to a contract that calls for payment on demand.\(^{164}\)

The court framed Park Nicollet’s obligation under the Policy as being analogous to a contract for payment on demand, making Park Nicollet’s performance due when Hamann demanded it.\(^{165}\) “Where a condition precedent to a right of action exists, the cause of action does not accrue and the statute of limitations does not begin to operate until the condition is performed.”\(^{166}\) Further, “where the parties so frame their contract as to make prior demand . . . a condition precedent to a right to sue, the statute of limitations does not begin to run until demand is made.”\(^{167}\) The implication thus seems to be that if Hamann had not made the demand to exercise his benefits, the cause of action would not have accrued until he actually stopped taking night call.

Under the court’s reasoning, if Hamann had not made the request to exercise Policy benefits, Park Nicollet’s performance could not have come due.\(^{168}\) Any affirmative notice that the Policy had been revoked or terminated,\(^{169}\) occurring prior to a demand for Policy benefits, would serve as a repudiation of a future obligation, rather than as an immediate breach of a present obligation.\(^{170}\) “Where a party to a contract does nothing more than

\(^{164}\) Park Nicollet, 808 N.W.2d at 838 (“[T]he Policy is similar to a contract calling for payment on demand.”).

\(^{165}\) Id.


\(^{167}\) Id. at 887; accord Bannitz v. Hardware Mut. Cas. Co. of Stevens Point, Wis., 219 Minn. 235, 237, 17 N.W.2d 372, 372 (1945) (“Where it appears from a contract that it is the intention of the parties that the money or claim which is the subject matter thereof is to be paid upon a demand in fact, the statute of limitations does not begin to run until an actual demand for payment is made . . . .”).

\(^{168}\) Park Nicollet, 808 N.W.2d at 838 (“As soon as Hamann had satisfied the conditions of the Policy and informed the Department Chair that he wished to exercise the Policy and stop taking night call, Park Nicollet had a duty to perform.” (emphasis added) (internal quotation marks omitted)).

\(^{169}\) Such as if Park Nicollet were to release a department-wide bulletin that provided notice of the Policy’s termination.

\(^{170}\) Performance under a contract becomes due only when all necessary
declare ‘an intention not to comply with its terms prior to the time the declarant must perform,’ the statute of limitations does not begin to run.”

An employee’s subjective intent to invoke policy benefits by requesting them thus becomes the difference between construing the termination of a policy as a repudiation rather than an outright breach, which has a substantial impact on the application of the statute of limitations.

Alternatively, by interpreting elective policy benefits as being due upon demand, the court may actually be doing employees a favor in future efforts to recover under altered or terminated policies. Notwithstanding the effect that eligibility requirements and other conditions may have on claim accrual, Minnesota is among a minority of states that do not allow an employer to unilaterally alter or terminate the various provisions of an employment contract. Under this minority rule, Park Nicollet need only have provided an unqualified assertion that the Policy had been revoked or terminated to be considered in breach and to start the limitations period running against all affected conditions have occurred. Restatement (Second) of Contracts § 224 cmt. b (1981). An anticipatory repudiation occurs when a promisor renounces a contractual duty before the time for performance has passed. See Wold v. Wold, 138 Minn. 409, 415, 165 N.W. 229, 231 (1917); see also Williston & Lord, supra note 153, § 38.7, at 394, 405 (stating that a condition precedent “must be performed or happen before a duty of immediate performance arises on the promise which the condition qualifies” and that “a promisor’s duty does not become absolute unless and until a condition precedent occurs”).

171. Park Nicollet, 808 N.W.2d 828, 837 (quoting Levin v. C.O.M.B. Co., 441 N.W.2d 801, 804 (Minn. 1989)).

172. Where a party repudiates a future obligation, the statute of limitations does not run until the time for performance has arrived, even though the injured party has the right to sue immediately. Id. at 838. Where a party fails to perform an obligation at the time performance is due, that party has breached by nonperformance and the statute of limitations begins to run immediately upon the breach, regardless of whether damages have occurred. See 8 DUNNELL MINN. DIGEST CONTRACTS § 12 (5th ed. 2009) (“A breach of contract occurs when one party renounces liability under the contract, [or] totally or partially fails to perform . . . .”).

173. Pine River State Bank v. Mettille, 333 N.W.2d 622, 629–30 (Minn. 1983) (holding that the indefinite duration of an employment contract does not by itself preclude the enforceability of unilaterally created provisions of employee handbooks, including job security provisions). In a majority of jurisdictions, contract provisions unilaterally enacted by the employer are unenforceable in an action for breach of contract and, as a result, employers may unilaterally alter or terminate such provisions after a reasonable time if employees are given reasonable notice and the modification does not affect any vested employee benefits. Asmus v. Pac. Bell, 999 P.2d 71, 76–77 (Cal. 2000).
employees. In finding that the Policy required Hamann’s request to exercise before Park Nicollet’s performance became due, the court may have provided employees with an argument that the unilateral modification or termination of an elective policy is an anticipatory repudiation rather than an outright breach, thus postponing the start of the limitations period.

Given that the Minnesota Supreme Court did not specifically address the effect that eligible employees withholding demand for benefits may have on the accrual of a cause of action, it is unclear exactly how significant the intent element is in the Park Nicollet holding. The court characterized the Policy as being similar to a contract for payment on demand, but it did not go so far as to extend that characterization to other elective benefit policies. Further, the court did not engage in any broader discussion about employers’ ability to unilaterally alter employment contracts. This makes it at least possible for employers to simply revoke demand provisions prior to eliminating a policy entirely so as to unequivocally start the limitations period for all employees upon notice, regardless of whether demand is made.

By not addressing whether Park Nicollet would have committed a breach in 2005 if Hamann had not requested performance, the court may leave some employees with the ability to postpone the start of the limitations period by withholding demand for benefits when a policy is terminated. Employees could thus have very different times in which to bring a claim based on an employer’s single wrongful act. At the very least, employers may have an incentive to ensure provisions of employment contracts are drafted in a way that does not tie employer performance to employee demand. Without further clarification, however, employers may find themselves defending wage recovery actions based on policies revoked many years ago.

V. CONCLUSION

Park Nicollet highlights many complex issues that arise out of the complicated interplay of legal and equitable principles in employment contract disputes. Theories of contract law ensuring employees have adequate time to bring valid claims against their employers must be reconciled against equitable principles.

175. Park Nicollet, 808 N.W.2d at 838.
arbitrarily limiting that time for the sake of fairness and judicial economy. The legislative trend toward shorter limitations periods, coupled with increasingly rigid judicial standards for determining when the period starts to run, reflects a cost-benefit analysis that seems to prioritize reducing the number of claims in Minnesota courts. On an individual level, the shorter limitations periods and stricter application standards may result in greater numbers of legitimate claims being denied access to recovery. But on a larger scale, employees will be discouraged from sleeping on their rights in a way that prejudices employers and unduly burdens an increasingly strained legal system.

More specifically, however, by limiting the application of the continuing-wrong theory to only those employment contract claims where the wrongful conduct is the refusal to pay wages itself, the Minnesota Supreme Court has potentially restricted employees’ ability to recover future benefits promised under policies that are revoked before they become eligible to receive them. Though the decision is consistent with a broader trend aimed at keeping limitations periods short and starting them early, it does not seem to adequately address countervailing interests of ensuring that plaintiffs have sufficient time to litigate legitimate disputes. At worst, Park Nicollet may force future employees to choose between the practical viability of bringing a claim immediately and the increased likelihood of having a claim barred outright by waiting until harm actually manifests. At best, the issues not addressed in the decision will likely need to be reassessed by the court in future litigation.

176. Id. at 837.
177. See Littell, supra note 14, at 37–38 (discussing the shift from longer general statutes of limitations to shorter periods in more categorically differentiated statutes).
178. See Statutes of Limitations, supra note 14, at 1190–91 (indicating that legislatures may generally limit or shorten the time within which actions may be brought if there is a reasonable time left for the plaintiff to sue so as not to offend the Due Process Clause of the Fourteenth Amendment). See generally WOOD, supra note 13, § 5.