

1980 WL 120645 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 31, 1980

***1 Re: [Section 41-11-170, 1976 South Carolina Code](#) of Laws**

Mr. James R. Brown
Director
Research and Administration
Gressette Senate Office Building
Post Office Box 142
Columbia, South Carolina 29202

Dear Mr. Brown:

You have recently asked this Office for an interpretation of a portion of [Section 41-11-170, 1976 South Carolina Code](#) of Laws, which reads:

In case of any failure to pay wages due an employee within forty-eight hours of a demand in writing therefor after such separation the wages of such employee shall continue from the date of such written demand until paid at the same rate which such employee received at the time of the separation. The employee may recover the penalty thus accruing to him in a civil action. Such action may be commenced within sixty days from the date of separation. (The sentence that is the subject of inquiry has been underscored).

Your specific questions are one, does the employee have to initiate legal action within sixty days following the termination of the employee's employment and two, is an action void if commenced after the sixty day time frame. The answers to both questions are negative.

Although the word 'may' has not been defined by the South Carolina Supreme Court, it is generally construed as imparting permission. [In re Hardy](#), 294 N.C. 90, 240 S.E.2d 367, 372 (1978), [Price v. Commonwealth of Virginia](#), 209 Va. 383, 164 S.E.2d 676, 679 (1968) and [State v. Stepp](#), 63 W.Va. 250, 59 S.E. 1068, 1070 (1907). See generally Words and Phrases, Vol. 26A, May—Permissive or Mandatory, p. 359, *et seq.* If the terms of a statute are clear and unambiguous, the terms must be applied literally. [Green v. Zimmerman](#), 269 S.C. 535, 238 S.E.2d 323 (1977), and [McMillen Feed Mills, Inc. of South Carolina v. Mayer](#), 265 S.C. 500, 220 S.E.2d 221 (1975). A literal reading of the statute causes one to conclude that a discharged employee may initiate a legal action before or after sixty days following the date of separation.

Sincerely,

Barbara J. Hamilton
State Attorney

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