

Employment Law Business Guide

PRACTICAL INSIGHTS FOR HUMAN RESOURCES, MANAGERS & BUSINESS OWNERS

McLane

Massachusetts SJC Holds that Wage Act Does Not Preempt Common Law Claims, Breathing New Life Into Cases Barred by the Wage Act's Three-Year Statute of Limitations

By Adam M. Hamel on August 13, 2013

With its mandatory treble damages, recovery of attorney's fees and personal liability of corporate principals, the Massachusetts Wage Act is a boon to employees who claim that they are owed wages. But, with its relatively short, three-year statute-of-limitations, the Wage Act favors the diligent plaintiff. A decision issued by the SJC yesterday, holding that the Wage Act does not preempt other common law claims, gives a helping hand to plaintiffs who cannot bring a claim under the Wage Act, for example because they waited more than three years to bring suit, or who, for some other reason cannot, or do not want to, seek relief under the Wage Act.

In *Lipsitt v. Plaud*, SJC-11285 (Aug. 12, 2013), the plaintiff was hired in 2004 to be the director of the Franklin D. Roosevelt American Heritage Center, a museum established to house a collection of FDR memorabilia. From the outset, the Center had financial difficulties, and the plaintiff was never paid the full salary he was promised. However, based on his desire to see the Center succeed, and his reliance on the defendant's promises that he would eventually be paid all of his back salary, the plaintiff continued to work for less than he was owed. By about July 2007, however, the Center closed when its landlord did not renew the lease and a planned move to a new location never materialized.



In 2008, the plaintiff filed a wage complaint with the Attorney General, who undertook an investigation which ended in 2010 with the plaintiff getting a share of a group settlement and a right-to-sue letter. A few months later, the plaintiff brought suit asserting claims for breach of contract, quantum meruit, fraud and deceit, and violations of the Wage Act.

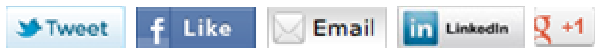
The trial court dismissed the plaintiff's common-law claims on grounds that they were preempted by the Wage Act, and dismissed his Wage Act claim to the extent that it sought to recover wages earned outside the statute's three-year

limitations period. On appeal, however, the SJC reinstated the common-law claims, holding that the Wage Act does not preempt other claims, such as those for breach of contract or quasi-contract theory, arising out of the non-payment of wages.

As the SJC has observed on many occasions, the Wage Act's purpose is "to prevent the unreasonable detention of wages." And since its enactment in 1886, it has been amended to expand its applicability to more and more workers and types of compensation. Where a statute is intended to enhance certain rights, the SJC held that it will not read that statute as abrogating common law actions aimed at protecting those same rights unless preemption is required by the statute's express language or necessary implication.

The SJC also rejected the assertion that allowing common-law claims to be asserted alongside Wage Act claims will frustrate the statute's purposes. The SJC predicted that allowing plaintiffs to pursue common-law claims in addition to statutory claims will not have any appreciable effect on the reporting of Wage Act claims or enforcement efforts since, given the mandatory treble damages and attorney's fees available under the Wage Act, "it would be foolhardy for an employee to forego" this relief if it were available to him. Rather, the SJC observed that employees would likely only seek common law remedies in cases where a claim is barred by the Wage Act's three-year statute of limitations, but where some relief may still be obtained under a longer common law statute of limitations, like the six-year limitations period on a breach of contract claim. The SJC held that under such circumstances, it could find "no good reason why, given the strong presumption against implied abrogation of the common law, that [an] employee cannot seek to recover [] unpaid wages by bringing a contract or quasi-contract claim."

Lipsitt, makes it clear that employers may continue to be on the hook for unpaid wages beyond the Wage Act's three-year statute of limitations, although the remedies available to employees are not as robust—no mandatory treble damage or attorney's fees. And plaintiffs seeking to hold corporate principals personally liable under a common-law breach of contract or quasi-contract theory will have a harder time, since they must overcome the relatively high burden for piercing the corporate veil, rather than relying on the Wage Act's strict liability for corporate principals.



Employment Law Business Guide
Concord, NH
Manchester, NH
Portsmouth, NH
Woburn, MA

STRATEGY, DESIGN, MARKETING & SUPPORT BY **LEXBLOG**