

Recent Decision by Massachusetts' Highest Court Removes Barriers to Wage Claims

Written by **Robert A. Fisher, Christopher Feudo**

June 19, 2013

This week, the Massachusetts Supreme Judicial Court (SJC) issued a decision that makes it easier to bring lawsuits under the Massachusetts Wage Act. In *Depianti v. Jan-Pro Franchising International, Inc.*, the SJC held that a plaintiff's failure to exhaust his administrative remedies by first filing a complaint with the Massachusetts Attorney General was not a bar to pursuing a Wage Act claim in court. Further, interpreting Massachusetts' employee misclassification statute, the SJC held that no contract between the plaintiff and defendant must exist for the plaintiff to assert a claim that the defendant misclassified him as an independent contractor rather than an employee.

In *Depianti*, the plaintiff, a janitorial cleaning service franchisee of the defendant, brought a class action in federal court against the defendant alleging, among other things, that the defendant had misclassified him as an independent contractor in violation of G.L. c. 149, § 148B, and violated various other Massachusetts wage statutes, including G.L. c. 149, §§ 148 and 150, and G.L. c. 151, §§ 1 and 1A. The plaintiff did not file a complaint with the Office of the Attorney General prior to filing suit. Further, the plaintiff obtained his franchise from an entity other than the defendant, a "regional master franchisee." These two issues prompted the federal court to certify to the SJC two questions under the state wage and hour laws: (1) whether a plaintiff's failure to file a complaint with the Attorney General prior to filing private action deprives a court of jurisdiction to consider the plaintiff's claims under Massachusetts wage statutes and (2) whether a defendant can be liable for employee misclassification under G.L. c. 149, § 148B, where there was no service contract between the parties.

As to first question, the SJC held that the failure to file a complaint with the Attorney General before filing a private lawsuit for violations of the Wage Act does not deprive a court of jurisdiction to consider the plaintiff's claims, at least where the Attorney General is notified of the suit during its pendency. The SJC reasoned that the failure to file a complaint with the Attorney General prior to filing suit does not interfere with the accomplishment of the purposes of § 150. According to the SJC, the requirement that a plaintiff first file a complaint with the Attorney General prior to filing a private action is simply intended to provide notice to the Attorney General so that she may investigate and prosecute violations of the wage statutes at her own discretion. If the Attorney General is notified of the claims after the lawsuit is initiated, the purposes of the statute are still accomplished because she may still pursue an enforcement action after the private action has been filed. The Court also explained that the defendant was not prejudiced because the lawsuit was filed within the three-year statute of limitations.

As to the second question, the SJC held that no contract between the parties is required for the defendant to be held liable for violating Massachusetts' employee misclassification law. Looking to the statute, the SJC found no language limiting its application to situations where the putative employer and employee entered into a contract. The SJC also found that so limiting the statute's applicability would undermine its broad remedial purposes, as it would permit an employer to escape its statutory obligations through arrangements that distance itself from its putative employees. The SJC found that any reference to a "contract for performance of service" in § 148B(a)(1) merely reflected the Legislature's failure to imagine a possibility where an entity that did not have contract with the plaintiff may be the agent of misclassification, not a legislative intent to excuse a putative employer from liability where it was not the entity that contracted with the plaintiff.

The decision in *Depianti* is yet another court decision interpreting the Wage Act in favor of employees. The impact of the decision is that employers have fewer defenses to claims under the statute. Plus, employers risk having to pay triple damages, interest, and attorneys' fees for violations of the Wage Act.

RELATED PRACTICES

- [Labor & Employment](#)
- [Wage & Hour](#)

This communication is intended for general information purposes and as a service to clients and friends of Foley Hoag LLP. This

communication should not be construed as legal advice or a legal opinion on any specific facts or circumstances, and does not create an attorney-client relationship.

United States Treasury Regulations require us to disclose the following: Any tax advice included in this document was not intended or written to be used, and it cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code.

Attorney advertising. Prior results do not guarantee a similar outcome. © 2013 Foley Hoag LLP. All rights reserved.