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MASSACHUSETTS HIGH COURT PROVIDES HELPFUL GUIDANCE TO EMPLOYERS REGARDING DAMAGES AND RELEASES UNDER WAGE ACT

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On December 17, 2012, the Massachusetts Supreme Judicial Court issued a **wide-ranging opinion** that clarifies the limitations on damages that employees can seek under G.L. c. 149, §§ 148 and 150 (“Wage Act”) when an employee claims to have been misclassified as an independent contractor instead of an employee and sets a new standard by which Wage Act claims can be waived through the use of general releases.

In summary, in *Crocker v. Townsend Oil Company, Inc.*, the Massachusetts high court held that

- **plaintiffs may recover their wages at the regular rate, but not the overtime premium, for damages incurred more than two but less than three years after the filing of their complaint;**
- **misclassification of an employee as an independent contractor, without more, does not toll the statute of limitations on a Wage Act claim;**
- **plaintiffs’ recovery under the Wage Act is limited to damages that actually occurred within the three-year period immediately before the filing of their complaint; and**
- **an employee may release Wage Act claims in a settlement or contract termination agreement containing a general release so long as the release of the Wage Act claim is (1) plainly worded and understandable to the average individual and (2) specifically refers to the rights and claims under the Wage Act that the employee is waiving.**

BACKGROUND

Townsend Oil Company, Inc., a home heating oil company, entered into an independent contractor agreement with two delivery drivers, Charles Crocker and Joseph Barrasso, in 1999 and 2002, respectively. Until 2007, Crocker and Barrasso provided delivery services on behalf of Townsend. In January 2007, Townsend terminated

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Barrasso's agreement, and the parties signed a "contract carrier termination agreement" that included a mutual general release of claims. The release did not specifically identify employee misclassification or Wage Act claims as being released. In April 2007, Crocker signed a substantially identical agreement. Crocker and Barrasso each received several thousand dollars for executing the agreements.

In December 2009, Crockett and Barrasso sued Townsend under the Wage Act, alleging that they were really employees, not independent contractors. They sought to recover unpaid wages (three-year statute of limitations) and overtime (two-year statute of limitations), and argued that their releases were not enforceable. Townsend countered that the plaintiffs were not entitled to overtime beyond the two-year statute of limitations (meaning that they would be completely precluded from recovering any unpaid overtime) and were not entitled to any damages that occurred beyond the three-year statute of limitations.

The parties litigated these issues in Superior Court, and in a series of decisions the court held that (1) the statute of limitations barred the plaintiffs' recovery except as to compensation earned but not paid within the three-year statutory period, meaning that the plaintiffs could seek overtime incurred during the entire three-year statutory period; and (2) the general release was an impermissible "special contract" as defined by the Wage Act and therefore not enforceable as a matter of law. (Parties may not try to avoid application of the Wage Act by entering into a "special contract," even if they do so voluntarily.)

THE SUPREME JUDICIAL COURT'S DECISION

For purposes of the appeal, the SJC assumed that Crockett and Barrasso were misclassified as independent contractors instead of employees. Nonetheless, the SJC for the most part disagreed with the Superior Court, issuing what amounted to four separate holdings – all of which should be instructive to counsel and employers dealing with misclassification cases.

First, the SJC addressed whether an employee could recover unpaid overtime under the three-year statute of limitations in the "unpaid wages" section of the Wage Act, even though the "overtime" section has a shorter, two-year, statute of limitations. Agreeing with **earlier federal precedent interpreting the Wage Act**, the SJC held that an employee whose claim for unpaid overtime is barred by the two-year statute of limitations may nevertheless assert a claim for unpaid wages under the Wage Act; however, the employee's recovery would be limited to uncompensated time worked at the regular rate. The SJC explained that permitting recovery of the overtime portion beyond the two-year statute of limitations would "essentially eviscerate the distinction between" the two- and three-year statutes of limitation. The SJC said that its holding permitting recovery of straight time but not overtime in the third year "strikes a balance between the Legislature's intent behind the Wage Act that employees receive timely payment of wages" and "the Legislature's intent to draw a nominal distinction between overtime wages and regular wages by establishing different statute of limitations periods."

Second, the SJC evaluated whether misclassification as an independent contractor instead of an employee, without more, could cause a statute of limitations under the Wage Act to be tolled. The plaintiffs in *Crockett* argued that tolling should apply, either based upon the "discovery rule" (meaning that the statute would be tolled until the plaintiff "discovered" or "should have discovered" the misclassification) or the doctrine of "fraudulent concealment" (meaning that the employer "fraudulently concealed [the plaintiff's] status" to avoid treating the person as an employee). With respect to Crockett and Barrasso, the SJC rejected the application of both of these principles because the independent contractor agreements clearly set forth the substance of the working relationship. The

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agreements, explained the SJC, provided the plaintiffs with all facts necessary to reach the conclusion that they might qualify as employees and put them on notice that they were being classified as independent contractors. In other words, nothing was concealed from them.

Third, the SJC strictly applied the relevant statute of limitations for the purpose of calculating damages under the Wage Act. The court explained that, although the continuing nature of the alleged wrong keeps alive the right to bring the action, damages are recoverable only for harms that are incurred within the statutory period. In this regard, the SJC differentiated claims under the Wage Act from certain discrimination cases where the “continuing violation doctrine” permits recovery for damages occurring outside the limitations period. Wage Act claims, by contrast, “give rise to a cause of action each time they occur and are easily identifiable,” the court said. Thus, the SJC limited the Plaintiffs’ recovery “to those damages that occurred within the three-year period prior to filing the complaint.”

Fourth, and finally, the SJC detailed the circumstances in which a general release would be enforceable against claims for past violations of the Wage Act. Based on its own precedent, the SJC said that a settlement or contract termination agreement by an employee that included a general release would be enforceable as to Wage Act claims brought in the future only if

- (1) the release is plainly worded and understandable to the average individual, and
- (2) the release specifically refers to the rights and claims under the Wage Act that the employee is waiving.

The SJC’s rationale in creating such a standard is that “such express language will ensure that employees do not unwittingly waive their rights under the Wage Act” while preserving the SJC’s “policy regarding the broad enforceability of releases by establishing a relatively narrow channel through which waiver of Wage Act claims can be accomplished.”

ANALYSIS

Based on the SJC’s guidance, employers should carefully evaluate every release that they plan to execute with employees to ensure that the release language is in compliance with the new standard set forth above. If employers are careful to “plainly” word releases and specifically refer to the Wage Act protections being released, the employee should be barred from suing under the Wage Act in the future.

Likewise, to the extent that an employer is facing a misclassification lawsuit under the Wage Act, and the allegedly misclassified employees have worked for the employer more than three years from the date that the complaint is filed, employers should have some newfound confidence in the limitations of the potential damages they are facing – and the SJC’s clarification in the law may also help them reach reasonable settlements to avoid the cost of protracted litigation.

If you have questions regarding this new opinion or any other labor or employment matter, please contact any member of Constangy’s **Boston Office, the Wage Hour Practice Group**, or the Constangy attorney of your choice.

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