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Supreme Judicial Court Issues Two Decisions Regarding the Massachusetts Payment of Wages Act

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Yesterday, the Massachusetts Supreme Judicial Court issued two decisions clarifying the scope of the Payment of Wages Act. First, in *Awuah v. Coverall North America, Inc.*, the Court held that a company which had misclassified employees as franchisees was not permitted to withhold payment of wages until it received payments from customers. Second, in *Rosnov v. Molloy*, the Court held that the July 12, 2008 amendment to the statute, which made treble damages mandatory, was not retroactive.

Awuah v. Coverall North America, Inc.

In *Awuah*, the plaintiffs sued Coverall in federal court, alleging that they were misclassified as franchisees rather than employees, and that they were owed wages. One of the plaintiffs had a franchise agreement that provided for "account receivable financing," meaning that the plaintiff was paid for his work only after the customer had paid Coverall for his services, except where Coverall paid interest-free advances. If the plaintiff received advance payment but the customer did not pay, Coverall had the right under the agreement to recapture the advance. Further, the plaintiffs were required to pay for their own workers' compensation insurance and had to pay a franchise fee and monthly management fees.

In April 2010, the federal court concluded that the plaintiffs should have been classified as employees. It then certified several questions to the Supreme Judicial Court regarding the Payment of Wages statute: (1) whether an employer may finance its payments to employees until a customer pays for the work; (2) whether an employer and employee may agree that such wages are not earned until a customer remits payment; and (3) whether an employer can require an employee to bear certain costs, such as workers' compensation insurance and fees.

As to the first question, the Court explained that the duty to pay an employee rests with the employer, not third parties such as the employer's customers. Thus, once an employee has performed the work required of her, the employee has earned her wage, and an employer cannot delay payment until a customer pays for the employee's work. As to the second question, the Court explained that the Wage Act prohibits contracts which would exempt the employer from its requirements. Thus, the employer could not rely on the employee's agreement. Further, the Court explained that the provisions of the agreement permitting Coverall to recapture advances was not a proper deduction from wages already earned and paid. The Court explained that if a customer refused to pay because of poor service, Coverall's recourse was to discipline the employee, not withhold or recapture earned wages.

As to third question, the Court held that Coverall improperly charged the employees for costs it had to bear. It explained that the employer, not the employees, was responsible for maintaining workers' compensation insurance. As to the fees charged by Coverall, the Court explained that the fees violated public policy because they operated to require the plaintiffs to "buy their jobs."

The decision in *Awuah* highlights the potential consequences of misclassifying an employee as an independent contractor. While the contractual arrangement between Coverall and the plaintiffs might have been appropriate if the plaintiffs were true franchisees, once the federal court concluded otherwise, that payment scheme became unlawful because it was inconsistent with the strict requirements of the Payment of Wages statute. Further, the decision emphasizes that the damages under the statute can be broader than just wages. To the extent that the misclassified employees were required to pay for costs typically paid for by the employer, those costs can also be recovered and subject to mandatory treble damages.

Rosnov v. Molloy

In *Rosnov*, the Court resolved an open question under the statute—whether the Legislature's amendment which made treble damages mandatory was retroactive. In 2005, the Supreme Judicial Court held in *Wiedmann v. Bradford Group* that an award of treble damages was permissive rather than mandatory, and that such damages were only appropriate in cases where the defendant's conduct was outrageous or recklessly indifferent. In 2008, in response to that decision, the Legislature amended the Payment of Wages statute to make treble damages mandatory, effective July 12, 2008. Notwithstanding the effective date of the amendment, the plaintiffs' bar had contended that the Legislature intended for the change to apply to claims that pre-dated the amendment. In support of that argument, plaintiffs' lawyers focused on language in the Senate version of the bill, which stated that the intent of the amendment was to clarify and reiterate what had been the original intent of the treble damages provision. The Supreme Judicial Court rejected these arguments as unpersuasive and held that the amendment did not apply to claims under the statute that arose prior to its effective date.

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