

## **CLIENT ALERT: Massachusetts Supreme Judicial Court Requires Release Agreement to Specifically Identify Wage Act Claims**

On December 18, 2012, the Massachusetts Supreme Judicial Court (“SJC”) held that general releases, such as those in settlement or separation agreements, may be enforceable to claims under the Massachusetts Wage Act, G.L. c. 149, only where the releases contain an explicit waiver of Wage Act claims. Through its opinion, the SJC also addressed several issues concerning the Wage Act’s statute of limitations which affect the scope of claims that employees may bring under the statute.

*Crocker v. Townsend Oil Co.*, SJC-11059 (Dec. 18, 2012), is a case involving alleged misclassification of employees as independent contractors. In connection with the termination of the plaintiffs’ services, the plaintiffs signed separation agreements that contained a general release of claims. The plaintiffs sued seeking unpaid wages and overtime under state law, claiming that the release was not valid because the language of the Wage Act prohibits parties from entering into “special contracts” that affect employee rights under the statute. The defendant argued that the plaintiffs had waived their Wage Act claims when they entered into termination agreements containing general releases.

Balancing the statutory language with the policy of encouraging releases and settlements, the SJC concluded that a release will be enforceable as to Wage Act claims “only if such an agreement is stated in clear and unmistakable terms.” The Court continued, “[T]he release must be plainly worded and understandable to the average individual, and it must specifically refer to the rights and claims under the Wage Act that the employee is waiving.” Thus, employers should take care to ensure that such language is included in any release agreement in which a release of the state payment of wages statute is sought.

The SJC also addressed several issues regarding the application of the Wage

Act's three-year statute of limitations period. Of particular note, it clarified the interaction of the statutory limitations periods for claims under the Wage Act and those under the state overtime statute, G.L. c. 151, § 1A. Specifically the SJC confirmed that employees are prohibited from bringing claims for unpaid overtime premiums beyond the two-year statute of limitations period set forth by G.L. c. 151; however, employees are may still assert claims for unpaid wages under the Wage Act for a full three-year period. The key distinction here is that recovery for unpaid wages under the Wage Act is limited to uncompensated time worked at the regular rate as opposed to the premium overtime rate.

Finally, the SJC refused plaintiffs' request to extend the "continuing violation doctrine" to their Wage Act claims. In so holding, the SJC found that failures to pay wages are discrete injuries which employees should be aware of at the time wages are not received; thereby limiting the plaintiffs' recovery to those damages which occurred within the three-year period prior to filing their complaint.

Employers should ensure that their release agreements comply with the Court's guidance in *Crocker*. Employers are encouraged to contact their MBJ attorney with questions regarding how this decision impacts them and what steps they should take to protect themselves.

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This alert was published on January 2, 2013.

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