

## **CLIENT ALERT: Recent Massachusetts Decision May Limit Individual Liability for Wage Act Claims**

A recent decision issued by a Massachusetts Superior Court suggests that some individual defendants may not face personal liability for unpaid wage claims brought under the Massachusetts Weekly Payment of Wages Act, G.L. c. 149, §148 (the "Wage Act"). In a case of first impression, a Superior Court judge ruled that an employee who claimed he was owed wages by the president and a manager of the limited liability company ("LLC") for which he worked could not recover from these individual defendants under the Wage Act.

In *Cook v. Patient EDU, LLC, et al.*, C.A. No. 10-00819, the plaintiff entered into an employment contract with the defendant LLC whereby he was to serve as director of business and strategic partner development for the company. His lawsuit alleged that the employee received no salary for the first six months he worked for the company, and that he was paid only sporadically thereafter. In addition to unpaid wages, the plaintiff also claimed that the company owed him business and travel expenses. The suit sought recovery for Wage Act violations from the company as well as from its president and manager individually.

The Wage Act imposes liability upon employers including the president, treasurer and "officers or agents having the management of [a] corporation." The Superior Court ruled that an LLC is not a "corporation" under the meaning of the Wage Act, and therefore the president and manager could not be held personally liable. The Court strictly construed the language of the Wage Act and determined that the legislature did not manifest an intent to impose liability on individual managers and officers of business organizations other than "corporations" because the Wage Act did not use broad language for all corporate forms. The Court found the language of the Wage Act to be "plain and clear" in not including managers of LLCs within the definition of "officers or agents having the management of [a] corporation."

The Wage Act imposes strict limitations on the duration of pay periods, and provides a remedy to employees who are not paid their wages in a timely

manner. Because the *Cook* decision was issued by a trial court, it is not binding on other courts. Nonetheless, given the novelty of this decision, it should create a strong defense for individuals employed by LLCs who are sued for alleged wage and hour claims under state law.

Employers should continue to strictly adhere to Massachusetts' unique wage and hour standards, which permit employees to recover automatic triple damages and attorneys' fees in most state wage actions. While the *Cook* decision is potentially helpful to a certain group of employers (LLCs), most employers are not impacted by the decision.

Employers with specific questions about the impact of this decision on their company should speak to their MBJ attorney.

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