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Client Advisory

Employer's "Safe Driver" Policy Violates Massachusetts Wage Act

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2/3/2011

The Massachusetts Supreme Judicial Court recently decided that an employer's policy of determining employee fault in accidents involving company-owned vehicles and deducting the damage cost from the pay of at-fault employees violates The Massachusetts Wage Act. Employers that have such policies should now review them closely with counsel and consider modifications to bring them into compliance.

On January 25, 2011, the Massachusetts Supreme Judicial Court decided *Camara and ABC Disposal Service, Inc. v. Attorney General et al.* The plaintiff in this case, ABC Disposal Service, provides curbside collection and disposal of solid waste and recycling through a fleet of trucks driven by ABC employees. To promote safety amongst its drivers, ABC instituted a policy of reviewing all accidents to determine if the employee driver was at fault. Under this policy, the company Safety Officer reviewed the records related to the accident and reported the findings to the Safety Manager. The Safety Manager then consulted with company management to determine whether the accident was "preventable". A driver determined to be at fault in an accident was given the choice of paying for the damage or accepting some other form of discipline. Drivers who chose to pay for the damages were also given an option of doing so through a payroll deduction of between \$15 and \$30 per week.

The Massachusetts Attorney General's office, which is charged with enforcement of The Wage Act, audited ABC and found that over a 22 month period over \$21,000 had been deducted from the wages of 27 of its drivers. On the other hand, ABC determined that during the 3 years immediately after implementing the policy, the damage done to its vehicles and personal property was reduced by 78%, demonstrating the purpose behind the policy.

The Attorney General concluded that the ABC policy violated The Wage Act and issued a civil citation requiring the repayment of the wages withheld and a \$9,410 civil penalty. The company appealed and an Administrative Law Judge upheld the AG's citation. ABC next appealed to the Superior Court, where a Justice agreed with ABC and overturned the citation. The Attorney General then appealed and the Supreme Judicial Court agreed to hear the case.

Section 148 of The Wage Act, at issue in this case, requires the prompt and full payment of wages when due and states:

255 State Street
Boston, MA 02109
617.897.5600

1000 Elm Street
Manchester, NH 03101
603.668.0300

Two Eagle Square
Concord, NH 03301
603.223.2020

Two Maple Street
Hanover, NH 03755
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Every person having employees in his service shall pay weekly or bi-weekly each such employee the wages earned by him to within six days of the termination of the pay period during which the wages were earned if employed for five or six days in a calendar week No person shall by **special contract** with an employee or by any other means exempt himself from this section ...

The SJC held that, regardless of an employee’s agreement to allow the wage withholding, the policy violated The Wage Act. The damages could not be deducted from pay, even if the arrangement to do so was voluntary on the part of the employee. Significant to the Court was the fact that ABC served as the “sole arbiter, making a unilateral assessment of liability as well as amount of damages with no role for an independent decision maker, much less a Court, and, apparently, not even an opportunity for an employee to challenge the result within the company.” As such, the Court found the policy and arrangement to constitute a “special contract” to avoid the full payment of wages, which is prohibited under The Wage Act.

Over the past few years, the Attorney General’s office has increased its enforcement of Wage Act violations significantly. Employers that fail to comply in all respects face the prospect of AG audits and fines, and civil actions by employees seeking treble damages and attorney’s fees. The *Camara* case underscores the need to review all pay practices to assure that they are in full compliance. At a minimum, any company that has a policy requiring employees to reimburse the company for damage to vehicles or other property should immediately consult with counsel to determine if their policy meets the standard set forth in the *Camara* case.

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Mark J. Ventola is a shareholder at Sheehan Phinney Bass + Green. He is Co-Chair of the firm’s Labor, Employment and Employee Benefits Group.

This article is intended to serve as a summary of the issues outlined herein. While it may include some general guidance, it is not intended as, nor is it a substitute for, legal advice. The labor and employment attorneys at Sheehan Phinney Bass & Green would be pleased to assist with a review of your company’s wage and hour practices to assure compliance with applicable laws.

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