A Timely Analysis of Legal Developments

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In a decision with immediate and significant repercussions for Massachusetts employers, the state's highest court has held that employers can dock employee pay only under very limited circumstances, and a wage deduction cannot be based on the employer's unilateral determination of employee fault.

Massachusetts High Court: Employers Can't Dock Pay!

By David Casey and Vanessa Hackett

Yet again, Massachusetts has ratcheted up the cost of doing business for employers. While many employers have routinely recouped money that employees owe them, such as reimbursement for damage employees cause to company or third-party property, a recent Supreme Judicial Court decision, *Camara v. Attorney General*, 2011 Mass. LEXIS 16 (Mass. Jan. 25, 2011), makes it clear that employers can dock their employees' pay only under certain limited circumstances.

The Massachusetts Payment of Wages Law, Mass. Gen. Laws ch. 149, §§ 148 *et seq*., states that the existence of a "valid set-off" is a possible defense to a claim that an employer failed to pay wages to an employee. To date, however, Massachusetts employers have received little guidance on what types of employee pay deductions constitute "valid set-offs" under the law. The state's highest court has now confirmed that it will construe this term narrowly. Granting deference to the attorney general's narrow interpretation of "valid set-off," the court concluded that the Payment of Wages Law prohibits an employer from making wage deductions based on its unilateral determination as to an employee's fault or the amount of damages owing.

The case arose after the Massachusetts Attorney General audited and issued a citation to ABC Disposal Service, Inc. ("ABC"), a solid waste disposal and recycling service, for its wage deduction practices. To deter unsafe and careless driving, ABC had instituted a written policy that gave the employee the option to either accept discipline or reimburse the company if ABC determined that he or she was at fault for causing property damage. In its assessment of employee liability, an ABC safety officer would conduct a thorough record review and present findings to the safety manager. If the safety manager decided that the damage resulted from a preventable accident, he would present the two options to the employee. ABC's repayment schedule provided for modest weekly deductions and never reduced the employee's wages below minimum wage standards.

On appeal, the Supreme Judicial Court agreed with the attorney general's strict construction of the Payment of Wages Law, holding that it prohibits an employer from withholding earned wages. Even where the employee voluntarily assents to the deduction, the court reasoned that such an agreement violates the Payment of Wages

Law because it amounts to a "special contract." Rejecting ABC's contention that it did not violate the statute's prohibition against special contracts because the deduction conferred an immediate benefit of reduced liability on the employee, the court noted that the affected employees received reduced pay as a result of policy provisions that apply only to certain employees and only in certain circumstances—the very definition of a special contract. The court further held that deductions made pursuant to ABC's policy were not valid set-offs under the Payment of Wages Law because they were based on ABC's one-sided determination of liability and did not provide any due process protections to the employee.

The court agreed with the attorney general that the following would be valid set-offs under the law: (1) an undisputed loan or wage advance; (2) employee theft or misappropriation established through an independent proceeding with due process protections; and (3) an employer's judgment against the employee for the value of the employer's property. The court recognized, however, that other categories of valid set-offs could exist, such as a deduction provided for in a collective bargaining agreement that reflects mutually agreed-upon independent procedures for determining both the existence and amount of a debt obligation. It also is likely that a deduction for a mistaken overpayment of wages to an employee would meet the criteria for a valid set-off.

In short, the *Camara* decision significantly restricts an employer's ability to make deductions from an employee's wages, even where the employee assents to the deduction. Going forward, employers should not make a deduction from an employee's wages for debts owed unless the deduction falls within the specific categories outlined above. Even then, employers must exercise caution. For example, employers should maintain meticulous records of loans or wage advances and obtain written employee assent to specific repayment terms. Employers that prefer to maintain a process to recoup debt obligations from an employee must implement an independent procedure to determine liability, which incorporates due process protections and a right to appeal, to safeguard against potential wage claims. Still, such a process is not a failsafe, as the attorney general will carefully scrutinize any internal process of liability determination for employer influence. If the employer cannot establish clear evidence of the employee's debt through appropriately independent procedures, or by proceeding against the employee in court, discipline may be its sole recourse.

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