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## Massachusetts High Court Permits Employees to Release Wage Claims

By Christopher Kaczmarek and Jeanne Barber

The Massachusetts Supreme Judicial Court (the “SJC”) recently answered two important questions that have vexed lower courts, and employers, in recent years. First, the SJC concluded that employees may release claims under the Massachusetts Payment of Wages Law, Mass. Gen. Laws ch. 149, § 148 (the “Wage Act”), provided that the release is “stated in clear and unmistakable terms” and specifically refers to the Wage Act. Second, the SJC held that, although plaintiffs may pursue claims for overtime under the Wage Act, which has a longer statute of limitations than the state overtime law, a plaintiff only may recover the straight-time value of such claims, not the premium rate provided for by the overtime law.

### Factual Background

In *Crocker v. Townsend Oil Co.*, No. SJC-11059 (Dec. 17, 2012), two oil delivery drivers claimed they had been misclassified by the company as independent contractors. At the conclusion of their business relationship with the company, both plaintiffs signed termination agreements containing a general release of claims. Ultimately, the plaintiffs brought claims against the company under the Wage Act, including claims for overtime pay.

In response, the company argued that the plaintiffs’ claims were barred by the releases they executed upon terminating their relationship with the company. In addition, the company argued that the plaintiffs could not bring claims for overtime under the Wage Act, which has a three-year statute of limitations. Instead, according to the company, the plaintiffs had to pursue such claims under the Massachusetts Overtime Law, Mass. Gen. Laws ch. 151, § 1A, which only has a two-year statute of limitations.

### Releases of Wage Act Claims Must Be Clear and Unmistakable

The Wage Act provides that “[n]o person shall by a special contract with an employee or by any other means exempt himself from” the Wage Act. Historically, plaintiffs have argued that this provision prohibits individuals from releasing Wage Act claims. In recent years, however, a few state and federal court judges have issued opinions stating that such releases are permissible.

In *Crocker*, the SJC acknowledged that adopting the plaintiffs’ argument would run contrary to the “public policy favoring the enforceability of general releases.” But, the SJC also noted that the

Wage Act was intended to provide “strong statutory protection for employees and their right to wages,” a right that “could be unknowingly frittered away under the cover of a general release.”

In light of these competing policy interests, the SJC struck a middle ground by holding that individuals may release Wage Act claims, but only where the release is “stated in clear and unmistakable terms.” “In other words,” said the court, the 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.” Because the releases executed by the plaintiffs in *Crocker* did not specifically mention the Wage Act, the SJC found that the releases failed to meet this standard and therefore were unenforceable.

## Employees May Pursue Claims for “Straight Time” Under the Wage Act

Next, the company argued that allowing the plaintiffs to assert claims for unpaid overtime under the Wage Act would have “the practical effect of obviating the Legislature’s determination that a shorter limitations period should apply for unpaid overtime claims” under the Massachusetts Overtime Law.

In response, the SJC again carved out a middle ground. On the one hand, the SJC held that employees may pursue claims for overtime under the Wage Act, thereby allowing them to take advantage of that law’s three-year statute of limitations, even if their claims were time-barred under the Massachusetts Overtime Law’s two-year statute of limitations. On the other hand, the SJC held that a plaintiff who pursues an overtime claim under the Wage Act may only recover for uncompensated time worked at his or her regular rate, not the premium rate of one-and-one-half times the regular rate provided for under the Massachusetts Overtime Law.

## Implications for Massachusetts Employers

In light of *Crocker*, Massachusetts employers should review any agreements or forms containing release provisions to ensure that those provisions comply with the standards set forth by the SJC. Notably, although the *Crocker* decision is limited to claims under the Wage Act, employers should exercise caution and consider applying the same standards to releases of claims under other state wage statutes, such as the Massachusetts Overtime Law and the state prevailing wage law. Indeed, in light of the SJC’s 2009 decision in *Warfield v. Beth Israel Deaconess Medical Center, Inc.*, discussed in this previous Littler ASAP,<sup>1</sup> the same level of specificity should be applied to releases of claims under the state’s general anti-discrimination statute, the Massachusetts Fair Employment Practices Law, Mass. Gen. Laws ch. 151B. Thus, at the very least, releases of claims should be stated in clear and unmistakable terms, in a manner that is understandable to the average individual, and should expressly reference the Massachusetts statutes under which claims are being released.

Massachusetts employers should consult with experienced employment counsel for further guidance regarding the proper drafting of releases.

[Christopher Kaczmarek](#) is a Shareholder, and [Jeanne Barber](#) is an Associate, in Littler Mendelson’s Boston office. If you would like further information, please contact your Littler attorney at 1.888.Littler or [info@littler.com](mailto:info@littler.com), Mr. Kaczmarek at [ckaczmarek@littler.com](mailto:ckaczmarek@littler.com), or Ms. Barber at [jbarber@littler.com](mailto:jbarber@littler.com).

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<sup>1</sup> See Christopher Kaczmarek and Amy Mendenhall, [New Massachusetts Decision Finds that General Arbitration Provisions Do Not Cover Discrimination Claims](#), Littler ASAP (Apr. 19, 2009).