

Massachusetts SJC Limits Wage Act Liability for Board Members and Investors

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In an otherwise quiet week in the world of employment law, the Massachusetts Supreme Judicial Court (SJC) issued an important decision limiting the scope of personal liability under the Massachusetts Wage Act. In *Andrew Segal vs. Genitrix, LLC*, the SJC held that personal liability under the Wage Act violations extends only to a company's president, treasurer and "officers or agents having the management" of the company. As such, the Wage Act does not impose personal liability on board members acting only in their capacity as board members and investors engaged in ordinary investment activities.

The *Segal* case arose out of an arrangement between an inventor and investors. The plaintiff assigned all of his intellectual property to a new limited liability company (LLC) and in exchange became president and CEO of the LLC. Eventually, the LLC began to have serious difficulties, leading the plaintiff to decide to stop taking a paycheck from the LLC. Ultimately, proceedings for judicial dissolution of the LLC were instituted, and the plaintiff continued to work for the company through this period without pay. Near the end of the dissolution process, the plaintiff demanded payment for his work from the company's board and investors. When they declined, the plaintiff brought a lawsuit against the LLC (now dissolved) and against several board members and investors under the Wage Act.

Looking at the language of the Wage Act, the SJC held that the defendants could only be personally liable if they fell within one of the express categories of corporate actors identified in the statute: the president, treasurer, or "officers or agents having the management" of the company. Because neither of the defendants had served as president or treasurer of the company and, and were not officers of the company, they could be held personally liable under the Wage Act only if they were "agents having the management of the corporation."

Interpreting this statutory language for the first time, the SJC applied the common law of agency and concluded that, although they exercise some control of the business, investors and board members exercising their ordinary duties do not act as "agents" of the company. The SJC did not foreclose the possibility that a board member or investor could face personal liability as an agent of the company. However, for investors or board members to be "agents," they must be appointed as agents separately and distinctly from their ordinary duties as a board member or investor. In *Segal*, the LLC agreement expressly stated that investors did not have agency authority, and while one investor had the right to enforce the President and CEO's employment agreement by insisting on his termination after two years, the SJC held that this power alone did not make him an agent for Wage Act purposes.

The SJC further found that board members and investors did not have "management" of the company. Ultimately, the plaintiff made the decision whether to pay employees, including himself. The board and investors played no role in that process. The court emphasized that investors' and board members' ordinary oversight of finances and high-level corporate matters did not constitute control over management of the company. Because the plaintiff could not demonstrate any unusual involvement in corporate finance and payroll decisions, he could not hold the investors and board members liable under the Wage Act.

The *Segal* decision provides board members and investors in Massachusetts the comfort of knowing that they will not face personal liability for unpaid wages – and the automatic trebling of damages that comes with Wage Act violations – so long as they are acting in their ordinary capacities as board members and investors. Still, employers should review their corporate organizational documents and agreements to ensure that these individuals have not been delegated management or agency powers that could qualify them as "employers" under the Wage Act. In addition, board members and investors should carefully consider taking on roles within an organization apart from their capacities as board members or investors, as such roles could expose them to potential Wage Act liability.

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