

SJC Holds that Massachusetts Wage Act Is Not Intended to be Sole Remedy for Recovery of Unpaid Wages Under State Law

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On August 12, 2013, the Supreme Judicial Court (SJC) held in *Lipsitt v. Plaud* that the Massachusetts Wage Act is not intended to be the sole remedy for the recovery of unpaid wages under state law. The Court concluded that employees who file claims under the Wage Act can also seek recourse for unpaid wages through traditional common law claims such as breach of contract or quasi-contract.

In *Lipsitt*, the plaintiff, a museum director for the Franklin D. Roosevelt American Heritage Center, did not receive the full salary due to him under his employment contract because of the Center's financial difficulties. The founder of the Center assured the plaintiff that eventually he would be paid in full, but the Center later closed and the founder abandoned his plan to reopen it in a new location. The plaintiff filed this action in Superior Court seeking over \$100,000 in damages that he contended the Center owed him. His complaint asserted claims for breach of contract, quantum meruit, and violations of the Wage Act, among others.

The Superior Court dismissed all of the plaintiff's claims except for the Wage Act claim. The Superior Court reasoned that the Wage Act is the exclusive remedy for the recovery of unpaid wages and thereby preempted the plaintiff's common law claims. The plaintiff appealed.

The SJC reversed the dismissal of the plaintiff's common law claims, including those based on breach of contract, or in the alternative, on a quasi-contract theory arising from the nonpayment of wages. In doing so, the SJC rejected the Superior Court's conclusion that in enacting the Wage Act, the legislature created a comprehensive vehicle for recovering unpaid wages and intended to preempt the plaintiff's common law claims. The SJC observed that the Legislature designed the Wage Act to *enhance* the rights of employees with respect to the payment of wages. It reasoned that if the Legislature had intended the Wage Act to abrogate long-standing common law actions aimed at protecting those same rights, it would have done so explicitly.

Following *Lipsitt*, employers will not be able to defend against common law claims for unpaid wages merely by arguing that they are preempted by the Wage Act. As the SJC noted in its decision, however, the continued existence of a common law right to recover unpaid wages will have a minimal practical impact on the enforcement scheme established by the Wage Act. In light of the Wage Act's mandatory award of treble damages and attorney's fees, employees will likely pursue common law contract or quasi-contract claims in lieu of Wage Act claims only where their Wage Act claims are time barred by the three-year statute of limitations.

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