

Supreme Judicial Court Limits Employers Ability to Deduct Losses From Wages

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Earlier this week, the Massachusetts Supreme Judicial Court sharply limited employers' ability to deduct losses from employees' wages under the Massachusetts Wage Act. The Wage Act requires the timely payment of wages but states that a "valid set-off" is a defense to a claim of failure to pay wages. Until now, there has been little guidance as to what constitutes a valid set-off, and it had been widely believed that the provision allows employers to make deductions for a variety of losses or damages caused by employees. However, in *Camara v. Attorney General*, the Supreme Judicial Court held that an employer could not dock employees' pay based on its unilateral determination that employees had caused a loss and were liable to the employer for damages.

In *Camara*, ABC Disposal Service, Inc., a waste disposal company, had a policy regarding damage to its trucks or property belonging to third-parties. If a member of management determined that an employee was at fault for an accident which caused property damage, the driver could either accept discipline for the accident or agree to pay for the damage over time through a deduction from wages. The Office of the Attorney General audited ABC and determined that the company had deducted more than \$21,000 from employees' wages pursuant to this policy. ABC was ordered to repay those amounts and to pay a civil penalty of over \$9,000.

ABC challenged the citation in court. On appeal, the Supreme Judicial Court affirmed the issuance of the citation. Adopting the Attorney General's interpretation of the statute, the Court explained that valid set-offs are limited to clear and established debts that are determined through some form of due process or occur at an employee's direction and in an employee's interests. According to the Court, ABC's policy did not fall within either of these categories because the employer made a unilateral assessment of liability and employees were offered only two unpalatable choices — discipline or a wage deduction.

In a footnote, the Court gave several examples of what the Attorney General did consider to be valid set-offs: (1) an undisputed loan or wage advance; (2) theft of the employer's property, as established in an "independent and unbiased proceeding" with due process protections; and (3) a legal judgment obtained by an employer against an employee. In other circumstances, the Court explained that for a deduction to be a valid set-off, there must be an agreed-upon set of independent procedures for determining the existence and amount of an employee's debt or obligation.

Camara instructs that employers cannot engage in self-help when faced with losses or damage caused by an employee. If an employee damages or steals company property, an employer risks violating the Wage Act and owing the employee treble damages and attorneys' fees if it unilaterally attempts to recoup its losses from an employee's wages. Unless the existence and amount of loss or damage is determined through the legal system or some other independent procedure, an employer's recourse may be limited to taking disciplinary action against the employee.

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