

MA Highest Court Decides that Managers at LLCs Can Be Individually Liable For Wage Act Violations

Written by Michael L. Rosen

June 14, 2013

Yesterday, the Massachusetts Supreme Judicial Court held that managers of limited liability companies can be individually liable under the Massachusetts Wage Act for unpaid wages due to employees. Historically, the Wage Act has been interpreted to impose individual liability on officers of corporations, but not on managers of LLCs. In *Cook v. Patient Edu*, the SJC dramatically departed from past interpretations of the Act and determined that managers of LLCs may have to personally pay the price for wage and hour violations affecting employees.

The decision arises out of a lawsuit originally brought in Massachusetts Superior Court, against Patient Edu, LLC and two of its managers by Cook, a former employee, for unpaid wages. Cook claimed that he accepted a position as Patient Edu's business development director, for which he was to be paid a sizable base salary and bonuses, but was not paid during the first six months of his employment and then only sporadically thereafter. The Superior Court dismissed the claim against the two managers, concluding that the Wage Act "does not, by its plain language, impose individual liability on the managers of an LLC."

On appeal, the SJC reversed the lower court, holding that "a manager who 'controls, directs, and participates to a substantial degree in formulating and determining' the financial policy of a business entity . . . may be a 'person having employees in his service' . . . and thus may be subject to liability for violations of the Wage Act." The court recognized that the Wage Act does not, by its plain language, impose liability on managers at LLC's (but rather only on individuals involved in the management of a "corporation"), but explained that this was in part because when the individual liability language was added to the statute, limited liability companies did not exist as a form of business association. The court concluded that a more expansive interpretation of the Wage Act was justified because "the legislative intent of the Wage Act, to hold individual managers liable for violations, is clear."

The SJC's decision greatly expands the potential liability of managers of LLCs, making clear that they cannot use that form of business entity to avoid personal liability. In a civil action under the Wage Act, a successful plaintiff is entitled to treble damages as well as attorneys' fees. Massachusetts-based LLCs, as well as other LLCs with employees working in Massachusetts, should be aware of the expanded potential liability.

RELATED PRACTICES

- [Labor & Employment](#)
- [Wage & Hour](#)

This communication is intended for general information purposes and as a service to clients and friends of Foley Hoag LLP. This communication should not be construed as legal advice or a legal opinion on any specific facts or circumstances, and does not create an attorney-client relationship.

United States Treasury Regulations require us to disclose the following: Any tax advice included in this document was not intended or written to be used, and it cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code.

Attorney advertising. Prior results do not guarantee a similar outcome. © 2017 Foley Hoag LLP. All rights reserved.

