

Two Recent SJC Decisions Clarify the Scope of the Wage Act

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Every employer and employee in Massachusetts likely is aware of the Massachusetts Wage Act, G.L. c. 149, § 148, et seq. This law governs the wages employers pay to their employees, and one of the law's basic purposes is to ensure that employers promptly pay their employees. Seen by some as a boon to employee-plaintiffs, because it provides for automatic treble damages for late or unpaid wages, the Wage Act also imposes personal liability for violations on a company's president and treasurer and any officers or agents having management of the company. The Supreme Judicial Court recently issued two decisions that should help employers (and their board members and investors) understand their obligations and exposures.

In Segal v. Genitrix, LLC, 478 Mass. 551 (2017), the SJC clarified the scope of who may be personally liable for an employer's violation of the law by interpreting the phrase "officers or agents having management of" the company. The question for the SJC was whether this personal liability could extend to board members or investors of a company. Answering the question required the SJC to determine first whether board members and investors are "agents" of a company, and second, if they are agents, what does it mean to have "management of" the company.

On the question of agency, the SJC determined that when board members and investors are acting within their roles as board members and investors they are not acting as agents of the company. Board members are not agents, because they act only as a collective body-i.e., the board-that supervises the activities of the company. Investors also are not agents, because when an investor acts, the investor acts as an individual and not on behalf of the company. The SJC cautioned that while board members and investors may not be considered agents by their positions alone, a board member or investor may be empowered to act as an agent for a company.

On the question of management, the SJC determined that the management responsibility must be "similar to those performed by a corporate president or treasurer, particularly in regard to the control of finances or payment of wages." The SJC recognized that even though board members are required by statute to exercise management oversight responsibility as part of a board, this responsibility is insufficient to meet the individual management responsibility required by the Wage Act. Similarly, even though investors may exercise some control over the companies in which they invest, that control is not sufficiently similar to the management responsibility of a corporate president or treasurer.

In Genitrix, the SJC set high hurdles for employee-plaintiffs seeking to bring claims for personal liability against their employers' board members and investors. The decision also provides helpful guidance for board members and investors to consider before taking on additional responsibilities to act on behalf of their companies or assume management responsibility for the company's finances.

The second decision, Mui v. Massachusetts Port Authority, 478 Mass. 710 (2018), decided whether accrued, but unused, sick time constituted "wages" under the Wage Act. The Act requires an employer to pay to a departing employee all wages, unused vacation time, and certain commissions due to the employee within certain specified time periods. The Act does not mention sick time, and the SJC concluded that the conditional nature of sick time-i.e., employees do not have an absolute right to use sick time, but rather may only use it when the employee or a family member is ill-meant that it was not a "wage" under the Act. As a result, unused sick time is not required to be paid to a departing employee. Massachusetts employers, many of whom are required to provide paid sick time to their employees pursuant to the Massachusetts Earned Sick Time Law, G.L. c. 149, § 148C, should benefit from the clarity this decision brings.