

## **CLIENT ALERT: SJC Decision Precludes Employees' Pursuit of Remedies under the Massachusetts Wage Act for Untimely Payment of Overtime Wages Due Solely Pursuant to the FLSA**

The Massachusetts Supreme Judicial Court (the "SJC") recently foreclosed on a theory of recovery sought by plaintiffs in non-payment of wages cases: to avail themselves of the Massachusetts Wage Act's treble damages provision for non-payment of overtime claims brought exclusively under the Federal Fair Labor Standards Act (the "FLSA"). In *Devaney v. Zucchini Gold, LLC*, the plaintiffs were restaurant workers routinely working in excess of 40 hours per week whose employer failed to pay the workers overtime wages required by the FLSA. SJC-13176 (Wendlandt, J. April 14, 2022).

The plaintiffs brought suit against their employer in September 2015 alleging violations of the FLSA for failure to pay overtime wages, violations of the Massachusetts Wage Act (M.G.L. c. 149, § 148) for failure to pay the FLSA overtime wages in a timely manner, and violations of the Federal and State minimum wage laws. Because the state overtime law, M.G.L. c. 151, § 1A, specifically exempts restaurant workers like the plaintiffs, they did not pursue a claim under that state law provision. Plaintiffs prevailed at summary judgment on their FLSA overtime and Massachusetts Wage Act claims. Following a trial solely on the issue of damages, Plaintiffs were each awarded one-and-one half times their regular rates of pay, which the judge then trebled (and awarded costs and attorney's fees) pursuant to the Massachusetts Wage Act.

The employer appealed, arguing that the trial judge erred in permitting the Plaintiffs to elect Wage Act remedies where the sole basis for liability was pursuant to the Federal overtime law, which itself provides a remedy (in the form of unpaid wages, liquidated (double) damages, costs and attorney's fees). The plaintiffs relied on a handful of cases that have allowed employees to recover under the Wage Act for FLSA overtime violations. The SJC noted, however, that those cases did not consider whether the FLSA's own comprehensive remedial scheme for recovery of damages when an employer violates the federal overtime law precludes an employee from seeking Wage Act remedies for overtime wage payments due solely under the FLSA. The SJC then employed a preemption analysis, ultimately determining that Plaintiffs may not pursue Wage Act remedies for overtime payments due solely under the FLSA. The Court reasoned that awarding such State law remedies would actually conflict with the Federal remedies provided in the FLSA and therefore Wage Act remedies were not available in this circumstance.

This case provides significant clarification for Massachusetts employers facing non-payment of overtime claims brought under the FLSA, and particularly for those employers who have employees who are exempt under Massachusetts' overtime law. While some plaintiffs had been permitted to pursue the employee-friendly treble damages provided by the Wage Act on the theory that they were not paid their (FLSA) overtime wages in a timely manner, following *Devaney*, remedies for such FLSA overtime violations will be limited to those provided under the FLSA - i.e., generally the amount of the

unpaid wages for a two year statutory period, possible double damages, costs, and attorney's fees. Penalties for violation of wage and hour laws remain significant, however, and employers should be careful to review their pay practices regularly to ensure compliance with state and federal laws and are encouraged to consult their MBJ attorney with related questions.

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