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Client Bulletin #434

DOCKING PAY FOR PROPERTY DAMAGE NOT PERMITTED UNDER MASSACHUSETTS WAGE ACT, COURT RULES

By Ellen Kearns and Jeffrey Rosin, Boston Office

Over the years, Massachusetts employers have wondered, “What can I deduct from an employee’s paycheck?” This week, in *Camara v. Attorney General*, the Massachusetts Supreme Judicial Court, deferring to the Attorney General’s interpretation of the Massachusetts Wage Act, narrowed the list of potential deductions.

ABC Disposal Service had a policy of allowing workers found by ABC to be at fault in accidents involving company trucks to agree to a deduction from their earned wages in lieu of discipline. ABC believed that this policy resulted in a 78 percent reduction between 2003 and 2006 in costs attributable to damage to vehicles and personal property.

However, the Attorney General’s office found that ABC’s policy violated the “valid setoff” language in the Massachusetts Wage Act, and conducted an audit of the deductions made by ABC for a two-year period. It found that ABC had deducted \$21,487.96 from the wages of 27 employees (who chose to reimburse the company for damages between \$15 to \$30 a week). It required ABC to make restitution and, in addition, assessed a civil penalty of \$9,140. After timely appeals, the Supreme Judicial Court took the case up on direct appellate review.

Section 148 of the Massachusetts Wage Act requires prompt payment of wages due. It also provides “no person shall by a *special contract* exempt himself” from paying wages due. (Emphasis added.) One employer defense to deducting from an employee’s pay is that the employer had a “valid set-off” under Section 150.

The Attorney General’s position was that “regardless of an employee’s agreement, there can be no deduction of wages unless the employer can demonstrate . . . the existence of a valid attachment, assignment or setoff as described in Section 150, a condition she claims that the ABC setoff policy does not meet.”

Valid setoffs enumerated in Section 150, she [Attorney General] states, all implicitly involve some form of due process through the court system, or occur at an employee’s direction and in the employee’s interests. ABC’s deductions therefore do not qualify: ABC has not shown that any of the employees are legally liable for damages, or that, with respect to third parties, ABC was legally required to make payments on an employee’s behalf by a judgment that “could not have been avoided.”

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On the other hand, ABC argued that recouping costs from an at-fault employee in an accident was analogous to a set-off to correct an employee's misappropriation of employer funds. ABC argued that it performed thorough investigations and made findings of fault before entering into set-off agreements with employees, and as such **"its debts were clear and established."**

The Court did not agree. "An arrangement where ABC serves as the sole arbiter, making unilateral assessment of liability as well as amount of damages with no role for an independent decision maker, much less a court, and apparently, not even an opportunity for an employee to challenge the result within the company, does not amount to 'a clear and established debt owed to the employer by the employee.'"

(By contrast, the U.S. Department of Labor **says** that the Fair Labor Standards Act allows employers to make deductions for damages to employer property if such deductions do not bring the employee's pay for time worked below the minimum wage in any given workweek.)

In a very interesting and provocative footnote, the Massachusetts Court addressed the outer contours of the term "valid setoff":

The Attorney General offers the following as examples of the defenses available to employers under the category of "valid set-off": where there is proof of an undisputed loan or wage advance from the employer to the employee; a theft of the employer's property by the employee as established in an "independent and unbiased proceeding" with due process protections for the employee; or where the employer has obtained a judgment against the employee for the value of the employer's property.

We do not understand the Attorney General to be arguing that these are the only types of setoffs that are permissible under Section 150; if that is her point we do not agree with it. There well may be other circumstances—for example as part of a collective bargaining agreement—in which an employer and employee enter into a set-off arrangement that does not involve formal judicial or administrative proceedings but that would be valid because it can be shown that the parties have voluntarily agreed to a set of appropriately independent procedures for determining, in a manner that adequately protects the employee's interests, both the existence and amount of the debt or obligation owed by the employee to the employer.

Employers should scrutinize their deductions from employees' wages to see if they meet the tests set out above. If you need assistance in this area, please contact any member of Constangy's **Boston Office**, the **Wage Hour Practice Group**, or the Constangy attorney of your choice.

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