

If I am not paid by an employer that is an LLC, do I have a claim against the manager of the LLC personally in addition to the LLC itself?

Answer: You might.

The Massachusetts Wage Act is a sweeping statute that imposes personal liability on officers of corporations for non-payment of wages in addition to the corporate entity itself. Most recently, that liability was formally expanded to managers of LLC's as long as they are considered a "person having employed in his service" by being someone who "controls, directs, and participates to a substantial degree in formulating and determining" the financial policy of a business entity. Cook v. Patient EDU, LLC, 465 Mass. 548, 549 (2013).

In *Cook v. Patient EDU, LLC* the Massachusetts Supreme Judicial Court addressed the question of whether a manager of an LLC was within the group of executive officers under the Massachusetts Wage Act that could be held personally liable for non-payment of wages. The Court discussed the history of the Wage Act and observed that LLC's, which first existed in 1996 in Massachusetts, did not exist when the Wage Act was drafted. Id. at 553. For this reason, a manager of an LLC was not one of the entities that were included in a specific list of corporate officers appearing in the statute. The Court stated that the list in the statute, which again did not include a manager of an LLC, was not an exclusive list. But rather, the list "serves to illustrate the circumstances in which an individual may be deemed a 'person having employed in his service.'" Id. at 553-54. By this reasoning, the Court determined that a manager of an LLC is an individual that *could be* subject to personal liability under the statute.

This decision should be heeded by employees given management responsibilities in LLC's as now there may be risk of personal liability if wages are not paid by the LLC. In other words, you may want to think twice about taking that promotion or ask for a raise if significant responsibilities are put on your plate.

This decision should also be noted by former employees that have not been paid and are informed the LLC has gone out of business because now there may be hope to pursue a claim against an individual. Possibly there is a claim now that you may have believed did not exist.

Regardless of what side of the statute you are on, employee or employer, the Massachusetts Wage Act is a formidable statute that all should study to be aware of its many details.

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