

How long do I have to bring my legal claim to court?

1 July 2013

This is a common question and one that has the typical legal answer, it depends. The author herein recommends a comprehensive approach to this type of question.

Initially, let's point out that we must back up and ask whether there is a claim to being with. Typically a person answers this question, without much, if any, professional help. At best, they have called and talked to an attorney, usually over the phone, and obtained what they believed was the correct answer, which is almost always, yes. They did not have the attorney review any documents related to the issue and presented a one-sided story of the facts. Further, human nature being what it is, an attorney, especially one that has just "met" the client, may be reluctant to tell the caller there is no claim. Although with a very simple set of facts a proper assessment can be made in one phone call, often this approach is risky as many times there is not enough investigation into the facts or law that could apply.

Assuming there is a claim, the next question that needs to be answered is: What kind of claim is it? And the last question: what statute of limitations applies?

There are broad categories that most lawyers can recite readily, such as tort (generally 3 years in Massachusetts), unfair business practices (generally 4 years in Massachusetts), and contract (generally 6 years in Massachusetts). However, these broad categories, are just that — broad — and an attorney less familiar with the facts or possible claims can easily mistakenly place a claim into one of these broad categories and miss a more specific and applicable limitation. Not only that, it may not be abundantly clear in the law.

For example, in *Crocker v. Townsend Oil Company* the plaintiffs brought a case arguing that they were employees and not independent contractors and thus were entitled to compensation for overtime pay. Crocker v. Townsend Oil Company, Inc., 464 Mass. 1 (2012). One question was whether the general 3 year limitation in the Wage Act or a 2 year limitation period a different statute governing overtime claims applied to the specific overtime claims brought by the plaintiffs. Crocker v. Townsend Oil Company, Inc., 464 Mass. at 6. This caused the court to have to compare the statutes. It decided that a plaintiff could bring a claim for hours worked within the 3 years, but if successful, the recovery would be limited to the regular hourly rate and not the enhanced overtime rate. Crocker v. Townsend Oil Company, Inc., 464 Mass. at 7.

As you can imagine, the set of facts that existed in *Crocker*, even though not all that complicated, would not be adequately addressed with a simply phone call. Even if both

statutes were considered, it would take formulating a formal legal opinion to allow a plaintiff to assess the claim properly.

The author suggests that if you find yourself assessing a claim, instead of relying on free advice obtained over the phone, to formally engage and compensate an attorney to answer the proper questions; and further, make the decision whether to pursue the claim without delay.

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