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CLIENT ALERT
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**MASSACHUSETTS SUPREME JUDICIAL COURT DRAMATICALLY LIMITS
ALLOWABLE DEDUCTIONS FROM EMPLOYEES' WAGES**

Last week, the Massachusetts Supreme Judicial Court issued a decision dramatically limiting the ability of Massachusetts employers to make deductions from their employees' wages.

Camara v. Attorney General, -- N.E.2d. -- (2011) involved a written policy of ABC Disposal Service, Inc. (ABC) that stated that drivers who were found by ABC to be at fault in an accident involving company trucks could agree to a deduction from earned wages to pay for the damages, in lieu of discipline. The policy was implemented to promote safety and to decrease careless driving by ABC's drivers. The determination of fault with respect to any accident was made after the ABC safety officer reviewed records related to the incident and made a report to the safety manager. If the ABC safety manager determined that the incident was a "preventable accident," the employee was offered the choice of making payment for the damages or accepting discipline. The findings of the ABC safety manager were final and not subject to any type of review or appeal process. With respect to those employees who elected to repay damages relating to "preventable accidents," their pay was reduced by \$15 to \$30 per week, but in no instance did their pay fall below minimum wage. According to ABC, costs relating to accidents were reduced by 78% after the policy was implemented.

As a result of an anonymous complaint to the Attorney General's Office, the Attorney General audited ABC and determined that ABC's policy violated the Massachusetts Wage Payment Act. ABC was cited and required to pay \$21,487.96 in restitution and \$9,410 in a civil penalty. ABC appealed the citation, and the appeal eventually made its way to the Massachusetts Supreme Judicial Court, the highest court of Massachusetts.

The Massachusetts Wage Payment Act provides that employers may make deductions from employees' earned wages only for "valid set-offs." M.G.L. c. 149, §§ 148, 150. In the Camara case, the Attorney General argued that the deductions under ABC's policy were not valid set-offs because valid set-offs are limited to situations involving some form of due process through the court system, or which occur at an employee's direction and in the employee's interests. ABC argued that the deductions were valid set-offs because the employee was liable for the accident-related damages, even if no court action had been taken against the employee.

The Supreme Judicial Court agreed with the Attorney General. The Court defined “valid set-off” to mean “a clear and established debt owed to the employer by the employee.” Applying that definition of “valid set-off,” the Court held that “an arrangement whereby ABC serves as the sole arbiter, making a 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.’”

The Court provided the following examples of “valid set-offs,” none of which are similar to the deductions under ABC’s policy:

- 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;
- where the employer has obtained a judgment against the employee for the value of the employer’s property; or
- where a collective bargaining agreement establishes a procedure, that adequately protects the employee, to establish both the existence and amount of a debt owed by the employee to the employer.

As unlikely as it may seem, the results of this case could have been worse for ABC. The Camara case was brought by the Attorney General on behalf of those employees whose wages were improperly deducted. However, those employees could have pursued a private claim in court, and if they had been successful, they would have been awarded three times their actual damages (“treble damages”), plus attorneys’ fees and costs (all of which are not available in an action brought by the Attorney General). Thus, had ABC faced a private action by an ABC employee (or a group of ABC employees), the amount at issue would have been far greater than the amount at issue in the action brought by the Attorney General.

As a result of this decision, Massachusetts employers should review the situations in which they make deductions from employees’ wages as well as any policies that address these issues. Deductions for such things as cash shortages, damage to property, or lost uniforms or other Company property are likely problematic under the Camara decision.

Please feel free to contact us if you have any questions regarding this or any other labor or employment issue.

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