

# The Bennett Law Firm

## *Client Update*

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### **MASSACHUSETTS SUPREME COURT EXPANDS EMPLOYER'S UNPAID WAGE LIABILITY EXPOSURE TO SIX YEARS**

The Massachusetts Supreme Judicial Court issued a decision last week that in certain circumstances doubles the statute of limitations from three years to six years for an employee to seek unpaid wages. The Court's decision increased the Plaintiff's recovery by more than \$100,000.00.

The Massachusetts Wage Act provides for the recovery of unpaid wages during the three year period measuring back from the filing of the law suit. (The statute of limitations for a statutory overtime claim under state law is two years). The statute provides for the automatic trebling of unpaid wages as well as the recovery of reasonable attorneys' fees.

In *Lipsitt v. Plaud*, No. SJC 11285 (Aug. 12, 2013), the Franklin D. Roosevelt American Heritage Center and Joseph Plaud, the Center's president, employed Cyrus Lipsitt from 2004 until 2007 but Lipsitt did not sue until 2010 when he claimed unpaid salary under his employment contract with the Center. To get around the three year limitations issue, when Lipsitt sued, he included common law claims in addition to claims for violations of the Massachusetts Wage Act, Mass. G.L. c. 149, §§ 148, 150. The statute of limitations for the common law claims is six years. His common law claims included breach of contract, quantum meruit, and fraud and deceit.

The Center and Plaud asked the Court to dismiss the common law claims on the basis that employees should be limited to the remedies set out in the Wage Act as the Wage Act preempts such claims. The Court rejected the employer's argument, holding that Lipsitt could pursue unpaid wages under the Wage Act for the three years preceding the lawsuit and he also could pursue unpaid wages under his common law claims for the six years preceding the lawsuit. The Court did note that to the extent Lipsitt recovered unpaid wages under the common law claims he could not recover treble damages nor could he automatically recover attorneys' fees for

pursuing those specific claims. By allowing the six year period, the Court increased Lipsett's wage recovery by \$117,500.00.

This decision puts Massachusetts employers squarely on notice that wage and hour exposure can extend six years. Employers should regularly conduct wage and hour audits to identify potential compliance issues as overlooking issues can be costly. Creation and retention of accurate records is essential. Please contact Peter Bennett ([pbennett@thebennettlawfirm.com](mailto:pbennett@thebennettlawfirm.com)) or Rick Finberg ([rfinberg@thebennettlawfirm.com](mailto:rfinberg@thebennettlawfirm.com)) with any wage and hour questions.