

Alert | Labor & Employment



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Top Massachusetts Court Rules in Favor of Employer in Wage Act Case of *Calixto v. Coughlin*

On Dec. 28, 2018, in *Calixto v. Coughlin*, the Supreme Judicial Court of Massachusetts (SJC) issued a unanimous opinion in favor of Greenberg Traurig’s clients, former officers of a defunct company. The SJC upheld the dismissal of Calixto’s claims alleging violation of the Massachusetts Wage Act, G. L. c. 149, § 148 (Wage Act), and breach of fiduciary duty. *Calixto* involved an issue of first impression under Massachusetts law – whether damages awarded for a violation of the federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101-2109 (2018) (WARN Act) constitute “earned wages” under the Wage Act, for which officers of the company can be held individually liable. The SJC held that any back pay owed under the WARN Act did not constitute “earned wages” under the Wage Act, narrowly construing the definition of “earned wages.” The SJC’s decision has significant implications for employers and business owners, because the Wage Act provides for individual liability, mandatory treble damages, attorney’s fees, and potential criminal liability.

Calixto arose from a challenge by former employees after their employer, ISIS Parenting, Inc., shut down in early 2014 without advance notice. The former employees filed a class action against the company alleging that it failed to give them 60 days’ advance notice of the shutdown, as required by the WARN Act. Because the company ceased operations, it did not defend the case, and a \$2 million default judgment was entered against it. Certain former employees then filed a putative class action against the company’s former officers, alleging, among other things, that the \$2 million WARN Act damages constituted “earned wages” under the Wage Act, which were wrongfully withheld, for which the former officers were

individually liable. The former employees also claimed that the officers breached their fiduciary duty to the company by allowing the company to violate the WARN Act.

In its unanimous decision, the SJC held that compensation awarded under the WARN Act was not pay for work that was actually performed but rather compensation for work that *would have* been performed had the 60 days' advance notice been provided before the shutdown. Therefore, under the Wage Act, such compensation did not constitute "earned wages." The SJC unequivocally held that in order to trigger the severe penalties of the Wage Act, "earned wages" must represent pay for work actually performed, and wage payments must be presently due. The SJC also held that employees, as creditors, could not assert a direct claim, such as breach of fiduciary duty, against corporate officers on behalf of the company, even if they styled the claim as a derivative claim.

Calixto is an important decision for Massachusetts employers and corporate officers and directors who may be deemed "employers" under the Wage Act. A finding that back pay damages under the WARN Act constituted "earned wages" could have not only created individual liability for officers and directors, but also exposed employers to Wage Act penalties for other monetary claims by employees, including claims for back pay for wrongful termination, severance pay, and discretionary bonuses, which have been excluded from the scope of the Wage Act in previous cases.

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