

**Wage Act Violations: Officers and Managers of LLCs at Risk.
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Last year, the Hampden Superior Court considered a case of first impression involving the application of the Massachusetts Wage Act (M.G.L. c. 149, § 148) to managers and officers of limited liability companies. In the case of *Cook v. Patient EDU, LLC et al.*, No. HDCV20100819, 28 Mass. L. Rptr. 492 (May 24, 2011), the court held that the managers and officers of a limited liability company cannot be held personally liable under the Wage Act. While that case is currently on appeal, the Suffolk Superior Court heard another case regarding whether the Wage Act applied to managers and officers of a LLC as it applies to officers of a corporation. In the case *Stephen Keefe v. Enterprise Associates, LLC, & others*, Lawyers Weekly Lawyers No. 12-139-12, the court denied a motion to dismiss the complaint against two individual defendants because natural persons can be employers under the Wage Act and the plaintiff may be able to prove that the individual defendants were his employers.

Stephen Keefe (“Keefe”) began working for Credit Control Services, Inc. (“CCS”) in September 2006. CCS reorganized on January 1, 2008 and Keefe began working for Enterprise Associates, LLC (“Enterprise”), a Massachusetts limited liability company, on the same day. In August 2010 Keefe filed an internal complaint alleging, among other things, that Enterprise had failed to pay him his earned wages. Keefe was terminated later that same month and on November 30, 2010 filed a complaint with the Office of the Attorney General for the non-payment of wages pursuant to the Wage Act. On December 16, 2010, Keefe was authorized by the Office of the Attorney General to bring an action in Superior Court. Keefe then filed suit against Enterprise, CCS, Steven Sands (“Sands”) and Mark Ramsdell (“Ramsdell”) for violations of the Wage Act.

The individual defendants, Sands and Ramsdell, moved to dismiss the claims against them personally because, as a matter of law, they could not be found personally liable under the Wage Act. Sands and Ramsdell are alleged to be the President, “SOC” and Resident Agent of Enterprise, as well as members of Enterprise. The Wage Act provides that “(t)he president and treasurer of a corporation and any officers or agents having the management of such corporation shall be deemed to be the employers of the employees of the corporation within the meaning of this section.” Sands and Ramsdell used the same arguments made in *Cook* and relied on that decision to argue that personal liability only attaches in the corporate context and that this language excludes them, as members of Enterprise, from liability.

The trial court noted that the Legislature clearly intended the limited liability form to be separate from the corporate form and that the employer presumption set forth above does not apply to an LLC. The court did not, however, end its analysis there. The Wage Act also provides that “(e)very person having employees in his service shall pay weekly or bi-weekly each such employee the wages earned by him... No person shall by special contract or by any other means exempt himself from (the Wage Act)”. Sands and Ramsdell did not argue that they are not persons and the court stated that the Wage Act applies to all persons. The complaint alleges that

Sands and Ramsdell were the employers of Keefe and as such there is no statutory reason that the Wage Act cannot apply to Sands and Ramsdell as long as they have employees in their service. The court further noted that this result is consistent with the legislative intent to protect employees and their right to their wages. Unless Sands and Ramsdell are proven not to be the employers of Keefe at trial, the court found “no legal impediment to individual liability under the Wage Act for members of an LLC.”

While the court did not explicitly state that managers and officers of a LLC can be held personally liable under the Wage Act, it did leave the door open for such an interpretation in the right circumstances. In light of the non-controlling authority of the trial court, the decisions of the courts in *Cook* and *Keefe* leave the application of individual liability under the Wage Act in the LLC context unsettled. Further, neither case releases LLCs from liability under the Wage Act. Therefore, managers, members and officers of LLCs should always endeavor to comply with the Wage Act and ensure that the employer LLC also complies with the Wage Act.

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