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EMPLOYERS BEWARE: LATEST ATTORNEY GENERAL ACTION ON EMPLOYEE WAGES

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With a new year upon us and the business community hoping for a rebounding economy, Massachusetts employers were recently reminded of the many restrictions imposed upon them by the Massachusetts Wage Act. The latest lesson concerns setting off employee wages by amounts owed by the employee.

In its January 25, 2011 decision in *Camara v. Attorney General*, the Massachusetts Supreme Judicial Court held that employers cannot set off wages of an employee to compensate for damages paid by the employer as a result of the employee's negligence, without a fact-finding process to determine the extent of the employee's fault. In making the ruling, the Court deferred to the Massachusetts Attorney General's interpretation of the Massachusetts Wage Act, which the Attorney General had argued prohibits workplace policies that employ such set-offs of employee wages.

The employer in this case, ABC Disposal Service, Inc. ("ABC"), provides curbside collection and disposal of solid waste and recycling for households and small businesses. As with other trucking-related businesses, ABC drivers are occasionally involved in accidents leading to damage to ABC's trucks and personal injury to third parties. In an effort to reduce the number of accidents caused by their employees, ABC had adopted a policy whereby drivers that ABC determined to have been at fault in causing accidents were given an option of either accepting disciplinary action or entering into an agreement to set off the damages they caused against their wages. The determination of fault was made by ABC's Safety Officer, who would review reports available from the accident and recommend to ABC's Safety Manager and Management whether damage caused by an employee was a preventable accident.

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Following an audit of ABC, the Massachusetts Attorney General found ABC's policy objectionable and issued a civil citation to recoup wages that ABC had withheld from its employees under the policy from 2004-2006. A series of appeals followed. First, ABC challenged the citation to an administrative law judge, who upheld the citation. ABC then appealed the citation to Superior Court, where a trial judge invalidated the citation. The Attorney General sought a further appeal, and the Supreme Judicial Court on direct appellate review reinstated the citation, after agreeing with the Attorney General that any such policy of withholding wages violated the State Wage Act.

In making its ruling, the Court cited provisions of the Act that require strict adherence to the weekly or bi-weekly payment of wages earned during each pay period and prohibit any "special contract" between an employer and employee to alter that strict requirement. Although the Court did recognize language in the Act that allows for "valid set offs" of wages, the Court found that the ABC policy was not a "valid set off" even if the employee agreed to it. To be a "valid set off", the Court held, there needs to be a "clear and established debt" owed by the employee to the employer. The Court found that ABC's policy, whereby it acted as "sole arbiter" of whether an employee committed a preventable accident, could not establish a "clear and established debt" of the employee because the employee was not allowed to participate in the process. Although the Attorney General seemed to argue that an employee debt could be established only through a court of law, the Court held that a debt could be established through other means as well, provided the employee is afforded due process in being able to participate in the fact-finding effort to determine employee fault.

For employers with policies similar to ABC's, or with policies that contemplate setting off wages of their employees for any reason, the *Camara* decision will require modifications to these policies going forward.

To discuss your situation, and to learn how Looney & Grossman may be able to assist you, please contact Edward V. Colbert, III, Esq. at (617) 951-2800 or ecolbert@lgllp.com.