

## Mass. Ruling Reduces Employers' Overtime Exposure Risks

By Siobhan Mee, Mary Grace Parsons and Keri Engelman (June 1, 2022, 3:00 PM EDT)

The Massachusetts Supreme Judicial Court held on April 14 in *Devaney v. Zucchini Gold LLC*[1] that employees whose overtime claims rest solely on the federal Fair Labor Standards Act[2] cannot recover greater remedies, including treble damages, under the Massachusetts Wage Act.[3]

In doing so, the court reduced exposure for Massachusetts employers with workers who are exempt from overtime requirements under Massachusetts law, but not federal law.

It also provided useful guidance to Massachusetts employers regarding how to calculate overtime damages, and the importance of maintaining accurate time records.

### Background

In *Devaney*, several restaurant employees sued the owners of the restaurant at which they worked, Rice Barn.

The employees "ostensibly were paid a fixed daily rate on weekdays," and one-half the daily rate on weekends, when the restaurant was only open for dinner. In reality, Rice Barn adjusted the amounts paid to account for the employees' absences on any given day.

Although the restaurant did not maintain records of the hours worked by the employees, the parties agreed that the employees routinely worked more than 40 hours per week.

The employees filed a complaint in Suffolk County Superior Court, alleging that the restaurant violated the FLSA by failing to pay overtime wages.

The complaint further alleged that Rice Barn's failure to timely pay the employees overtime under federal law also violated the Massachusetts Wage Act, entitling them to mandatory treble damages.

A motion judge granted the employees' motion for summary judgment on Rice Barn's liability and, after a jury trial on damages, at which the jury awarded the plaintiffs overtime damages at one and one-half times their regular rate for all overtime hours worked, the trial court trebled the actual damages and awarded the plaintiffs their attorney fees and costs pursuant to



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the Wage Act.

The trial court's damages order was consistent with prior decisions in cases where overtime violations were established under federal law only. Such decisions were premised on the notion that any nonpayment of wages, even if those wages are due only under the FLSA and not the state overtime law, is also a Wage Act violation.

Rice Barn appealed the trial court's decision. After transferring the appeal from the Court of Appeals sua sponte, the Supreme Judicial Court reversed and remanded the case, holding that (1) treble damages were not available under the Wage Act for an overtime violation based solely on the FLSA, and (2) a one-half multiplier, rather than a one and one-half multiplier, must be applied to calculate the damages award, as the plaintiffs already were paid their regular rate for the overtime hours worked.

### **No Wage Act Remedies**

Rice Barn argued on appeal that the trial court's award under the Wage Act for failure to pay FLSA-mandated overtime wages was erroneous, on the grounds that employees cannot elect remedies under the Wage Act if the sole basis for the employer's liability for overtime is the FLSA.

The Supreme Judicial Court unanimously agreed, concluding that "allowing the plaintiffs to pursue wage act remedies for FLSA violations would amount to circumvention of the remedy prescribed by Congress." When Massachusetts employees sue their employers for violations of the FLSA without an independent claim under state law, they are limited to the remedies provided under the FLSA.

In reaching its holding, the court examined the differences between the federal and state overtime laws. Not only is there a significant difference in the amount of liquidated damages available under the Wage Act and the FLSA — treble and double, respectively — but the FLSA, unlike the Wage Act, provides a defense to those damages when the employer can demonstrate a reasonable, good faith basis for its actions.

The statutes of limitations under the Wage Act and FLSA also differ: The FLSA's standard statute of limitations period is two years, with a third year available only if the plaintiff can demonstrate willful conduct by the defendant, whereas the Wage Act's limitations period is three years for all claims.

These differences, the Supreme Judicial Court held, quoting state court precedent, make

clear that allowing an employee aggrieved by a violation of the Federal overtime law to elect State wage act remedies for untimely payments of wages due solely under the FLSA would present an "obstacle to the accomplishment and execution of the full purposes and objectives" of the FLSA.

As the court explained, the FLSA was enacted in 1938 to provide wage guarantees, including overtime wages, to employees covered under the federal law.

To avoid the conflict between federal and state law, the court concluded that "where, as here, the plaintiffs' sole claim for overtime wages rests on the FLSA, they are limited to the remedies provided under the FLSA," and may not receive treble damages and other remedies pursuant to the Wage Act.

The court remanded the case to the trial court to determine the amount of damages available under the FLSA.

While the Supreme Judicial Court's holding is significant insofar as it rejects the conclusion of several lower court decisions allowing Wage Act remedies for violations of the FLSA, the scope is narrow, as it only applies to individuals exempt from Massachusetts overtime requirements, but not the FLSA's overtime requirements.

The plaintiffs in *Devaney* were restaurant workers exempt from Massachusetts overtime requirements under Chapter 151 of the Massachusetts General Laws, Section 1A, which excludes from the commonwealth's overtime laws restaurant workers and 19 other categories of employees, including outside salespeople and individuals who work in hotels and hospitals.

Thus, while the court's holding clarifies an important issue, its impact is limited to employers with employees exempt from state overtime laws, whose claims for overtime wages arise solely under the FLSA.

### **Hybrid Pay Structure Overtime Calculations**

In addition to limiting the damages available for violations of the FLSA, the Supreme Judicial Court held that the trial court improperly instructed the jury on the calculation of overtime wages under the FLSA.

Rice Barn successfully argued on appeal that the trial court's jury instructions contained a methodological error that resulted in plaintiffs receiving two and one-half times their regular rate. This error was due to the fact that the plaintiffs had already been paid for all hours worked in a week, including overtime hours, at their regular rates of pay.

The court rejected Rice Barn's argument that its payment scheme fell within the exemplary day rate scheme set forth in Title 29 of the Code of Federal Regulations, Section 778.112, however, because the plaintiffs were not paid a flat sum for a day's work regardless of the hours that they actually worked in a day. Instead, Rice Barn offset the plaintiffs' day rate by the hours that they were absent from work during the workday.

Given the hybrid pay structure used by Rice Barn, the court instructed that the regular rate for each plaintiff must be "determined by dividing [the employee's] total remuneration for employment ... in any workweek by the total number of hours actually worked by [the employee] in that workweek for which such compensation was paid."

Because the plaintiffs' day rate was intended to compensate them for all actual hours worked, including any hours worked over 40 hours per week, Rice Barn had already effectively paid the employees a portion of the overtime wages due to them under the FLSA and, therefore, they were entitled only to the remaining one-half their regular rate for their overtime hours.

The Supreme Judicial Court remanded the case, instructing the trial court to reduce the plaintiffs' damages by using a one-half multiplier rather than a one and one-half multiplier.

Rice Barn had further argued on appeal that the jury's verdict as to damages was unsupported by the weight of the evidence because the verdict was based solely on the plaintiffs' testimony and records of the hours that they had worked.

Rice Barn, however, had failed to comply with its own legal obligation to maintain time records.

Quoting the U.S. Supreme Court's 1946 decision in *Anderson v. Mt. Clemens Pottery Co.*, the court found that an employer that has failed to comply with its duty to maintain accurate records of wages and hours

"cannot be heard to complain that the damages lack the exactness and precision of measurement that would be possible had [it] kept records" in accordance with the [law].

The court thus rejected Rice Barn's argument, holding that the plaintiffs' own testimony provided reasonable and sufficient grounds for the jury's damages verdict.

### **Takeaways**

The Supreme Judicial Court's decision reduces exposure risks for businesses with Massachusetts employees who are entitled to overtime wages under federal, but not Massachusetts, law.

Rather than automatic treble damages in the event of a finding of liability under the FLSA, employees are limited to double damages, and employers have an opportunity to avoid any damages by showing that they acted in good faith and upon a reasonable basis.

Penalties under the FLSA, however, may still be substantial — and an overtime violation that violates both the FLSA and Massachusetts law will be subject to the commonwealth's automatic treble damages.

To minimize exposure to such damages, employers should continue to prioritize timely payment of all wages owed.

The decision also clarifies the standard for calculating overtime wages under the FLSA. While the FLSA provides for overtime at the rate of one and one-half times the regular rate of pay, the court confirmed that that multiplier should only be applied after accounting for amounts already paid.

Finally, the court's decision underscores the importance of employers maintaining complete and accurate records of their employees' wages and hours, insofar as their failure to do so violates their obligations under state and federal law, and deprives them of the opportunity to counter or object to employees' testimony as to their hours worked.

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[1] *Devaney v. Zucchini Gold, LLC*, 489 Mass. 514 (2022).

[2] 29 U.S.C. § 207.

[3] M.G.L. ch. 149, § 148.