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SECTION REVIEW



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LABOR EMPLOYMENT

Case report: *Croker v. Townsend Oil Company Inc.*

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The Supreme Judicial Court's December 17, 2012 decision in *Croker v. Townsend Oil Company Inc.*, clarifies several issues regarding claims under the Wage Act. Specifically, the decision clarifies the application of the Wage Act's statute of limitations and the enforceability of general release language covering Wage Act claims.

The plaintiffs in *Croker* were both truck drivers, classified as independent contractors by Townsend Oil, an oil distribution company. Each signed contracts requiring full-time delivery of oil and containing non-compete clauses prohibiting delivery for other companies. At the end of their employment, each signed similar termination agreements containing general releases of all claims. After another Townsend driver, Hughes Amero, successfully established that he had been misclassified as an independent contractor rather than an employee, the *Croker* plaintiffs sued, alleging that they too had been misclassified and were entitled to pay, including overtime pay under the Wage Act. Townsend moved for summary judgment, arguing the claims were barred by the Wage Act's three-year statute of limitation and otherwise waived in the general



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release of claims agreed upon in the termination agreements.

STATUTE OF LIMITATIONS

The court considered several questions regarding the statute of limitations. First, the court decided whether or not the plaintiffs' overtime claims (subject to a two-year statute of limitations) could be brought beyond the two-year timeframe via the Wage Act's three-year statute of limitations. The court held that the Wage Act's statute of limitations defined the window in which any Wage Act claim could be brought. However, to permit overtime claims for three years would render meaningless the legislature's two-year statute of limitations for overtime

claims. Therefore, the court concluded that the Wage Act's three-year statute of limitations permits a claim for overtime pay, but in the event the claim is barred by the two-year statute of limitations for overtime claims, recovery is limited to regular pay, not overtime pay.

The plaintiffs also claimed that the statute of limitations should be tolled in this case because of the discovery rule, the defendant's fraudulent concealment of facts, and because of the continuing violation doctrine. The court found that on the facts of this case, there was no evidence to suggest that the defendant fraudulently concealed evidence. Further, the court found the discovery rule inapplicable because the plaintiffs possessed all the facts necessary to reach the conclusion that they might qualify as employees. As to the continuing violation doctrine, the court found that claims related to pay are discrete and separate wrongs, to which the continuing violation doctrine should not apply. The court distinguished Wage Act cases from discrimination claims where often the facts are such that to fully appreciate the nature of the discrimination, one must consider a complete series of events, some of which occurred beyond the statute of limitations. Claims related to pay give rise to causes of action each time they occur and are easily identifiable. There-

fore, the Wage Act provides the right to recover for violations from three years prior to the date the lawsuit is filed.

RELEASE LANGUAGE

Both plaintiffs had signed general releases as part of their termination. Townsend Oil argued that the releases barred their Wage Act claims. The court balanced its policy of enforcing release language with the policies that support the Wage Act as a special protection for employees. It adopted the language and logic of its *Warfield* decision relating to the language necessary to effectively release discrimination claims. To effectively release statutory Wage Act claims, a release must use language that clearly and unmistakably waives the claims in language an ordinary person can understand. Broadly worded legalese will not suffice to effectively release Wage Act claims.

The *Croker* decision provides helpful information to both plaintiffs and defendants. It demonstrates that for plaintiffs, moving quickly on Wage Act claims (like other employment claims) is essential to preserving the ability to pursue causes of action. For defendants, it underscores the importance of using clear and unmistakable language in referring to Wage Act claims when drafting release agreements. ■