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Massachusetts Court Issues Ruling Clarifying Applicability of Holiday Pay Law

In a recent decision by a panel of the Massachusetts Appeals Court, *Drive-O-Rama, Inc. v. Attorney General* (No. 04-P-657, June 28, 2005), the Court decided that the Commonwealth's Holiday Pay Law (M.G.L. c. 136, § 13), required a retail chain to pay its employees a holiday premium of time and one-half on designated holidays, even though the retailer was otherwise exempt from the "blue laws."

Facts and Procedural History

The plaintiff, Drive-O-Rama, Inc., doing business as Mill Stores ("Plaintiff" or "Mill Stores") is a Massachusetts corporation engaged in the retail sale of furniture, gifts, souvenirs and other general merchandise at various locations throughout the Commonwealth. Following a complaint to the Attorney General by one of Mill Stores' several hundred nonexempt hourly employees that the store had failed to pay her holiday pay for work performed on Veterans' Day, 1999, an investigation was commenced. The Attorney General notified Mill Stores that it was legally obligated to provide holiday pay to its nonexempt employees for work performed on the holidays referenced in G.L. c. 136, § 13 (including New Year's Day, Columbus Day, and Veterans' Day). After disclosing to the Attorney General the appropriate payroll information as requested, and prior to the Attorney General initiating any enforcement action against the company, Mill Stores filed a declaratory judgment action.

The Superior Court found in favor of the Attorney General, holding that the Holiday Pay Act was applicable to Mill Stores, and issued an order requiring the company to pay holiday pay to its nonexempt employees. In addition to the requirement of prospective compliance with the Holiday Pay Act, the judgment also ordered Mill Stores to make restitution to its employees in the form of back wages.

Arguments

On appeal, Mill Stores contended that the Holiday Pay Law is inapplicable to its business because its stores do not operate on holidays pursuant to this statute, but rather under a separate statutory provision; the "gift shop exception" to the Sunday laws, M.G.L. c. 136, § 6(29), which predates the holiday pay requirements that the Attorney General sought to enforce. The Holiday Pay Law reads, in relevant part, as follows:

> "The provisions of sections five to eleven, inclusive [prohibiting conducting business on Sunday], shall except as provided in section 14 [permitting sporting and other events on holidays], apply to all legal holidays, except [the holidays referenced above], ...
>
> "Any retail establishment which operates on January first, or November eleventh, the second Monday in October, under the exemption granted by this section, shall pay to those employees working on any of said days, time and one-half, or such larger sum as may be determined by contract; such work shall be voluntary and refusal to work for any retail establishment on such legal holidays shall not be grounds for discrimination, dismissal, discharge, reduction in hours, or any other penalty."
>
> M.G.L. c. 136, § 13, as amended through St. 1989, c. 287, § 58.

The Sunday law "gift shop" exemption on which Mill Stores relies, on the other hand, states in pertinent part that M.G.L. c. 136, § 5 (penalizing conducting business on Sundays) :

> "shall not prohibit the following: '[t]he sale, at retail, of gifts, souvenirs, antiques, secondhand furniture, handcrafted goods and art goods, in an establishment primarily engaged in the sale of such merchandise, or on the premises of a licensed common victualler'."
>
> General Laws c. 136, § 6(29), as amended through St.1979, c. 296

Mill Stores argued that Section 6(29) above does not require the payment of time and one-half to employees and, further, that since the Legislature treats legal holidays in much the same way that it treats Sundays, Mill Stores' "gift shop" exemption should be equally valid for both Sundays and legal holidays. As such, the company urged that it should not be required to pay holiday pay to any of its workers who work either on Sundays or on the enumerated legal holidays.

The Court's Reasoning

The Appeals Court began by examining the statutory language at issue, along with the legislative history leading up to the enactment of the Holiday Pay Law. It noted that, "[s]ignificantly, G.L. c. 136, § 6(29) [the Sunday law], does not authorize any holiday business openings, nor does it permit performance of work on any legal holidays but rather applies only to Sunday openings. The statutory authority that permits Mill Stores, as well as other retailers, to operate on certain enumerated holidays is solely derived from G.L. c. 136, § 13 [the Holiday Pay Law]." The Court then seized on the unambiguous language of the Holiday Pay Law in stating, "[i]t is clear that pursuant to paragraph two of G.L. c. 137, § 13, an employer must pay its employees time and one-half if they work on New Year's Day, Columbus Day, or Veterans' Day. This unambiguous statutory language manifests the legislative intent to require all retailers to provide holiday pay under G.L. c. 136, § 13."

In dismissing Mill Stores' argument that, because the gift shop exemption to the Sunday law predates the Holiday Pay Law, the company has a pre-existing right to avoid the requirement of holiday pay, the Court turned to legislative history for support. It noted that the existing Sunday closing laws were substantially revised and amended in 1962 in order to take into account the changing mores of the day. Under the 1962 amendments, businesses could open on Presidents' Day, Evacuation Day, Patriots' Day, and Bunker Hill Day. St.1962, c. 616, § 2. Later, Veterans' Day was added, with a requirement that employers provide holiday pay for that day. Then, in 1988, the Holiday Pay Law was amended to apply to "retail establishments" operating on the holidays enumerated in G.L. c. 136, § 13 (New Year's Day, Columbus Day, and Veterans' Day). St.1988, c. 311, § 3. The Court stated that in 1988, "when the Legislature amended G.L. c. 136, § 13, to include a provision requiring retailers to provide holiday pay, the revision made no exception for retailers of any kind, nor did it provide for 'grandfather' rights [citing to such express "grandfather" clauses in other statutes]. The absence of such express language from the holiday pay requirement shows that the Legislature did not intend to create any such exemption." The Appeals Court accordingly affirmed the judgment below and held that the Holiday Pay Act is fully applicable to all of Mill Stores' nonexempt retail employees.

Conclusion

Massachusetts' "blue laws" often appear contradictory and are difficult to parse. They are riddled with exemptions and requirements for premium pay, and there is very little case law to make sense of the often murky statutory language. The *Drive-O-Rama* decision is important because it clarifies one aspect of the situation: holiday premium pay is always required, even of businesses that are otherwise exempt from the blue law requirements. The decision sends a clear message to all retail businesses operating in the Commonwealth: compliance with the premium pay and voluntary service provisions of the Holiday Pay Act will be strictly interpreted and enforced without regard to an employer's "grandfather" status or any established past practices. The decision also indicates that potential liability under the Holiday Pay Act is not limited to an order of prospective compliance, but instead may include a judgment under the Wage Payment Act for overdue back pay, with all of that statute's punitive provisions. Finally, employers should take note of the Attorney General's willingness to take action on complaints received by employees in this regard.

Proskauer's nearly 175 Labor and Employment lawyers are capable of addressing the most complex and challenging labor and employment law issues faced by employers. The following individuals serve as contacts and would welcome any questions you may have:

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