



When a Release Doesn't Release

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December ruling requires different treatment regarding Massachusetts Wage Act

Massachusetts employers may need to use new language in their releases, based on a December 2012 Supreme Judicial Court case. In Crocker v. Townsend Oil Company, Inc., 464 Mass. 1 (2012), the court issued an opinion that requires employers to include specific language waiving Massachusetts Wage Act claims if they want to be protected against such claims in later suits. The Wage Act is a statute that requires prompt payment of wages to employees.

Why is Crocker important?

- In Crocker, an employer terminated its contracts with two employees. The employer paid the former employees several thousand dollars in exchange for their signing of termination agreements that included reciprocal general releases. The purpose of the releases was to free the employer of all liability to the employees. The releases turned out to be insufficient to protect the employer against Wage Act claims.

What was wrong with the release in Crocker?

- The Wage Act contains language stating, "No person shall by special contract with an employee or by any other means exempt himself from this section or from section one hundred and fifty." The court reasoned that this language was included for the purpose of providing strong protections to employees and their right to their wages. It is because of this language that the court decided that releases must include specific language to waive Wage Act claims. An employee signing a general release without specific language has not released their Wage Act claims. The release in Crocker did not contain specific language releasing Wage Act claims.

Can I still release claims under the Wage Act through a settlement agreement or other contract?

- Yes. The court also wanted to safeguard its policy regarding the broad enforceability of releases. The court acknowledged the importance of individuals being able to settle claims by compromising or foregoing Wage Act claims where that is the intention of all parties.

What do I have to include in a release to protect myself against Wage Act claims?

- A release is only valid if it is **voluntary and knowing** and contains **express language** that the Wage Act claims are being released. According to the court, Wage Act claims can be released only if the agreement is "stated in clear and unmistakable terms....the release must be plainly worded and understandable to the average individual, and it must specifically refer to the rights and claims under the Wage Act that the employee is waiving."

In the Field

Mark D. Smith has moderated two recent Boston Bar Association panels.

Cutting Edge Issues in Criminal Law on January 15 brought together distinguished judges and practitioners to discuss changes in the last year and anticipated issues for the upcoming year. The panelists discussed the new priorities of the Inspector General's office and the status of the state crime lab investigation. The seminar provided practical advice on emerging trends in criminal law.

Mark co-chaired and spoke to a full room at the BBA Continuing Legal Education course **Recent Developments in the Foreign Corrupt Practices Act and Public Corruption and Government Prosecution**, held February 12. He also moderated the panel on Public Corruption and Fraud Prosecutions. This session's discussion was welcomed because of the new emphasis on prosecuting public corruption and government fraud and new legislation that can enhance penalties for offenders. The speakers shared effective defenses to these prosecutions.

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