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Internships and the Massachusetts Minimum Wage Law

by Adam J. Shafran, Esq.



Adam Shafran

Internships, both paid and unpaid, are popular across nearly every industry throughout the country and in Massachusetts. Many companies, however, offer unpaid internships based on an often mistaken belief that an intern does not need to be paid minimum wages. In Massachusetts, this could not be farther from the truth, as the Massachusetts minimum wage law requires all individuals, regardless of whether or not they are classified as

interns, to be paid at least the state minimum wage unless one of five exceptions apply. They are as follows: (1) someone providing a professional service; (2) agricultural or farm workers; (3) people being rehabilitated or trained under rehabilitation or training programs in charitable, educational or religious institutions; (4) members of religious orders; and (5) outside sales workers who don't make daily reports or visits to the office or place of their employer. If your intern does not fit into one of the exceptions, they must at least be paid the state minimum wage for their time working as an intern.

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Constructive Knowledge of Overtime Work Sufficient for Wage Act Liability

by Robert P. Rudolph, Esq.



Robert Rudolph

The Appeals Court of Massachusetts recently decided that an hourly employee who claimed that she was frequently pressured to work through her lunch break, which she took at her cubicle in the office, could sue her employer for unpaid overtime even though she did not record this extra time in the Company's electronic timekeeping system, Kronos, which was used to punch in and out. G.L. c. 151, Section 1A, the Commonwealth's overtime pay statute, provides that most employees must be paid one and one-half times their regularly hourly

rate for all hours worked in excess of forty (40) hours in a given week.

In the matter of *Donna Vitali v. Reit Management & Research, LLC*, Vitali sued her employer alleging she accrued overtime that was not credited by the Kronos system the company had in place to keep track of the employee's hours. Vitali worked nine to five, five days a week, with a one-hour paid lunch break each day. She also often stayed late after work on days she worked through her lunch. The company had a practice of paying overtime to hourly employees once they clocked forty-five hours for a given week, unless having reported work was done during the one-hour paid lunch. She alleged she was required to work during her

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lunch breaks on average three to four times per week, as people would bring her assignments that required prompt attention. In order to record time worked during lunch in the Kronos system, a special drop-down menu had to be used. It was uncontested that Vitali never successfully used the drop-down menu to record the extra time worked during lunch.

Pursuant to the Fair Labor Standards Act, an employee must prove both that she incurred unpaid overtime work, and that the employer had actual or constructive knowledge that she was working overtime. The employer tried to avoid the implication that it knew Vitali was performing work during her lunch breaks and stressed that it had a sternly worded policy requiring employees to obtain specific approval before working overtime. The Appeals Court found the arguments unveiling, saying the Company failed to show the policy had any application to employees performing work during lunch and that the evidence actually showed employees had "general blanket approval for overtime." Further, evidence indicated that the Company had received multiple employee inquiries on how to record lunch time work and

the Company's payroll supervisor testified, without explanation, that she did not always provide such instructions to all individuals who inquired.

The Appeals Court held that where an employer had reason to know that overtime work was being done, or had the opportunity through reasonable diligence to acquire such knowledge, it cannot deny compensation even where the employee fails to claim the overtime hours. Further, the Appeals Court opined that reasonable jurors could find that although the company had a way to record lunch time work, the written instructions were contradictory, confusing and incomplete and the company was armed with at least constructive knowledge that employees were undertaking lunch time work that should have been credited toward overtime. Instituting and enforcing a strong policy prohibiting overtime without prior approval is an important first step, but once an employer has reason to suspect that an employee is working more than forty (40) hours in a week and allows it to happen, the employer risks liability if that employee is not paid overtime.

Firm News



Rudolph Friedmann LLP congratulates longtime client Davio's Northern Italian Steakhouse and its owner, Steve DiFillippo, on its 30th year anniversary. **Jim Rudolph** started representing Davio's when it had its first location on Newbury Street with 15 employees. Thirty years later, Davio's employs over 800 people, has seven locations on the east coast, from Boston to Atlanta, a line of frozen-food products available in over 4,000 markets across the country and will soon open two new restaurants in Los Angeles, CA and King of Prussia, PA. You can learn more about the Davio's story in Steve's all-access book, *It's All About the Guest*, available on Amazon. Congratulations to the entire Davio's team!



Jon Friedmann and **Joe Merlino** recently had a lawsuit filed against our client dismissed due to Plaintiff's failure to comply with discovery orders. The case involved payment of proceeds from the dissolution of a real estate partnership. The discovery responses were deemed insufficient and the Court ordered all of the Plaintiff's remaining claims stricken and dismissed the matter.

Jon Friedmann and **Adam Shafran** received final approval of the Class Action Settlement in Allied Waste. Ninety four percent of the claims in value accepted the settlement. Also, of the six hundred ninety claimants, only one opposed the settlement.

Bobby Rudolph was recently honored with the Anti-Defamation League's Krupp Leadership Award at the ADL's 13th Annual Young Leadership Celebration. Bobby was co-chair of the event for the previous two years and currently serves as co-chair of ADL's Associate Board.

Jim Rudolph was recently inducted as an ABC Legend of Associated Builders and Contractors ("ABC") at the annual Excellence in Construction Awards ("EICA") dinner this past November. Jim has been a Board member of ABC for several years, is a past president, and is currently the ABC's General Counsel. The dinner will raise money for the ABC Building Our Future Scholarship Fund.



Jocelyn Campbell's second grandchild was born August 20, 2015, Nadia Isla Gradowitz, to daughter Lauren and her husband Jack who live in Manhattan. Jocelyn was recently appointed to the Massachusetts Bar Association, Social Justice Section Council.