

# Wage and Hour Issues in the Dental Profession: Rights and Responsibilities Under the Massachusetts Wage Act

BRIAN J. MacDONOUGH ▲ DAVID I. BRODY

Mr. MacDonough concentrates his practice at Sherin and Lodgen in employment law and executive advocacy, handling a wide range of matters, including discrimination, retaliation, whistle-blowing, wage and hour issues, wrongful termination, and contract negotiation and enforcement. He also counsels and represents clients regarding employment agreements, severance terms, and non-competition provisions. He can be contacted at [bjmacdonough@sherin.com](mailto:bjmacdonough@sherin.com). Mr. Brody is an associate in Sherin and Lodgen's employment law group and litigation department, representing clients in a wide range of matters, including wage and hour issues, wrongful termination, discrimination, retaliation, whistle-blowing, and contract negotiation and enforcement. He can be reached at [dibrody@sherin.com](mailto:dibrody@sherin.com).

Massachusetts is known for having some of the most protective wage and hour laws in the country. The protections provided to employees under the Massachusetts Wage Act (M.G.L. c. 149, § 148 et seq.) are expansive, running the economic spectrum from low-wage earners to highly compensated professionals. Among other protections, the Wage Act imposes strict requirements regarding the timely payment of wages.

These include not only an employee's regular salary or rate of pay, but also holiday and vacation pay and certain commissions, minimum wage and overtime, and the classification of individuals as employees versus independent contractors.

The Wage Act is known as a strict liability statute; any violation, whether intentional or not, will expose an employer to liability—even in situations where an employee voluntarily agrees to defer the payment of wages. Furthermore, the statute defines the term "employer" broadly, imposing individual liability against certain officers, agents, and managers. There are also harsh penalties associated with non-compliance, such as mandatory treble damages and attorneys' fees, which can make disputes particularly dangerous and costly.

Navigating these precarious wage and hour issues under the Massachusetts Wage Act (and its federal counterpart, the Fair Labor Standards Act [FLSA]) can prove challenging, especially for those in the dental profession. Here we highlight two of the most common wage and hour issues—overtime pay and misclassification—that are most relevant to the dental profession.

## OVERTIME PAY: THE "WHITE COLLAR" EXEMPTIONS

As a general rule, an employer is required to pay employees overtime at the rate of one and one-half times the regular hourly rate for all hours exceeding 40 hours in a workweek. The Wage Act, however, provides for certain exceptions to this rule, the most common of



which are the "white collar" exemptions.

The Wage Act provides that employees holding "bona fide executive, or administrative or professional" positions are exempt from the rule and, therefore, not entitled to overtime pay. When faced with a dispute as to what constitutes an executive, administrative, or professional position, courts will closely scrutinize an

employee's actual job duties, and will give little deference to a particular job title.

With regard to the "professional" exemption, the legal analysis will focus on whether the employee's work requires the regular exercise of discretion and judgment, and knowledge of an advanced nature in a field of science or learning customarily acquired by a prolonged course of specialized education. There is hardly a dispute that a licensed dentist engaged in the practice of dentistry will fall within the "professional" exemption under the Wage Act; however, the exemption status for other positions within the dental profession is less clear-cut, and must be assessed on a case-by-case basis.

For example, consider the overtime requirements for dental hygienists under the Wage Act. There is no defined standard regarding exemption from overtime pay; however, the U.S. Department of Labor, the agency charged with enforcing the above-mentioned FLSA, states that "[d]ental hygienists who have successfully completed four academic years of pre-professional and professional study in an accredited college or university approved by the Commission on Accreditation of Dental and Dental Auxiliary Educational Programs of the American Dental Association generally meet the duties requirements for the learned professional exemption."

Another important factor in determining whether a dental employee may fall within the "white collar" exemptions is salary level. There is no specific minimum salary required under the Wage Act;

however, under the FLSA, individuals who would otherwise fall under the “white collar” exemptions also need to be paid a weekly rate of \$455 (\$23,660 per year) to remain exempt from overtime protections. This threshold was established in 2004, and was set to increase significantly under updated regulations issued in 2016. The updated regulations would have increased the minimum salary to \$913 per week (\$47,476 per year), but days before they were set to take effect last November, a federal judge issued an order placing them indefinitely on hold. Although many experts have serious doubts about whether the current administration will support the regulations in court and seek to have them implemented, the substantial salary increase that hangs in the balance makes this an issue that all employers must keep a careful eye on.

### MISCLASSIFICATION (EMPLOYEE VS. INDEPENDENT CONTRACTOR)

In Massachusetts, it is often remarked that all workers are essentially “employees.” While this, of course, is not true, it does bring to attention the rigid standards for determining whether an individual is properly classified as

an employee or an independent contractor under the Wage Act.

There is a three-part test used to determine this classification status. In order for an individual to be properly classified as an independent contractor, it must be established that the person is (1) free from direction and control in connection with the performance of the service; (2) providing services outside the usual course of the business; and (3) engaged in an independent trade, profession, or business. Importantly, all three prongs of the test must be satisfied.

Dental professionals, specifically, must give special attention to the second of these three classifications. For example, a dentist “moonlighting” at a small practice, who has the ability to select his or her own hours and cases, may very well satisfy requirements one and three; however, unless the employer can establish that the services provided are outside the course of its regular business, the individual will be deemed an “employee” for purposes of the Wage Act (even if the dentist prefers to be treated as an independent contractor). Furthermore, if a dispute arises regarding compensation and it is determined that the dentist is, in fact, an “employee,” the

individual will be entitled to damages equal to the value of wages and benefits that he or she should have originally received as an employee.

### NON-COMPLIANCE CAN BE PAINFUL AND LEAD TO SIGNIFICANT DAMAGE AWARDS

The wage and hour laws are complex, often-times confusing, and ever-changing. Whether it's a dispute regarding the timing of and/or non-payment of wages or issues regarding misclassification and/or entitlement to overtime, dental professionals need to be aware of their rights and responsibilities and should, given the strict rules and penalties associated with non-compliance, consult with legal counsel when issues arise. **JMDS**

### Practice Management Tips

The MDS is dedicated to helping dental professionals manage their practices from navigating through guidelines and regulations to understanding the impact risk management has on their practices. Please visit [massdental.org/practicemanagement](http://massdental.org/practicemanagement) to find resources and tools to help you manage your practice.



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