

# Massachusetts Appeals Court Clarifies Issues Regarding Overtime Compensation Defenses

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Employees who claim that their employers misclassified them as exempt from the overtime requirements of Massachusetts law frequently attempt to recover overtime pay for hours worked outside the statute of limitations applicable to statutory overtime claims. In pursuing these claims, employees often argue that the statute of limitations should be tolled because their employers misrepresented their entitlement to overtime pay to them, and/or they assert common law claims that have a longer statute of limitations. In cases where they experience some form of adverse action, employees often also assert a retaliation claim based on vague statements that they made to their employers about their exempt status and compensation. The Massachusetts Appeals Court's recent decision in [\*Tam v. Federal Management Co., Inc.\*](#) now makes it more difficult for employees to prevail on any of these arguments.

## Relevant Background

Mary Jane Raymond worked for Federal Management Co., Inc., as a property manager at one of its apartment buildings. From the outset of Raymond's employment, the company paid her a salary and classified her as an exempt employee under state and federal wage and hour laws. At some point during her employment, Raymond allegedly began to feel that her salary was inadequate to compensate her for the hours that she was working, and she "complained to Federal [Management] that she felt overworked and underpaid." After Raymond raised these concerns, the company terminated her employment.

Following her discharge, Raymond asserted claims against Federal Management for unpaid overtime under the Massachusetts Minimum Fair Wage Law (M.G.L. c. 151, § 1) and various common law theories (such as breach of contract and promissory estoppel), and for retaliation under the Massachusetts Wage Act (M.G.L. c. 149, § 148A). The trial court dismissed Raymond's claims, and she appealed that decision to the Massachusetts Appeals Court.

## Analysis

The Massachusetts Appeals Court affirmed the dismissal of all three of Raymond's claims. First, the

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court held that Raymond's overtime claim under the Minimum Fair Wage Law was time-barred. The statute of limitations in effect during Raymond's employment required her to file her statutory overtime claim within two years after the events giving rise to it. Although Raymond filed her claim more than two years after her discharge, she attempted to bring it within the statute of limitations by invoking the doctrine of fraudulent concealment. Under the fraudulent concealment doctrine, the statute of limitations is tolled until the plaintiff discovers facts giving rise to a claim if the defendant had actively hidden those facts from the plaintiff. Raymond argued that the company had engaged in fraudulent concealment by classifying her as exempt and leading her "to believe that she was not entitled to overtime." The court rejected this argument, reasoning that even if the company had misclassified Raymond as exempt, "she was aware of all of the facts needed to appreciate that Federal [Management] may have owed her unpaid overtime."

Second, the Appeals Court analyzed Raymond's breach of contract and promissory estoppel claims for unpaid overtime and found that they were deficient. To prevail on either claim, Raymond was required to show that the company had promised to pay her overtime. According to the court, not only did Raymond fail to make such a showing, her allegations that the company had repeatedly told her that she was an exempt employee who was not entitled to overtime pay precluded her from establishing the promise by the company, which was necessary to support these claims. As a result, the Appeals Court upheld the trial court's decision to dismiss her breach of contract and promissory estoppel claims.

Finally, the Appeals Court rejected Raymond's retaliation claim. According to the Appeals Court, although an employee need not "expressly invoke her statutory rights for a retaliation claim to lie," "abstract grumblings' about pay are not sufficient" to trigger the Wage Act's anti-retaliation provisions. Because Raymond's allegedly protected activity consisted only of general, informal statements to the company that "she felt overworked and underpaid," the Wage Act did not protect them. Accordingly, the Appeals Court affirmed the trial court's dismissal of Raymond's retaliation claim.

## Takeaways

The Appeals Court's decision in *Tam* is noteworthy for three reasons:

1. An employer's misclassifying an employee as exempt from the overtime requirements of Massachusetts law is not sufficient to invoke the doctrine of fraudulent concealment and toll the statute of limitations for a claim for unpaid overtime under the Minimum Fair Wage Law.
2. Employees who are allegedly misclassified as exempt are unlikely to prevail on breach of contract or promissory estoppel claims for unpaid overtime because the fact that their employers told them that they were exempt is inconsistent with the notion that their employers promised to pay them overtime, which they are required to prove as a precondition to these claims.
3. Although employees do not have to refer specifically to their statutory rights or file an elaborate complaint relating to their compensation to have a viable retaliation claim under the Wage Act, according to *Tam*, they must do more than express their general dissatisfaction with their hours of work and pay.

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