

DISTRICT OF COLUMBIA COURT OF APPEALS

Appeal No. 18-CV-1201

Balasubramaniam Sivaraman,
Appellant,
v.
Guizzetti & Associates,
Appellee.

APPEAL FROM THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

**BRIEF FOR
METROPOLITAN WASHINGTON EMPLOYMENT LAWYERS ASSOCIATION
AS *AMICUS CURIAE*
IN SUPPORT OF APPELLANT**

Roseann R. Romano
D.C. Bar No. 1034895
Murphy Anderson PLLC
1400 K Street NW, Suite 300
Washington, D.C. 20005
(202) 223-2620
rromano@murphypllc.com

Daniel A. Katz
D.C. Bar No. 447412
Washington Lawyers' Committee for
Civil Rights and Urban Affairs
11 Dupont Circle NW, Suite 400
Washington, D.C. 20036
(202) 319-1000 ext. 135
daniel_katz@washlaw.org

Counsel to *Amicus Curiae*

Dated: March 20, 2019

TABLE OF CONTENTS

TABLE OF AUTHORITIES 3

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES 4

RULE 26.1(a) STATEMENT OF AMICUS 4

RULE 29(a)(4)(C) STATEMENT OF INTEREST OF AMICUS 4

STATEMENT OF FACTS..... 5

ARGUMENT..... 5

**I. Interpretation of the Meaning of “Wages” Under the DCWPCL
Requires Examining the Overall Statutory Scheme 5**

**A. The Council Intended for the DCWPCL’s Definition of “Wages” to
Be Interpreted Broadly to Protect All Workers 6**

**B. The Structure of the Definition of “Wages” Suggests the Term
Must Be Broadly Applied..... 8**

**C. D.C. Wage-Hour Rules Require That Employers Pay Certain
Travel Expenses 9**

**II. The Superior Court’s Interpretation of “Other Remuneration”
Ignores the Purpose and Structure of the Law 10**

CONCLUSION 12

TABLE OF AUTHORITIES

Cases

Eaglin v. District of Columbia, 123 A.3d 953, 955 (D.C. 2015)..... 10

District of Columbia Public Schools v. District of Columbia Dept. of Employment Servs., 95 A.3d 1284, 1287 (D.C. 2014) 11

McCormick & Schmick Restaurant Corp. v. District of Columbia Alcoholic Beverage Control Bd., 144 A.3d 1153 (D.C. 2016)..... 5

Statutes

D.C. Code § 32-1301..... 5, 6, 7, 10, 12

Regulations

7 DCMR 900 *et seq.*..... 9

7 DCMR 909.1..... 9–10

Other Authorities

D.C. Council, Comm. of the Whole Report on Bill 20-199 (May 22, 2013) 7

D.C. Council, Comm. on Bus., Consumer, & Regulatory Affairs Report on Bill 20-671 (Apr. 10, 2014)..... 7

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

- (A) *Parties and Amici*. All parties appearing before the Superior Court and in this Court are listed in the Appellant’s Brief.
- (B) *Rulings Under Review*. References to the rulings at issue appear in the Appellant’s Brief.
- (C) *Related Cases*. There are no related cases.

RULE 26.1(a) STATEMENT OF AMICUS

The Metropolitan Washington Employment Lawyers Association is an association. It does not have any corporate parent. It does not have any stock, and therefore no publicly held company owns 10% or more of the stock of this amicus.

RULE 29(a)(4)(C) STATEMENT OF INTEREST OF AMICUS

The Metropolitan Washington Employment Lawyers Association (“MWELA”), founded in 1991, is a professional association and is the local chapter of the National Employment Lawyers Association, a national organization of attorneys who specialize in employment law. MWELA conducts continuing legal education programs for its more than 300 members, including an annual day-long conference which usually features one or more judges as speakers. MWELA also participates as *amicus curiae* in important cases in the District of Columbia, Maryland, and Virginia, the three jurisdictions in which its members primarily practice. MWELA’s members and their clients have a significant interest in the proper interpretation of the D.C. Wage Payment and Collection Law, D.C. Code § 32-1301

et seq., as it serves as an important vehicle for protecting employees' rights to recover unpaid wages from employers.

STATEMENT OF FACTS

Amicus adopts the appellee's statement of the case, Brief of Appellant at 3, and the statement of facts, Brief of Appellant at 5.

ARGUMENT

This *amicus* brief focuses on one issue before the Court: whether the Superior Court erred by ruling that unreimbursed travel expenses which an employer agreed to pay an employee pursuant to an employment contract are not wages within the meaning of the D.C. Wage Payment and Collection Law ("DCWPCL"), D.C. Code § 32-1301 *et seq.* At its essence, this issue is one of statutory interpretation, requiring an examination of the plain language as well as legislative intent and the context of the statutory and regulatory scheme. Considering this evidence of the statute's intended scope, *amicus* urges the Court to conclude that reimbursement of travel expenses promised in an employment contract are wages under the DCWPCL.

I. Interpretation of the Meaning of "Wages" Under the DCWPCL Requires Examining the Overall Statutory Scheme.

This Court views statutory interpretation as a "holistic endeavor" by which the Court "consider[s] not only the bare meaning of the word[s] but also [their] placement and purposes in the statutory scheme." *McCormick & Schmick*

Restaurant Corp. v. District of Columbia Alcoholic Beverage Control Bd., 144 A.3d 1153, 1155 (D.C. 2016).

The statutory language at issue in this case, D.C. Code § 32-1301(3), provides:

“Wages” means all monetary compensation after lawful deductions, owed by an employer, whether the amount owed is determined on a time, task, piece, commission, or other basis of calculation. The term “wages” includes a: (A) Bonus; (B) Commission; (C) Fringe benefits paid in cash; (D) Overtime premium; and (E) Other remuneration promised or owed: (i) Pursuant to a contract for employment, whether written or oral; (ii) Pursuant to a contract between an employer and another person or entity; or (iii) Pursuant to District or federal law.

This case requires the Court to interpret Subsection (3)(E)(i). In examining the legislative intent and statutory structure, it is clear that “other remuneration promised . . . pursuant to a contract for employment” should be interpreted broadly to include promised reimbursement of travel expenses.

A. The Council Intended for the DCWPCL’s Definition of “Wages” to Be Interpreted Broadly to Protect All Workers.

The Council of the District of Columbia enacted the Wage Theft Prevention Amendment Act of 2013 to amend portions of a 1956 statute “for the payment and collection of wages in the District of Columbia.” Pub. L. No. 953, 70 Stat. 976 (1956). As evidenced by the statutory scheme, the overall goal of the amendments was to accord employees full and complete relief from employers who violate the DCWPCL. For example, the Council increased the available liquidated damages from double to treble the amount of unpaid wages, and strengthened employees’ rights to recover

“appropriate restitution and damages.” D.C. Council, Comm. of the Whole Report on Bill 20-199, Attach. 3 at 26 (May 22, 2013).¹

Relevant here, the 2013 amendments also expanded the DCWPCL’s definition of “wages” by enumerating several specific categories of compensation, D.C. Code § 32-1301(3)(A)-(D), and by adding the catch-all at issue here: “other remuneration promised or owed: (i) pursuant to a contract for employment, whether written or oral; (ii) pursuant to a contract between an employer and another person or entity; or (iii) pursuant to District or federal law,” D.C. Code § 32-1301(3)(E).

Though little exists in the way of legislative history relating to the rewritten definition of “wages,” examining the broader historical context of the change sheds some light. Subsequent to the 2013 Amendment which expanded the meaning of “wages,” the Council enacted a more far-reaching set of amendments to D.C.’s wage laws in 2014. Specifically focused on combatting wage theft across all industries, the Council “increase[d] administrative and criminal penalties for employers who commit wage-and-hour violations and expand[ed] employee remedies.” D.C. Council, Comm. on Bus., Consumer, & Regulatory Affairs Report on Bill 20-671, at 13 (Apr. 10, 2014).² The 2014 Amendments further strengthened the wage-payment enforcement regime by expanding the definition of “employer” to capture a broader scope of work relationships. *Id.*

¹ Available at: <http://lims.dccouncil.us/Download/2932/B20-0199-COMMITTEEREPORT.pdf>.

² Available at: <http://lims.dccouncil.us/Download/31203/B20-0671-CommitteeReport1.pdf>.

Together, the 2013 and 2014 Amendments to D.C.'s wage laws demonstrate the Council's intent to prevent wage theft and provide greater protections for wage theft victims. The expanded definition of "wages" expands the types of payments to employees that are subject to wage payment laws and, concomitantly, the amount of compensation which employees are entitled to recover (plus liquidated damages). Thus, through the 2013 and 2014 Amendments, the Council intended that the definition of "wages" play an important role in the expanded remedies for employees victimized by non-payment of wages. Failure to permit full damages for an employer's failure to pay reimbursement of travel expenses promised under an employment contract undermines the legislative intent to provide employees with full and complete relief for their employer's wage law violations.

B. The Structure of the Definition of "Wages" Suggests the Term Must Be Broadly Applied.

As discussed above, the 2013 addition of the "other remuneration" catch-all was intended to expand protections and remedies for employees whose employers violate the law. In addition to the legislative intent demonstrated in the statutory language and relevant committee reports, the structure of the definition of "wages" clearly demonstrates the statute's broad reach.

The enumeration of specific types of compensation that constitute wages in Subsections 3(A) through 3(D) addresses forms of wages that are common across industries. By contrast, Subsection 3(E) is notable for its lack of specificity. Subsection 3(E) encompasses all other compensation employers owe to their employees, whether created by law or contract. In this way, the language of

Subsection 3(E) captures forms of compensation that may be unique to a particular industry or, as in this case, to an individual employment contract. In other words, the structure of the statutory definition indicates it was intended to cover the broadest variety of employment relationships and compensation arrangements, including the one at issue here.

The sweeping nature of the term “other remuneration” aligns with the Council’s intent to provide full and complete relief for wage payment violations. Properly interpreted, Subsection 3(E)(i) encompasses all payments that an employer promises in exchange for an employee’s labor. Nothing in the statutory language or structure justifies limitations based on distinguishing traditional hourly or piecemeal compensation from promised reimbursement of travel expenses—expenses incurred for the benefit of the employer.

C. D.C. Wage-Hour Rules Require That Employers Pay Certain Travel Expenses.

In addition to the DCWPCL’s statutory purpose and structure, the regulatory scheme promulgated by the D.C. Department of Employment Services pursuant to the Minimum Wage Revision Act of 1992, supports finding that reimbursement of travel expenses constitutes wages. *See* 7 DCMR § 900 *et seq.* In general, the “Wage-Hour Rules” address the wages and benefits that employers owe their employees, including minimum wages, overtime compensation, and payment for uniforms and necessary tools. *Id.*

Of particular relevance here, the Rules provide: “In addition to the wages required by this Chapter, the employer shall pay the cost of travel expenses

incurred by the employee in performance of the business of the employer.” 7 DCMR § 909.1. The introductory phrase, “[i]n addition to the wages required by this Chapter,” suggests that certain travel expenses are an additional category of wages or remuneration owed by employers to their employees. In keeping with D.C.’s overall wage-payment enforcement scheme, it follows that travel expenses constitute wages or other remuneration within the meaning of D.C. Code § 32-1301(3).

II. The Superior Court’s Interpretation of “Other Remuneration” Ignores the Purpose and Structure of the Law.

The Superior Court’s determination that contractually negotiated reimbursement of travel expenses does not constitute “other remuneration” within the meaning of D.C. Code § 32-1301(3)(E) is inconsistent with the overall purpose and structure of the law. This interpretation denies adequate recourse to employees who—as a part of an employment contract—agree that part of their compensation is reimbursement of incurred travel expenses, but then do not receive those payments. The broader statutory scheme and purpose of District of Columbia wage laws dictates that “wages” including “other remuneration” must be accorded a meaning broader than the dictionary definition relied upon by the Superior Court. *See* Hearing Tr. at 5–6 (Oct. 12, 2018) (App. 160–61).

In interpreting the meaning of “wages” and “other remuneration” under the DCWPCL, the Court “must first look at the language of the statute by itself to see if the language is plain and admits of no more than one meaning.” *Eaglin v. District of Columbia*, 123 A.3d 953, 955 (D.C. 2015). “Although the ‘plain meaning’ rule is

certainly the first step in statutory interpretation, it is not always the last or most illuminating step. Even where the words of a statute have a ‘superficial clarity,’ a review of the legislative history . . . may reveal ambiguities that the court must resolve.” *District of Columbia Public Schools v. District of Columbia Dept. of Employment Servs.*, 95 A.3d 1284, 1287 (D.C. 2014) (internal citations omitted).

Indeed, although the dictionary definition of “remuneration” may shed some light on the meaning of the statute, the Superior Court was required to look further—to engage in a “holistic endeavor”—to avoid adopting an interpretation based on mere “superficial clarity.” Considering the legislative history and the remedial purpose of the D.C. wage laws, “other remuneration” must be accorded an interpretation to provide employees with broad protections and full relief for wage and hour violations.

In this case, reimbursement of travel expenses was promised to Mr. Sivaraman in an employment contract. The reimbursement can reasonably and only be understood as part of Mr. Sivaraman’s compensation package. When the employer failed to pay this reimbursement, Mr. Sivaraman experienced the same economic loss as when the Company failed to pay portions of his annual salary.

The broad remedial purpose of the DCWPCL instructs the courts not to distinguish between the components of an employee’s overall compensation in determining the amount of unpaid wages he is owed. Rather, “wages,” including “other remuneration,” is intended to be interpreted broadly to allow for maximum recovery across diverse industries and compensation schemes as a means to ensure

that employees do not suffer permanent consequences as a result of non-payment of wages.

That Mr. Sivaraman may be able to recover the reimbursable expense under contract does not take this case outside the purview of the DCWPCL. On its face, the DCWPCL contemplated such a scenario and explicitly included, as wages, remuneration promised by contract. This interpretation fits cleanly within the Council’s intent to provide full and complete relief to employees who are aggrieved by their employers as a result of unpaid wages. Further, this reading fits logically within the regulatory framework promulgated by the Department of Employment Services, which explicitly states that employers must pay for certain travel expenses incurred by their employees.

CONCLUSION

Considering the Council’s legislative intent and the statutory language, as well as the broader regulatory framework, *amicus* submits that the Court must conclude that monies promised by an employer to an employee as reimbursement for travel expenses is “remuneration” within the meaning of D.C. Code § 32-1301(3)(E). Accordingly, the Superior Court erred as a matter of law in holding that an employee could not recover under the DCWPCL for travel expenses that the employer promised to reimburse under an employment contract between the employer and the employee.

//

//

Dated: March 20, 2019

Respectfully submitted,

/s/ Roseann R. Romano
Roseann R. Romano (No. 1034895)
Murphy Anderson PLLC
1400 K Street NW, Suite 300
Washington, D.C. 20005
(202) 223-2620
rromano@murphypllc.com

/s/ Daniel A. Katz
Daniel A. Katz (No. 447412)
Washington Lawyers' Committee for
Civil Rights and Urban Affairs
11 Dupont Circle NW, Suite 400
Washington, D.C. 20036
(202) 319-1000 ext. 135
daniel_katz@washlaw.org

Counsel to *Amicus Curiae*