

Treble Trouble for Employers Who Pay Late Wages.

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Employers beware. Employees take note. An employer's failure to comply with the Massachusetts Wage Act subjects it to substantial penalties in the form of treble damages. No exceptions. No mitigation.



On April 4, 2022, Massachusetts' highest court issued a decision that mandates an award of triple damages and payment of attorneys' fees against employers who fail to strictly comply with the Massachusetts Wage Act. This means that an employer who inadvertently issues a final paycheck a day or more *after* termination of an employee – even for cause – is obligated to pay three times the final paycheck amount, legal fees and interest. Ignorance of the law or good faith efforts to remedy an honest mistake are no exception!

In *Reuter v. City of Methuen*, the Supreme Judicial Court (“SJC”) mandated payment of triple damages for the value of accrued but unused vacation time that the City of Methuen (“City”) failed to timely pay an employee that it had terminated. The City terminated the employee after her criminal conviction of larceny from the City. In doing so, the City failed to include payment for nearly \$9,000 of vacation leave that the employee had accrued. The City subsequently remedied its failure three weeks later by paying the employee in response to the employee's demand for payment of the vacation leave. The employee subsequently instituted litigation seeking treble damages on the full unpaid amount. In response, the City argued that only three weeks of interest on the unpaid amount constituted “damages” under the statute. The SJC rejected the City's argument. The Court concluded that the subsequent payment did not mitigate or reduce the employer's obligation to pay treble damages on the full amount of unpaid vacation time on the date of termination. As a result, the City was also obligated to pay the employee's legal fees – which were significant after years of litigation.

The *Reuter* decision marks a stark change to nearly 20 years of legal practice concerning the Wage Act's penalty provisions. Prior to this decision, employers relied upon *Dobin v. CIOview Corp.*, a 2003 lower trial court decision. *Dobin* recognized a defense for employers so long as the delinquent payment was made prior to the employee's filing of a lawsuit.

In *Dobin*, an employee similarly claimed entitlement to triple damages for late wage payments despite acknowledging that the employer had paid the wages due prior to the lawsuit filing. The *Dobin* trial court denied the employee's claim. In doing so, it found significance in the Wage Act's provision barring a "post-complaint" payment defense and held that "an employer is not required to pay treble the lost wages and benefits if the wage and benefit payments were tardy but made *before* suit was brought." (Emphasis added). Thus, the trial court concluded that a "tardy" but "pre-complaint" payment limits the employee's damages to only interest on the tardy payment – not the full amount of initial unpaid wages.

The *Dobin* decision acknowledged that a tardy, pre-complaint payment constituted a technical violation of the Wage Act and compensated the employee for that tardiness by awarding interest on the late-paid wages. However, *Dobin* precluded a windfall to the employee who had been paid, albeit late, so long as the payment was prior to the filing of a complaint. This is no longer the law of the Commonwealth.

Massachusetts' Wage Act is one the harshest wage laws in the United States. It imposes strict liability on an employer. This means there is no defense to not paying employees on the date they are terminated. Employees are automatically entitled to treble damages, attorneys' fees and interest even for unknowing and technical violations. While *Dobin* previously mitigated damages imposed where an employer acted in good faith to subsequently pay wages, the *Reuter* decision reignites the full impact of the employer's strict liability.

In reaffirming the Wage Act's strict liability in *Reuter*, the SJC reasoned that the employer controls the date of involuntary termination and thus, has control over the circumstances of separation. The Court also recognized that the Wage Act was enacted to protect employees and to ensure the prompt payment of wages. Therefore, "the Legislature's command is clear: if you choose to terminate an employee you must be prepared to pay him or her in full when you do so." This is because the express language of the Wage Act mandates final payment of all wages (including, as was the case in *Reuter*, unused accrued vacation leave) on the day of involuntary termination. In contrast, an employee who elects to leave voluntarily may be paid in the usual course as part of the next pay cycle.

In practice, this means that employees who engage in criminal conduct or substantial violations of company policy warranting immediate termination will need to be placed on administrative leave or suspended until the employer is prepared to pay

all wages due. Employers will also need to ensure that company policies provide for administrative leave or suspension in such circumstances.

It is essential that employers review their employment practices to ensure strict compliance with the statute. The *Reuter* decision eliminates any good faith defense for inadvertent or nominal errors in paying wages. As the SJC reiterated, “[t]he statutory language and purpose of the Wage Act require prompt payment of wages and the trebling of those wages as liquidated damages when they are paid late.”

The *Reuter* holding does not preclude application of the decision retroactively. As such, employers may be subject to substantial multiple damages for wage payment violations dating back three years (which is the limitations period for a wage claim). Accordingly, employers should err on the side of caution when assessing final wages to ensure full payment of all potential wages. In the event of mistake, an employer should also consider prompt payment of multiple damages to reduce the potential for a significant legal fee and interest award as well.

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