Don't Delay: MA Employers Are Now Strictly Liable for Three Times the Amount of Wages for Late Payments With No Safe Harbor for Paying in Full Prior to Suit!

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Under the Massachusetts Wage Act (the "Wage Act"), if an employee voluntarily quits their employment, the employer must pay the employee their final wages, including any earned, unused vacation pay, on the employer's next regular pay day.



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However, when an employee is *involuntarily* terminated, the employer is required to pay the employee's final wages, including accrued and unused vacation pay, on the day the employee is discharged. Paying final wages on the day of discharge can sometimes be challenging, especially if the termination is abrupt (for example, because of an employee's serious misconduct on the day of termination) or when the terminated employee is working remotely and direct deposit is not available. In addition, employers sometimes make payroll errors that result in employees not receiving all of their final pay on a timely basis.

The Wage Act also allows employees that do not receive all wages they are owed to pursue a civil action for damages incurred, including liquidated damages in the amount of three times the wages owed, plus attorneys' fees and costs. During the last decade, courts and litigants took the position that if an employer remedied the wage violation before a complaint was filed with the Attorney General's office or in court, then employers were only liable for three times the accrued *interest* on the late payment, calculated at 12% between the date the wages were due and the date of full payment. Unfortunately, that approach is no longer feasible.

This week, the Massachusetts Supreme Judicial Court (SJC) clarified the

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Wage Act's treble damages provision in Reuter v. City of Methuen, SJC-13121 (Mass. April 4, 2022), holding that employers are strictly liable for any delay in payments, regardless of the reason for the delay (including, for example, a payroll error). The Court reasoned that any delay in payment of final wages could cause the terminated employee serious economic harm, and the legislature sought to prevent that by instituting automatic treble damages for violations of the Wage Act. In that case, the Town of Methuen paid Reuter her earned, unused vacation pay ($8,952.15) three weeks after her discharge for misconduct. The Town will now have to pay her an additional $17,904.30, plus interest and thousands of dollars in attorneys' fees as a result of the delay in payment.

In light of the SJC's decision in Reuter, when employers delay (even for one day!) in paying a discharged employee their final wages upon termination, they are now risking claims for three times the amount owed (plus interest and attorneys' fees). As mentioned above, because employers sometimes struggle to pay terminated employees their final wages on the last day of employment, the SJC's decision in Reuter will likely result in more claims by former employees seeking to capitalize on their employers' missteps. One possible silver lining – former employees and their attorneys may now be more incentivized to resolve wage disputes before "racing to the courthouse" to file a lawsuit because holding off on filing suit will not cause them to risk foregoing potential treble damages.

So what are the takeaways for Massachusetts employers who want to avoid a precarious pitfall (and windfalls for terminated employees)? Make sure that your pay practices are accurate and legally-compliant (including proper classification of workers, payment of all working time and overtime, etc.), and do not discharge any employee unless and until you are prepared to pay them their final wages on the day of termination. If it is not possible to pay the employee's final wages on the termination date but you need to remove them from the workplace (e.g., in the case of misconduct), then you could place the employee on administrative leave until the next day and then pay their final wages at that time. In fact, the Court in Reuter suggested that approach as a possible option.

Nonetheless, the SJC's clarification of what is now an even more "employee-friendly" Wage Act may cause significant burden to employers and result in increased claims by former employees and their attorneys seeking treble damages and attorneys' fees.

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If you have any questions regarding the Reuter case and/or how you can ensure that your organization is compliant with state and federal wage & hour laws, please do not hesitate to reach out to any member of Mirick O'Connell's Labor, Employment, and Employee Benefits Group.

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