

Insights, News & Events

MASSACHUSETTS HIGH COURT: EMPLOYERS ARE ON THE HOOK FOR TRIPLE FINAL PAY EVEN WHEN PAYMENT IS MADE BEFORE CLAIM IS FILED

Insights
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In yet another gift to plaintiffs' attorneys, the Massachusetts Supreme Judicial Court just held today that employees are entitled to automatic triple damages for late final wage payments even where the employer pays the employee the total due before a claim is filed. This shocking ruling in *Reuter v. City of Methuen* is a radical departure from settled law dating back to 2003 and is sure to embolden an already aggressive plaintiffs' bar. What does your business need to know about this unfortunate decision?

How Did We Get Here?

You probably already know that Massachusetts has one of the strictest wage payment laws in the country, mandating automatic triple damages, attorneys' fees, and interest for even technical or unknowing violations. The statute likewise imposes strict liability, meaning it does not matter whether the mistake was an accident, or in some cases, even if you were following guidance issued by the government or courts.

In the context of final pay, the law requires that when an employee is involuntarily terminated, the employer must provide the employee's final wages and the balance of any unused vacation time on the day the employee is terminated. Further, an employer may not use a "post-complaint" payment as a defense to future litigation.

Understandably the immediacy of the payment creates practical problems for employers, especially when the termination is unanticipated, the employee is not present at

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work when they are terminated, where the employee is paid via direct deposit, or where the employer does not have the ability to issue payroll checks (with mandatory FICA and other taxes deducted) at the drop of a hat. In these cases, the employee may receive their final pay a day or two later to account for processing and mailing.

In a 2003 case, *Dobin v. CIOView*, an employee sued claiming entitlement to triple damages for late wage payments despite acknowledging her employer had paid her all that she was due prior to her filing of a complaint. In denying the employee's claim for triple damages, then-Superior Court Justice Ralph Gants provided a pragmatic reading of the wage act, which harmonized the provision barring a "post-complaint" payment defense with the rest of the statute to hold "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." In these circumstances, the employees' damages were limited to interest on the delayed payment.

Justice Gants was subsequently appointed to the Supreme Judicial Court, becoming Chief Justice in 2014. His decision was adopted by many state and federal court judges over the past two decades, because it made sense. It acknowledged a technical violation and compensated the employee for the late payment in the award of interest but avoided an unearned windfall where an employee is paid all that she is owed, albeit belatedly.

The SJC Upends 20 Years of Settled Law

In 2013, the City of Methuen terminated a custodian in its school department following her conviction for larceny. At the time of her termination, the custodian had accrued nearly \$9,000 in unused vacation time. For reasons unknown, the city paid the vacation time three weeks after the termination. In response to a 2014 demand letter, the city paid an additional amount to cover the trebled interest on the late payment as required by the *Dobin* case.

The custodian filed suit in the Superior Court seeking full treble damages, attorneys' fees, and interest. The Superior Court, applying *Dobin*, entered judgment only for the attorneys' fees and interest. On appeal, the Supreme Judicial Court summarily dispensed with *Dobin* and the 20 years of settled cases interpreting it, finding instead that the wage act compels triple damages for the amount of the late-

paid wages, regardless of whether a complaint has been filed. According to the SJC, “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.” If that payment is not timely, then the employer is liable for treble damages.

How Can You Protect your Business?

This decision is just one in a long line of employee-friendly wage and hour decisions to come out of the Massachusetts Supreme Judicial Court in the last few years. As employers struggle with their return from government-mandated shutdowns and other restrictions, this decision is the last thing employers need. There are some steps you can take, however, to put yourself in the best position to navigate this unfortunate new day.

Be Proactive

Moving forward, you must be proactive when considering involuntary termination decisions. Consider lining up your final pay checks in advance of the actual termination. In instances where the termination is unanticipated, you should consider suspending the employee to provide enough time to process any final payments owed to the employee.

Use a Courier, or Deposit Amounts Early

But these solutions are unfortunately not one-size-fits-all. As employers continue to grow their remote workforce, they may not be able to physically meet with the terminated employee to provide the final paycheck. Likewise, for multi-state employees, the Massachusetts employee may be the only employee in the state. In these circumstances, you should consider the use of a courier, or issue payments (either by check or direct deposit) in advance of informing the employee of their discharge (if a suspension is unworkable). This of course creates other issues – such as the potential for the employee to receive their final pay before they know they have been terminated.

Conduct a Self-Audit ASAP

This decision also leaves open the question of whether its holding will apply retroactively. Unfortunately, Massachusetts courts are historically hostile to arguments that a new decision should not apply retroactively, even

where the practice was recommended by a government agency, or in this case, specifically endorsed by a prior court decision. You should consider auditing any involuntary terminations over the past three years to determine whether any departing employees were not paid on the day of their termination.

Conclusion

We will continue to monitor this matter and any other related developments. For employers with multi-state operations, now is a great time to review final pay practices in each of your jurisdictions to ensure compliance. To assist in that effort, Fisher Phillips provides complimentary access to two different interactive maps, one covering [voluntary](#) terminations and one for [involuntary](#) separations.

Please make sure you are subscribed to [Fisher Phillips' Insight system](#) to ensure you gather the most up-to-date information about this case and other labor and employment issues affecting Massachusetts employers. If you have questions, please contact your Fisher Phillips attorney, the [author](#) of this alert, or any attorney in our [Boston](#) office.