

Failure to Pay Wages Due at Discharge Can Incur Triple Damages in Massachusetts

Late payment of final compensation just became significantly more expensive for employers with workers in Massachusetts. In an opinion on April 4, 2022, *Reuter v. City of Methuen*, the Massachusetts Supreme Judicial Court held that companies that fail to pay wages owed to employees on the day of their termination may be liable for up to triple the amount of the previously owed wages. These treble damages are based on principles of strict liability, meaning that they can be applied regardless of the intent of the employer or how quickly it corrects the error. The decision marks a major departure from what has been the prevailing interpretation since 2003.

Massachusetts Previously Only Required Trebling of Interest

Prior to the *Methuen* decision, Massachusetts had only required that treble damages be paid on the accrued interest on whatever wages were owed at the time of termination. Section 148 of the Massachusetts Wage Act (the Act) requires employers to pay all wages owed to employees on the same day of their involuntary separation from employment (e.g., discharge, termination, layoff). These wages can include benefits such as accrued vacation or holiday time subject to the individual agreement between the employer and employee. Section 150 of the statute provides that any employee who prevails in a private cause of action to recover unpaid wages in violation of Section 148 "shall be awarded treble damages, as liquidated damages" in addition to attorneys' fees and costs.

Since the 2003 decision in *Dobin v. CIOview Corp.*, Massachusetts courts have interpreted these treble damages to apply only to the interest accruing between the discharge and the time of actual payment. In *Dobin*, the plaintiff was terminated on December 13, 2000, and on the same day, her employer gave her checks that covered her wages in full—checks dated December 15, 2000. The same day she received the checks, the plaintiff filed a complaint alleging violations of the Act.

The *Dobin* interpreted Section 150 ("the defendant shall not set up as a defen[s]e a payment of wages after the bringing of the complaint") to hold that providing post-dated checks amounted to "pre-complaint" payment, so the plaintiff was not entitled to treble damages on the wages. The plaintiff was, however, still entitled to the "foregone interest she suffered from the delay in paying her monthly wages, trebled." This amounted to three times the interest for the two days of late payments, significantly less than triple the total wages she was owed.

This interpretation, where employers could mitigate penalties through late or delayed payment after termination, was the prevailing law following *Dobin*, and remained so until this year.

***Reuter v. City of Methuen* Overturns Settled Law**

In *Reuter*, a custodian for the city was terminated after being convicted of larceny. At the time of her termination on March 7, 2013, she had accrued approximately \$9,000 worth of unused vacation time. Her employer did not pay her for the accrued vacation until March 28, 2013—three weeks after her termination. Between the

termination and the receipt of the checks, the employee sent a demand letter to the employer requesting an amount equal to triple the owed vacation pay minus the amount actually sent to her, plus attorneys' fees (about \$23,000). Consistent with *Dobin*, the employer responded to the demand letter with an amount equal to triple the accrued interest of the value of the money between March 7 and 28, about \$180. The employee sued, seeking triple the wages, as she originally demanded.

The Massachusetts Supreme Judicial Court emphasized the purpose of the Act as being "for the protection of employees, who are often dependent for their daily support upon the prompt payment of their wages." The court therefore looked to the specific language of the Act, saw no intent to bar the trebling of wages, and found "no room for wiggle room" in the language requiring that "any employee discharged from such employment ... shall be paid in full on the day of his discharge." The court reasoned that because the consequences of not receiving such payments in a timely manner can be "severe" for an employee, even late payments constitute unambiguous violations of the statute.

The *Reuter* court roundly rejected *Dobin*, opting instead for a more literal reading of the statute's provision that "the defendant shall not set up as a defense the payment of wages after the filing of a complaint." The court expressed concern that employers take advantage of the leeway granted by *Dobin* to avoid making wage payments until the day before a complaint is filed. The *Reuter* court also reasoned that tripling interest alone was not enough to properly compensate unpaid employees, who "rely on such payments to pay for [their] family's housing, transportation, food and clothing, tuition, and medical expenses."

Practical Considerations

This decision imposes severe consequences for employers; even inadvertent miscalculations of pay at termination may result in treble damages. In an effort to mitigate the harsh effects of its ruling, the *Reuter* court pointed to Section 148 of the Act, which distinguishes discharge from other forms of separation. While, per the court, "if you choose to terminate an employee you must be prepared to pay him or her in full when you do," suspensions do not fall under the protection of the Act.

If proceeding with an involuntary termination, an employer that cannot meet with the employee in person to present them a check should explore alternate payment methods to comply with the Act's same-day payment requirement (e.g., direct deposit on the termination date, courier delivery of check).

Retroactive Application?

Finally, the court left open whether this holding may apply retroactively. As such, until the question is answered in subsequent litigation, legislation, or regulation, employers should prepare for the possibility of lawsuits seeking treble damage liability for past instances of miscalculated backpay extending back up to three years (the Act's statute of limitations).

Given the serious consequences and exceedingly slim margin for error under the court's interpretation of the Act, Massachusetts employers should consult with qualified wage-and-hour counsel.

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