

Alert | Labor & Employment



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Massachusetts Employers Strictly Liable for Late Payments Under Wage Act

This GT Alert covers the following:

- Massachusetts' highest appellate court holds that courts must award triple damages to successful plaintiffs paid their wages late.
- Employers face substantial liability if proper payment is not made to an involuntarily separated employee.

On April 4, 2022, the Massachusetts Supreme Judicial Court (SJC) held, in *Reuter v. City of Methuen*, that the Massachusetts Wage Act, G.L. c. 149, § 148, requires courts to award triple damages to successful plaintiffs paid their wages late—even if their employer paid them in full and regardless of whether the wages were paid one day or one year after they were owed.

Under the Wage Act, employers must pay employees involuntarily separated any earned, unpaid wages on the final day of their employment (employees who voluntarily separate employment must be paid by the next payroll date). The dispute in *Reuter* centered on the proper measure of damages for a Wage Act violation when the employer paid wages after the statutory deadline but before the employee filed a complaint. Under those facts, the SJC concluded the employer owed treble damages, even though the employer paid the wages in full several weeks after the plaintiff's termination.

Facts and Procedural History

Plaintiff, a custodian for the city of Methuen's school department, was convicted of larceny and terminated from her job. On the day of her termination, the city owed plaintiff for accrued vacation, which was paid three weeks later. Under the Wage Act, wages include any vacation payments due an employee under a written or oral agreement. In response to plaintiff's demand for a trebling of the late wages and attorney's fees, the city paid trebled interest for the three-week delay. Until the SJC's decision, lower-court case law held that such interest payments were the proper measure of damages where wages were paid late but a lawsuit had not yet been filed.

The complaint asserted a claim under the Wage Act for failure to pay vacation pay on the day of termination, which claim the employer did not dispute. The trial judge—consistent with prior case law—held that plaintiff was entitled only to treble *interest* for the three-week delay in receiving her vacation pay, and attorney's fees. The city appealed from the award of attorneys' fees, and plaintiff cross-appealed from the determination that she was not entitled to treble lost wages.

The Decision

The question of first impression for the SJC was whether plaintiff was entitled under G.L. c. 149, § 150 to a trebling of late-paid wages or, as the trial judge ordered, trebling of interest only.

The court found that the remedy for late payment of wages provided under G.L. c. 149, § 150 is explicit: the employee “shall be awarded treble damages, as liquidated damages, for any lost wages or other benefits.” Accordingly, the court held that given “the strict time-defined payment policies underlying the Wage Act, and the liquidated damages provision providing for treble damages for ‘lost wages and other benefits,’” the employer in *Reuter* was “responsible for treble the amount of late wages, not trebled interest.” The plaintiff was also entitled to attorneys' fees and costs as the prevailing party.

The court recognized “that this rule puts employers in a difficult position when immediately terminating employees for misconduct as in the instant case.” The court found, however, that if an employer decides to terminate an employee, it “must be prepared to pay him or her in full.” According to the court, this “may mean that employees who, like the plaintiff, have engaged in illegal or otherwise harmful conduct may have to be suspended rather than terminated for a short period of time until the employer can comply” with the Wage Act.

Implications

Under *Reuter*, employers face substantial liability if proper payment is not made to an involuntarily separated employee.

There are no exceptions under the statute. Even if an employee needs to be terminated on the spot for serious misconduct, employers must be prepared to pay that employee in full at that time.

This decision creates practical challenges for employers. For example, in the current remote workforce environment, an employee may not be at the workplace at the time of termination. The use of direct deposit and third-party payroll providers presents logistical obstacles for same-day payment. Any technical issues as to payment, including the payroll provider's failure to initiate a payment as directed by the employer, or even a cyberattack or system failure beyond the employer's control, would apparently not provide any relief from mandatory treble damages.

The *Reuter* decision may also incentivize employers to challenge wage claims more aggressively and to be increasingly hesitant to settle such claims. Late payment of a contested amount no longer eliminates the threat of treble damages, but instead could be viewed as an admission that treble damages are automatically owed.

There may be more to come. The concurring opinion suggested that in addition to an employee being entitled to treble damages on the principal amount owed, they may also be entitled to other “damages incurred” including consequential damages stemming from a late payment, an issue the SJC declined to consider under these facts. The potential retroactive effect of this decision on previously resolved wage and hour claims is also a looming question.

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