

Massachusetts Enacts Law Requiring Treble Damages for Wage Payment Violations

By Joseph T. Bartulis, Jr., Esq.

As Massachusetts employers know, they are subject to extensive and complex wage and hour laws. With the recent passage of new legislation, that exercise will soon become far more costly for the unwary employer. Under recently enacted legislation which becomes effective on July 13, 2008, employers who violate the Commonwealth's wage and hour laws will now be required to pay treble (triple) damages even if the violation was unintentional.

Prior to this recent legislative enactment, plaintiff-employees could seek treble damages but courts were disinclined to award them – in light of the 2005 case of *Wiedmann v. The Bradford Group*. In that case, the Massachusetts Supreme Judicial Court held that awarding treble damages was discretionary rather than mandatory. The *Weidmann* court went on to hold that treble damages were punitive and should only be awarded in cases of “willful misconduct.” It was in response to the *Wiedmann* decision that the new law was enacted. The new law draws no distinction between willful and unintentional violations. Now treble damages will be awarded in all instances. The court will be without authority to exercise discretion.

In promulgating this new law, the Legislature stated that it was clarifying its intentions regarding the prior law's treble damages provisions. Given its “clarification” statements, it is plausible that plaintiffs' attorneys might argue that the new statute should be applied retroactively to violations which occur before the July 13th effective date of the law. Given that the *Weidmann* decision requires willful misconduct to recover treble damages it seems less likely that plaintiffs will be successful in retroactively applying the new law but we will have to see.

Given that Massachusetts' wage and hour statutes already enable successful plaintiff's to recover attorneys' fees, those costs, when coupled with the treble damages provisions of the

new law, greatly increase the financial exposure for employers and could prove very costly. Moreover, given the fertile landscape for bringing such claims, it is anticipated that the number of class action lawsuits on wage and hour compliance may likely increase as well. As such, it is imperative that Massachusetts employers take all necessary steps to make sure they are in compliance with the myriad of Massachusetts wage and hour laws, including, but not limited to, overtime calculations, the calculation of one' “regular rate” (upon which one's “time and one-half” overtime rate turns), exempt versus non-exempt status of “salaried” employees, and the classification of individuals as “independent contractors,” among many others.

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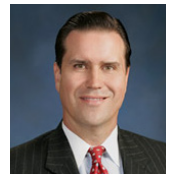
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