

# Massachusetts Employers Immediately Liable for Triple Damages and Attorneys' Fees for Wage Act Violations

Insights

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In a landscape-shifting, pro-employee decision, Massachusetts' highest court has ruled that employers are strictly liable under the Massachusetts Wage Act for treble damages and attorneys' fees the very minute the employer fails to pay wages, even if the nonpayment is rectified before the employee brings a claim. The Court's decision represents a significant deviation from long-held understandings and case law, under which employers could avoid the severe penalties of a missed or late wage payment by making that payment before the employee filed a complaint in court. Under the new ruling, employers lack that safety net to correct even innocent mistakes or miscalculations in wage payments. Instead, as discussed in more detail below, significant legal and financial consequences will now trigger automatically. The Court's new interpretation will be especially challenging for employers who need to fire an employee on the spot and are not prepared to pay all wages owed that same day.

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## Key Takeaways:

- Employers no longer have any grace period or escape hatch for paying wages, including commissions and accrued vacation pay, when an employee is involuntarily terminated. Innocent delays and good faith miscalculations, even if quickly remedied, may have significant financial consequences.

- Employers who terminate an employee must be prepared to pay all wages and PTO owed immediately. This may be challenging when a termination is unexpected (for example, an employee who assaults a coworker) or when the wages owed require some investigation or analysis (for example, a salesperson earning commissions).
  - If a time-sensitive and unplanned termination occurs, employers should suspend Massachusetts employees for a short period (with pay) rather than immediately moving forward with a termination, which will trigger the obligation to pay all wages. This extra time will provide an opportunity to calculate wages owed and facilitate a timely payout under the law.
  - Employers who discover a missed wage payment or receive a demand letter for unpaid wages and hope to quickly end the dispute by paying all, or some portion, of the wages claimed may already be liable for three-times the amount in dispute and should immediately contact counsel for assistance.
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On April 4, 2022, in *Reuter v. City of Methuen*, the Massachusetts Supreme Judicial Court (SJC) held that all violations of the Massachusetts Wage Act trigger treble damages, even before an employee files a claim for unpaid wages. This ruling eliminates an employer's ability to avoid the punitive elements of the Wage Act by correcting wage payment errors, eviscerating a safety net that Massachusetts employers have come to rely upon.

The Massachusetts Wage Act states that prevailing plaintiffs "shall be awarded treble damages, as liquidated damages, for any lost wages and other benefits and shall also be awarded the costs of the litigation and reasonable attorneys' fees." The Act also states that the defendant cannot use a post-complaint payment of wages as a defense to a claim under the Wage Act.

Since 2003, Massachusetts courts have relied on *Dobin v. CIOview Corp.* when determining liability for Wage Act violations. In *Dobin*, future Chief Justice of the Supreme Judicial Court Ralph Gants (who died in 2020), then an Associate Justice of the Superior Court, held that an employer who corrected a Wage Act violation before a complaint was filed in court would be liable for treble damages on the *interest* of the unpaid wages, not on the wages themselves. Under this interpretation, employers were able to correct any mistakes and comply with the Wage Act without incurring significant liability, so long as they acted expeditiously enough to head off the employee's race to court.

After nearly twenty years, the *Dobin* safety net is gone. Now under *Reuter*, employees automatically may obtain triple damages for late wage payments, *even if*

the employer pays the employee in full before a claim is filed.

In *Reuter*, the City of Methuen fired an employee after she was convicted of larceny. Several weeks later, the City paid the employee approximately \$9,000 for unused vacation days. The employee demanded treble damages for the late payment of her vacation days. The City paid treble damages on the interest for the delay, assuming that would resolve the dispute. However, the employee sued for treble damages on the full \$9,000 and for her attorney's fees. The employee also attempted to bring a class claim on behalf of all City employees who were involuntarily discharged in the prior three years.

The Superior Court denied class certification and then sided with the employer on the issue of damages, finding that the employee was only entitled to treble damages on twelve percent interest for the three-week delay in receiving her vacation pay, which she had already received. The Superior Court's decision was not all good for the employer, however, as the lower court awarded the employee approximately \$75,000 in attorneys' fees. Both sides appealed.

Siding with the employee, the SJC overturned the lower court and ruled that the City was strictly liable for any delay in payment of wages because the Wage Act states "any employee discharged from such employment shall be paid in full on the day of his discharge." The SJC rejected Judge Gants' analysis in *Dobin*, finding permitting employers to correct their wage payment failures and errors incentivizes employers to withhold payments and improperly puts the burden on employees to take legal action to obtain wages already owed to them. The *Reuter* court concluded that the City is liable for treble damages on the late vacation-days payment, and is liable for plaintiff's reasonable attorney fees.

Going forward, employers must be aware of this new ruling and its unfortunate implications for liability surrounding involuntary termination decisions.

## **Action Steps**

- Employers should make sure their payroll policies comply with the Massachusetts Wage Act, as there is no longer any opportunity to correct an error.
- Employers should implement a short suspension for any unanticipated employee terminations, to make sure that all wage payments owed will be made on the day of termination.
- Employers should reassess their litigation and settlement strategies now that settling wage claims will be much more expensive.

- Employers should review their vacation and PTO policies to ensure the employer knows what needs to be paid out when employees leave the company.
- Employers should also review commission plans and other sophisticated compensation plans to ensure the employer knows what needs to be paid out when employees leave the company.

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