



# FINAL WAGE PAYMENT ERRORS: No More Safe Harbor in Massachusetts

By Samantha Halem

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**W**hile Massachusetts is uniquely employee-friendly when it comes to final wage payments, the Supreme Judicial Court (SJC) just narrowed the margin of error allowed for employers to nil.

In a ruling handed down on Monday, April 4, the SJC ruled that in order to comply with the Massachusetts Wage Act, employers must pay terminated employees in full on the date of termination and those employees are automatically entitled to treble damages (three times the late payment) without even needing to file a Wage Act complaint.

The Wage Act already mandates automatic triple damages, attorney fees and interest for violations of the act, even if they are unknowing or technical errors. Accidents or mistakes are no excuse. Former employees may bring a private action under the Act "for injunctive relief, any damages incurred, and lost wages." However, up until now the Massachusetts courts have employed a practical "post-complaint" payment defense. The idea was that an employer who has made a late payment due to a technicality but

has cured an error before the former employee files a complaint, is not liable for treble damages because the error was corrected and did not require legal enforcement. The federal and lower courts that examined the issue found that the employee was entitled only to treble any interest that accrued on the wages during the delay.

In *Reuter v. City of Methuen*, the SJC departed from that approach and determined that an employer's failure to pay an involuntarily terminated employee imposes strict liability upon the employer for treble damages, fees and interest. In this case, an employee was owed approximately \$9,000 for accrued vacation time that, for whatever reason, the employer did not pay out to Reuter (the plaintiff) until three weeks later (and prior to Reuter filing a wage complaint). The employer paid treble the



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interest for the time the wages were delayed, but the plaintiff demanded payment of treble damages due to the three-week delay, and the SJC agreed. The issue of what happens when the “employer pays wages after the deadlines provided in the act but before the employee files a complaint” was, to the Court, clear: “[g]iven 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 Court] conclude[d] that an employer is responsible for treble the amount of late wages, not trebled interest. As the prevailing party, the plaintiff is also entitled to attorney’s fees and costs.”

At the end of this lengthy fight, the employee who was delayed in receiving \$9,000 in vacation for three weeks ended up getting \$18,000 more for the trebling of the by-now paid vacation, plus all the employee’s attorney’s fees (through the appeal), plus interest dating back to the start of the case.

It is imperative that employers prepare prior to involuntary terminations. In an ideal world, the amount of accrued vacation and other wage-related benefits should be calculated prior to any termination meeting, and a check should be cut to give the employee on their way out the door, settling all accounts.

The problem for many employers is that due to automated payroll systems, it can be impossible for a payroll company to issue a check or initiate a direct deposit at the drop of a hat. In this case, there are a few options. The first approach, as described above, is to plan ahead for the termination, calculate the amount that will be owed on the day that the payroll company can issue the amount owed and tell the employee that the payment will be in their account by the time they leave the building on their last day. The second approach, set forth by the SJC, is to suspend the employee while the employer is processing the paycheck. What the SJC did not tell us is whether such a “suspension” should be paid or unpaid. Therefore, the safest method is to continue to pay the employee regular wages until such time as the final wage payment can be paid.

We strongly recommend that you advise your clients to review their payroll processes now. Technical mistakes, delays in payments and even a system failure could have very expensive consequences. In particular, clients need to be cognizant that technical errors that were previously dismissed because they were rectified in a matter of days, must now be fixed.

### Clients should focus on:

- Ensuring terminated employees are paid on the date they are terminated and that employees

that resign are paid on the next regularly scheduled payday

- Ensuring hourly employees are paid at least bi-weekly, not bi-monthly
- Ensuring no one is paid on a monthly basis unless they expressly ask for that status in writing
- Ensuring vacation payouts happen on the day someone is terminated
- Reviewing and revising commission plans to ensure employees are paid in a timely manner

Going forward, before correcting a payroll error, talk to experienced employment counsel. In the past, it was an easy decision to fix an accidental underpayment by paying the employee. Now that correction will leave the company liable to treble damages. ♦

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