

## New Law Triples Exposure For Mass. Employers

*Tuesday, Apr 29, 2008* --- A controversial amendment to Massachusetts wage and hour laws was enacted April 14, 2008, and will likely cause significant changes to the employment litigation landscape in the Commonwealth.

Under the new law, employers must pay triple damages for violations of the state's complex wage and hour laws.

Prior to this change, employees could request triple damages, but judges had the discretion not to award them.

Triple damages are now mandatory, and employers can no longer argue as a defense that they acted in good faith.

Governor Patrick refused to sign the so-called "treble damages" bill because he believed it was unfairly punitive.

In a letter to the Massachusetts Senate, he urged legislators to amend the bill to provide a defense "for employers who establish by clear and convincing evidence that they acted in good faith."

No such amendment was added. The governor did not veto the bill—it became law without his signature.

### *The Effects Of The Law On Employers*

#### *Litigation May Increase*

Mandatory treble damages awards for violations of state wage and hour laws could very well lead to more cases being filed and litigated in the Commonwealth.

The types of claims that are subject to mandatory triple damages include, but are not limited to, the following:

Failing to pay wages due

Failing to remit paychecks within the statutorily specified time requirements

Misclassifying an employee as exempt from overtime pay

Misclassifying a worker as an independent contractor

Improperly calculating commissions or bonuses

Improperly distributing tips to service employees

Paying an employee less than the minimum fair wage

### *Costs Of Settlements May Increase*

Along with an increase in the number of wage and hour lawsuits, employers may also see an increase in the costs of pre-trial settlements of wage and hour disputes.

Employees will now be less likely to settle simply for what they perceive to be their actual damages; they may insist upon a premium approaching treble damages.

Many employers may be more inclined to try to settle wage and hour disputes, given the increased exposure.

### *Class Actions May Increase*

The most troubling impact on employers, however, may be a significant increase in the number of wage and hour class actions.

Even before this new law, at least 10 wage and hour class action cases had already been filed in Massachusetts in 2008. Across the country, wage and hour class actions have been among the fastest growing employment lawsuits in the last few years.

Mandatory triple damages will provide even greater incentives for lawyers representing employees to pursue class claims.

Technical claims with minimal individual damages can quickly add up when such claims are aggregated in a class action and then tripled.

For example, consider a hypothetical employer with 70 non-exempt employees earning \$20 per hour. If that employer requires those employees to check e-mail from home a half hour each day, but does not pay for that time, it could face a claim for damages of \$750,000 that would now be trebled to \$2.25 million.

Given the new legal environment in Massachusetts, even small mistakes in this very complex area of the law can be financially devastating for the state's employers.

### *Next Steps For Employers*

Employers can review their human resources practices and procedures for compliance with all applicable state and federal wage and hour laws.

Employers confronting claims for mandatory treble damages may also wish to consider challenging the constitutionality of this new legislation.

The state's highest court already laid the foundation for such an argument in *Goodrow v. Lane Bryant, Inc.* in 2000.

It explained that awarding multiple damages for wage and hour violations "absent evidence of heightened culpability would very likely constitute 'an arbitrary or irrational deprivation[] of property,' ... and thus would be constitutionally impermissible."

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