

Client Alert

A report
for clients
and friends
of the Firm April 2008

Massachusetts Bill Mandating Treble Damages for Violations of State's Wage and Hour Provisions Becomes Law

On April 14, 2008, a bill mandating the award of treble damages to prevailing plaintiffs in wage and hour claims (Senate Bill 1059) became the law in Massachusetts. The new law, which was neither signed nor vetoed by Governor Deval Patrick this week, calls for treble damages to be awarded automatically against any employer found in violation of the state's wage and hour laws, regardless of the specific circumstances presented.

An amended version of the bill, which was earlier proposed by Governor Patrick but rejected by the legislature, would have allowed for discretion on the part of trial judges and preserved the option of awarding less than treble damages if an employer was found to have violated the law inadvertently. Instead, as passed, the law provides for the award of treble damages as a matter of course, without any statutory exception or defense. In a letter to lawmakers last week, Governor Patrick stated: "I am allowing the bill to become law because I support efforts to ensure that all workers are paid the wages and compensation legally owed them...[but] I am declining to sign the

bill because I remain concerned that mandatory treble damages in all cases, without exception for employers who act in good faith, is unfairly punitive."

Prior to the passage of this bill, the governing Massachusetts statute (dating to 1993) also allowed for the award of treble damages to prevailing plaintiffs, but left such awards to the discretion of the trial courts. Under the previous statute, a showing of "good faith" or a lack of "reckless indifference" on the part of an employer was generally enough to avoid such harsh sanctions, but not anymore. Once the present law goes into effect on July 13, 2008, employers can reasonably expect a substantial uptick in the volume of wage and hour litigation being filed in Massachusetts. The categories of violations encompassed by the new law's treble damages requirement include: minimum wage, payment of overtime, Sunday and holiday "blue laws," tip pooling, and the timely payment of wages. In addition, prevailing employees will continue to be entitled to reasonable attorneys' fees and costs under the law.

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