April 7, 2022

Don't Be Late on Wage Payments to Terminated Employees in Massachusetts

The Massachusetts Supreme Judicial Court (SJC) issued a surprising decision on April 4, holding that an employer is strictly liable for treble damages if it fails to make timely wage payments, regardless of whether the employer remedies the violation prior to the employee asserting a wage claim. This decision, in *Reuter v. City of Methuen*, upends long-standing trial court precedent, which had authorized employers to remedy late wage payments by paying the unpaid amounts in full, with just trebled interest, prior to litigation.

The Wage Act

The Massachusetts Wage Act provides for the payment of wages and requires that employers pay any employee discharged from employment ***in full on the day of discharge***. Mass. Gen. L. C. 149 § 148. The term "wages" includes unused holiday or vacation payments due to an employee. The Wage Act also provides that an employee who prevails on a claim under it "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." Mass. Gen. L. C. 149 § 150. Significantly, the Wage Act provides that an employer may not use a payment of wages after the employee brings a complaint as a defense to such litigation.

In 2003, the Superior Court, in *Dobin v. CIOview Corp.*, interpreted the Wage Act and held that "an employer is not required to pay treble the lost wages and benefits if the wage and benefit payments were tardy but made before suit was brought." In those circumstances, the *Dobin* court found that the employee's damages were limited to interest on the delayed payment. Employers have relied on *Dobin* and a series of Superior Court and federal court decisions following that decision similarly holding that the proper remedy for tardy wage payments paid before the bringing of the complaint is the interest arising from the delay in payment.

The SJC Decision

The City of Methuen terminated Beth Reuter, a custodian, for cause. At the time of her termination, Reuter had accrued nearly $9,000 in unused vacation time, but the City did not pay her that amount until three weeks after her termination. At that time, Reuter demanded treble the unused vacation payment ($27,000), plus attorney's fees. However, consistent with precedent in *Dobin*, the City responded by paying just the unused vacation time and treble the interest on the late payment for the time between her termination and payment ($9,000 plus approximately $185 in interest). Reuter then filed the instant action.

The SJC found that there was no question that the City violated the Wage Act in failing to pay Reuter for her unused vacation time on the day she was fired. The issue was how to determine the proper measure of damages when an employer pays wages after the Wage Act deadline but before the employee files a complaint. The Court concluded that given the "strict time-defined payment policies underlying the Wage Act," an employer is responsible for treble the amount of the late wages, not merely trebled interest. Additionally, as the prevailing party, Reuter was also entitled to attorney's fees and costs.

The SJC rejected *Dobin*, noting that limiting damages on late payments to interest would essentially encourage late payments right up to the filing of the complaint. Further, the Court found that awarding only interest for late payments would

be inconsistent with the fundamental purpose of the Act, reasoning that the statute "expects and demands the prompt payment of wages to employees who rely on such payments."

What This Means for Employers

Reuter makes it clear that employers face significant financial penalties if they do not fully and timely comply with the Wage Act. Employers have a clear duty under the Wage Act to pay an employee all wages due, including unused vacation time, on the day of discharge. An employer's failure to do so, regardless of any reason or justification for such failure, will result in the employer being liable for treble the amount of the unpaid wages. Accordingly, prior to terminating any employee, an employer must be prepared to pay the employee all wages owed on the day of discharge. If an employee engages in serious misconduct that requires immediate action, but the employer is unable to pay all wages due on the date of such misconduct, the employer should consider suspending rather than terminating such an employee until the employer can comply with the Wage Act.

Authors



Daniel L. Schwartz
Partner

Stamford, CT | (203) 977-7536

New York, NY | (212) 297-5800

dlschwartz@daypitney.com



Francine Esposito
Partner

Parsippany, NJ | (973) 966-8275

fesposito@daypitney.com



Glenn W. Dowd
Partner

Hartford, CT | (860) 275-0570

gwdowd@daypitney.com



Heather Weine Brochin
Partner

Parsippany, NJ | (973) 966-8199

New York, NY | (212)-297-5800

hbrochin@daypitney.com



Lindsey A. McCarthy
Associate

Hartford, CT | (860) 275-0211

lmccarthy@daypitney.com



Rachel A. Gonzalez
Partner

Parsippany, NJ | (973) 966-8201

New York, NY | (212) 297-5800

rgonzalez@daypitney.com



Theresa A. Kelly
Partner

Parsippany, NJ | (973) 966-8168

tkelly@daypitney.com