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Employee must be paid in full for earned wages on termination date to avoid treble damages - by Michelle De Oliveira and David Kerrigan

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A recent decision by the state's highest court has reinterpreted the Massachusetts Wage Act's damages calculation for a late wage payment to a discharged employee, holding that an employer that does not pay earned wages in full on an employee's termination date is liable for treble damages, attorney's fees, and costs regardless of whether the employer pays the employee in full before the employee files a complaint. This case has significant consequences for employers moving forward.

The Massachusetts Wage Act requires employers to pay discharged employees the full amount of all wages earned through the termination date, including all unused and accrued vacation time, on the termination date. If wages are not timely paid, an employee may seek three times the unpaid wage amount as damages (e.g., trebled damages). Until this decision, courts interpreted the Wage Act so that if an employer paid the late wages before an employee filed a complaint, the employer would owe three times the lost interest.

In a groundbreaking decision, *Reuter v. City of Methuen*, Massachusetts' Supreme Judicial Court rejected this interpretation in finding that the statute entitles employees to three times their late wages, regardless of whether the employer pays the employee before a lawsuit.

In *Reuter*, the city of Methuen discharged an employee for stealing—and she was owed \$8,952.15 for accrued vacation at the time of her termination. The city of Methuen did not pay her in full on her

termination date but paid her for all accrued vacation time three weeks after her termination. Over a year later, the employee's attorney sent Methuen a demand letter seeking three times the late wages in damages. In response, Methuen paid an additional \$185.42, representing three times the interest accrued during the three-week delay between her termination and payment of her remaining wages. After the employee brought an action seeking three times the total unpaid wages, the trial court agreed with Methuen, finding that the employee was only entitled to three times the interest lost during the three-week delay in her vacation pay.

On appeal, the Supreme Judicial Court reversed the trial court's decision, based on the Wage Act language that "the employee shall be awarded treble damages, as liquidated damages, for any lost wages and other benefits." The court found that "lost wages" includes late paid wages, regardless of whether the employer paid the employee in full before a lawsuit was filed. While the court recognized some ambiguity in the statutory language, it found that allowing employees to recover treble damages for late wages is consistent with the statute's purpose of ensuring prompt payment of wages.

This decision reinforces the importance of timely paying employees in full for all wages earned, including upon termination. Employers must be ready to pay an employee who is terminated in full for all wages earned through the termination date, including vacation and commissions, on the termination date—and not a day later.

This requirement may present practical problems if an employee engages in misconduct and immediate action may be required—but if full pay cannot be made on that day, suspension with pay is a better practice until the exact amount of pay can be determined and issued. Even a brief delay in paying the full amount of wages could result in liability for three times the late wage amount. Individuals with specific questions are encouraged to speak with a K&S attorney.

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