

HRW CLIENT ALERT

April 11
2022

Payment of Final Wages Upon Separation: New SJC Decision Increases Employer Exposure

Last week, the Massachusetts Supreme Judicial Court (“SJC”) issued an opinion that all Massachusetts employers should be aware of when discharging an employee. The SJC ruled that even in the case of a minor miscalculation or delay in payment of final wages, the employee is entitled to triple damages and attorneys fees. This decision increases the stakes and the risk of litigation over seemingly minor discrepancies or delays in final wage payment.

Under the express language of the Wage Act¹:

- (i) “any employee discharged from such employment shall be paid in full on the day of his discharge”, with “wages” being defined to include all earned vacation time,
- (ii) an aggrieved employee may file a lawsuit “for injunctive relief, for any damages incurred, and for any lost wages and other benefits”; and
- (iii) an employee who wins their lawsuit “shall be rewarded trebled damages, as liquidated damages, for any lost wages and other benefits and shall also be awarded the cost of the litigation and reasonable attorneys’ fees.”²

In the past, relying on previous Massachusetts court decisions, employers who failed to pay final wages owed on the day of involuntary discharge could remedy the situation by belatedly paying the employee the amount owed plus interest from the termination date to the date of payment, so long as payment was made before the employee filed a lawsuit.³

In the recent case of *Reuter v. City of Methuen*, No. SJC-1312 (Mass. Apr. 4, 2022) (slip op.), however, the SJC ruled that this common pre-litigation remedial approach was “incorrect”.⁴ The Court held that employers must pay treble (triple) the amount of the late wages as damages any time an employer’s payment is late. The SJC further emphasized that even an inadvertent “miscalculation” rendering payment late would make an employer liable for treble damages.

In *Reuter*, the plaintiff (“Employee”) was terminated from her job as a janitor at the Methuen

¹ M.G.L. c. 149, §§ 148,150.

² Prior lower court decisions concluded that wages were not actually “lost” if interest was paid for the period of the unpaid amount prior to the filing of a complaint by the employee.

³ In particular, see *Dobin vs. CIOview Corp.*, Mass. Sup. Ct., No. 2001-00108 (Middlesex County Oct. 29, 2003); *Reuter*, p. 15.

⁴ *Id.* at p. 15.

city's school department ("Employer") when the Employer learned that she had been convicted of a felony. As of the date the Employee was terminated, she had accrued nearly \$9,000 in vacation time, which the Employer paid her in full three weeks later. The Employee challenged her termination in court, and one year later, after she had lost her case, the Employer sent her a check for \$185.42, which represented a trebling of the annual interest on her three-week late payment.⁵ The Employee then filed Wage Act claims against the Employer seeking damages for failure to pay her vacation pay on the day of termination.⁶ The case proceeded to a trial before a Superior Court judge who ruled that the Employee was only entitled to treble the interest owed for the three-week delay in receiving her vacation pay, which the Employer had already paid her, plus attorneys' fees. When the Employee appealed the ruling, the SJC, Massachusetts' highest court, accepted the case on its own motion.

The SJC rejected prior lower court decisions, reasoning that the plain language of the Wage Act provides employers no defense to pay late wages pre-complaint,⁷ nor does it include language that the payment of interest-only is a remedy for late payments. The SJC opined that this approach would "authorize" and "even encourage" nonpayment as well as late payment of final wages by employers.⁸ Together, the purpose and the language of the Wage Act, the SJC noted, "leaves no wiggle room" for the late payment of wages, and that "any delay" in payment "may have severe consequences for the employee."⁹ In short, the SJC in *Reuter*, overturned lower court precedent by holding that when an employer has violated the Wage Act through late payment of wages, the employer will be required to pay the employee triple the amount of wages owed, plus attorney's fees and costs; any interest owed for back pay is in addition to these awards to the claimant.

Employer Takeaways from *Reuter*:

- A discharged worker must be paid all wages owed on the date of discharge, including any vacation payments due, or else the employer risks being held liable to pay triple the amount of late wages, plus attorney's fees and costs, plus interest.
- Employers should be cautious about making final wage payments by direct deposit, as the payment does not always hit the discharged employee's bank account on the date of termination; even a one-day delay in payment places the employer at risk of a lawsuit and treble damages.
- The SJC emphasized that the Wage Act imposes strict liability on employers providing no excuse for late payments even due to a miscalculation. Consequently, employers should very carefully calculate the amount owed to a discharged employee; when in doubt, consider erring on the side of payment given the risks of a Wage Act claim.

⁵ The defendant calculated the interest at an annual rate of 12%.

⁶ Reuter also alleged a class claim on behalf of all city employees who were "involuntarily dismissed" or "voluntarily left employment" within the last 3 years. A judge denied class certification and Reuter did not appeal this ruling.

⁷ See *Reuter* at pp. 15-16, providing that "no defen[s]e for failure to pay as required... shall be valid" except "the attachment of such wages by trustee process or a valid assignment thereof or a valid set-off against the same, or the absence of the employee from his regular place of labor at the time of payment, or an actual tender to such employee at the time of payment of the wages so earned by him" (citing M.G.L. c. 149, §150) (emphases added by SJC).

⁸ *Id.* at p. 17.

⁹ See *id.* at pp. 10, 11.

- Even in the case of employee misconduct, including illegal or harmful acts (an illegal act was the basis for Reuter’s termination), the *Reuter* decision suggests that employers who are unable to pay the employee all wages owed should opt to place the employee on a brief suspension until final payment can be calculated and arranged. It appears that no matter how egregious the employee conduct, and how clear-cut the need for immediate termination may be, an employer must pay the employee all wages owed on the day of separation without exception.
- This case does not impact payment of final wages to an employee who voluntarily quits or resigns. In that instance, the employer must pay the employee in full on either the “following regular pay day, or in the absence of a regular pay day, on the following Saturday.”¹⁰ The SJC emphasized that when an employee quits, the employee controls when they leave and has often obtained another job, as opposed to involuntarily termination, where an employee has no opportunity to plan ahead.
- Employers should consider reviewing their payroll practices to avoid late payment of wages, particularly employers that pay their employees on a bi-monthly or monthly basis. Although the SJC was not addressing the regular payment of wages in *Reuter*, the Court did reference the Wage Act requirement that employers must pay their employees “weekly or bi-weekly within either six or seven days of the termination of the pay period during which the wages were earned,”¹¹ suggesting that a failure to comply would be a late payment subjecting an employer to similar damages.

For questions, please consult your HRW attorney including:

- Kathleen Berney (kberney@hrwlawyers.com / 617-348-4335);
- Richard Loftus (rloftus@hrwlawyers.com / 617-348-4360);
- Peter Moser (pmoser@hrwlawyers.com / 617-348-4323);
- Catherine Reuben (creuben@hrwlawyers.com / 617-348-4316); or
- Any member of the [HRW Team](#) to discuss your particular situation.

¹⁰ See *Reuter*, pp. 12-13, citing M.G.L. c. 149, § 148.

¹¹ See *Reuter*, pp. 5-6, citing M.G.L. c. 149, § 148.