

EMPLOYMENT LAW UPDATE

Kerstein, Coren & Lichtenstein, LLP

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New Massachusetts Law Mandates Triple Damages for Unpaid Wages

On April 14, 2008, Massachusetts amended its wage laws to impose mandatory “treble” (triple) damages if employers fail to pay required wages, even for inadvertent violations. The new law applies to a broad range of compensation, including the minimum wage, overtime pay, regular and vacation pay, Sunday and holiday pay, breaks and rest periods, “prevailing” wages (for union employees), tips and gratuities, and commissions. Companies remain liable for litigation costs and reasonable legal fees when employees prevail in wage lawsuits. Though Governor Deval Patrick had lobbied against the legislation (Senate Bill No. 1059), he declined to veto the final bill. As a result, the new amendments will take effect on July 13, 2008. To view the new amendments in their entirety, please see:

<http://www.mass.gov/legis/laws/seslaw08/sl080080.htm>

The new law may cause an upsurge in employee lawsuits and “class-action” type claims. Massachusetts law continues to authorize employees to sue for themselves and for “similarly situated” workers. Since treble damages and legal fees are mandatory, some attorneys will solicit cases from large groups of employees who were allegedly denied wages. As the Senate bill was enacted to “clarify” the intent of previous employment laws, the courts may apply it retroactively to prior wage violations.

The Wisdom of an “Ounce of Prevention”

Many companies avoid seeking legal advice about wage laws until a serious problem arises. Given the increased risk of lawsuits and substantial damages, companies should contact their employment lawyer to discuss the new wage laws. In a brief article, it is not possible to discuss the numerous ways that companies can inadvertently violate Massachusetts and/or federal wage laws. Therefore, companies are encouraged to audit their wage practices with counsel to reduce the risk of wage violations and litigation.

Common Wage Violations

Misclassification of Exempt Employees

Companies must pay the minimum wage and overtime to all “non-exempt” employees. Massachusetts recognizes many exemptions including “white-collar” exemptions for “bona fide” executives, administrators, professional employees, and outside sales persons. Unfortunately, some companies misclassify employees as exempt because they draw a salary. Both Massachusetts and federal law demand a careful analysis of job functions.

Violations of Independent Contractor Law

Recent changes to Massachusetts law limit when companies can classify workers as independent contractors. Under the new law, contractors must: (1) be free from the company’s direction and control; (2) perform services outside the company’s usual business or outside places the company operates; and (3) engage in an independent trade, occupation, profession or business to provide services. Improper classification of contractors can lead to damages for failure to pay overtime, FICA contributions, etc.

Non-Payment of Wages and Commissions

Companies must make prompt payments of regular and vacation wages that are due and commissions that are due and “definitely determined.” Companies should exercise care in computing wages and commissions that are due when terminating an employee.

Violations of Tip Pooling Laws

Restaurants, hotels, and service businesses cannot require or permit the sharing of tips with managers or non-service employees.

[Employment Law Update](#) is presented by **Attorney Paul W. Morenberg**. If you have questions about the new wage laws, please contact your own KCL attorney. The opinions in this report do not necessarily reflect the views of Kerstein, Coren & Lichtenstein. This document should not be construed as legal advice and may constitute legal advertising. © 2008, Paul W. Morenberg.