



Legal Alert: Last Employer Left in Massachusetts Turn Out the Lights...

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Massachusetts employers may soon find themselves facing a significant increase in state wage and hour lawsuits in the wake of legislation that became law earlier this week. The new law makes treble damages (that is, three times the amount of lost wages or other benefits) mandatory if an employer is found to have violated the state's wage and hour laws, even if the violation was inadvertent. This includes the state's wage payment and overtime and minimum wage laws.

The legislation became law earlier this week without Massachusetts Governor Deval Patrick's signature. The Governor had proposed an amendment to the legislation that would have permitted employers to avoid treble damages if they could show they acted in good faith. However, the legislature rejected the proposed amendment and resubmitted the bill to the Governor. It became law when he took no action on it within ten days.

The law is a reaction to a 2005 decision of the Massachusetts Supreme Judicial Court, which held that treble damages are punitive in nature and should be awarded only in situations involving "willful misconduct" by the employer. Massachusetts is the only state whose law provides for mandatory treble damages for wage and hour violations.

The effective date of the law is July 13, 2008. However, language in the statute states that it is "intended to clarify the existing law and to reiterate the original intention of the general court that triple damages are mandatory." Based on this language, plaintiffs' attorneys may argue that the law is retroactive and applies to wage and hour claims that arise prior to July 13, 2008. It is not clear whether such an argument will be successful, but employers in Massachusetts should be aware of this risk.

In addition to increasing the potential value of awards in state wage and hour lawsuits, the law likely will result in an increase in the number of wage and hour claims filed, especially collective actions, which will have a much greater potential recovery. Thus, it is critical that employers ensure they are in compliance with all aspects of the state's wage and hour laws.

If you have any questions regarding this issue or other labor or employment related issues, please contact the Ford & Harrison attorney with whom you usually work.