



LABOR *Issues*

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Treble Damages For Wage Violation

The Legislature recently enacted a law to limit a court's discretion regarding the award of treble damages.



In 2002, the Legislature amended a wide variety of wage laws to include a provision allowing the Massachusetts courts to award prevailing plaintiff(s) treble-damages and attorneys' fees. That law provided in pertinent part:

"Any employee claiming to be aggrieved by a violation of this section **may** at the expiration of ninety days after the filing of a complaint with the attorney general, sooner if the attorney general assents in writing, and within three years of such violation, institute and prosecute in his own name and his own behalf, or for himself and for others similarly situated, a civil action for injunctive relief and any damages incurred, **including treble damages** for any loss of wages and other benefits. Any employee so aggrieved and who prevails in such an action shall be entitled to an award of the costs of the litigation and **reasonable attorneys' fees.**" Chapter 357 of the Acts of 2002.

Subsequently, in 2005, the Massachusetts Supreme Judicial Court in a case, **Weidman v. Bradford Group, Inc.**, 444 Mass. 698 (2005) held that:

"There was nothing in the plain language of the statute that **requires** an award of treble damages"

The Court reversed the trial court's award of treble damages, finding that under the above language the statute did not make treble damages mandatory, and remanded the case for further fact finding.

This year, the Legislature, enacted a law to limit a court's discretion regarding the award of treble damages. The new law reads in pertinent part:

"An employee claiming to be aggrieved by a violation of this section may, 90 days after the filing of a complaint with the attorney general, or sooner if the attorney general assents in writing, and within 3 years after the violation, institute and prosecute in his own name

continued on page 19


and on his own behalf, or for himself and for others similarly situated, a civil action for injunctive relief, for any damages incurred, and for any lost wages and other benefits. **An employee so aggrieved who prevails in such an action 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." Chapter 80 of the Acts of 2008.

The law was passed over the Governor's veto. The Governor requested the law contain a "good faith" exception to imposing treble damages. Based upon the discussion by the Supreme Judicial Court in the Weidman case, enforcement of the treble damages provision may leave room for a constitutional challenge to a mandatory imposition of a treble damages award.

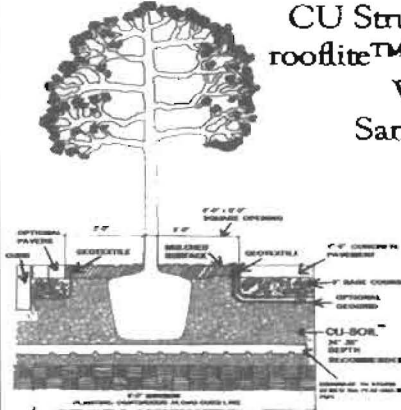
As noted above, treble damages are applicable to a wide variety of wage laws. Specifically:

1. The Prevailing Wage Law, as applied to construction, rental equipment and maintenance contracts.
2. Violation of the Independent Contractor Law.
3. Violation of the Minimum Wage and overtime laws.
4. Violation of the weekly payment of wage law, including prompt payment of accrued wages and vacation pay upon termination.
5. Other protective legislation found in MGL c.149.
6. For violation of the organ donor law.
7. To employers who take deductions for group insurance but fail to purchase coverage.
8. To compensate employees whose employers dun them for coming to work late in excess of the proportion of wages which would have been earned.
9. Violation of the tip statute; and,
10. Staffing agencies who charge employees for transportation to and from the site of work in excess of actual costs.


Oftentimes, wage violations can be widespread or class-based actions, i.e. misclassifications, failure to pay for all hours of work, etc. To avoid costly litigation, do a self-audit to make sure you are in compliance with the Commonwealth's wage laws and pay practices. ■



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