

Young Lawyers Division

## Stop, wage thief!

What employment lawyers need to know about the efforts to ensure the payment of fair wages, in Massachusetts and nationwide

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The Massachusetts and federal governments have increased efforts to ensure employees are paid fair wages. These efforts include (1) the introduction of new wage-related laws and regulations; and (2) the increased enforcement of all wage laws. Attorneys advising employers and employees should stay abreast of the changes to Massachusetts and federal wage laws, and should advise their clients about the impact of increased enforcement efforts in Beacon Hill and Washington, D.C.

### The enactment of new laws ensures fair wages

The Massachusetts Legislature has demonstrated an increased focus on the payment of fair wages by enacting laws which increase the wages Massachusetts employees earn.

The Legislature increased the total wages many Massachusetts workers earn by increasing the minimum wage from \$9.00 to \$10.00 for the period January 1, 2016 to December 31, 2016, and from \$10.00 to \$11.00 beginning January 1, 2017. (M.G.L. c. 151, §1, 2). The Massachusetts Legislature also enacted the new Earned Sick Time Law, ensuring that employers with eleven (11) or more employees pay their employees one hour of sick time for every thirty hours worked, up to a total forty hours. (M.G.L. c. 149, § 148C).

Massachusetts' efforts to ensure its employees are paid a fair wage are similar to efforts nationwide. The Department of Labor has made efforts to ensure non-exempt workers are fairly paid overtime by enacting new overtime regulations. These new regulations, which went into effect in December 2016 more than doubled the base salary for overtime exemption, from \$455 per week to \$913 per week (or approximately \$47,000). As a result, most employees who earn less than \$913 per week are now classified as non-exempt workers, and must be paid time and a half for work performed in excess of forty (40) hours per week. The Department of Labor expects that these changes will effect approximately 4.2 million workers nationwide, with 84,000 of those workers in Massachusetts alone.

### The increased enforcement of new and existing laws ensures proper payment of wages

In addition to new wage laws, there is a heightened interest by local, Massachusetts and federal governments in policing wage theft through the increased enforcement of all wage laws.

Locally, officials have taken cre-

ative steps to leverage laws already in existence, in an effort to maximize compliance with all wage-related laws in their jurisdictions. On October 23, 2014, Boston Mayor Martin J. Walsh signed an Executive Order requiring city vendors to certify compliance with state and federal wage laws before being awarded city contracts. According to the Mayor's office, the certification of compliance, made under oath, is intended to "strengthen the City's ability to hire vendors that treat their employees fairly." On September 17, 2015 Mayor Walsh issued another innovative directive aimed at preventing wage theft—a requirement that any business seeking to renew a food or liquor license before the Boston Licensing Board must certify, under oath, its compliance with state and federal wage laws. The directive also expands the Mayor's Office of Workforce Development to include a "Theft & Living Wage Division" to educate workers about their rights and to actively investigate employers suspected of violating wage-related laws. Violating employers are referred to the Boston Licensing Board for potential disciplinary action, including loss of license.

Similar commitment to fighting wage theft exists at the state level. On July 21, 2016, Attorney General Maura Healy announced that her office reached an agreement with national restaurant company "Bloomin' Brands, Inc." to pay \$210,000 in restitution and penalties for failure to pay wages for required training: a violation of state law. This settlement is part of a larger trend demonstrating Healy's ongoing efforts to combat wage theft. In the first quarter of 2016, Healey issued 29 civil citations against construction companies totaling nearly \$260,000 in restitution to employees and \$68,000 in fines levied against the companies. According to the Attorney General's Office, this is an increase from the previous two quarters. Healey has publicly declared that her Office will continue its increased enforcement of wage laws noting that, "[w]age theft is a real issue in Massachusetts, including in the construction industry where dishonest companies continue to cheat their employees. Our office is working to level the playing field so that workers are paid fairly and contractors who follow the rules are not at a disadvantage."

Massachusetts' increased focus on wages is unlikely to subside, as numerous wage-related bills are currently pending in the Legislature. For example, the Massachusetts Senate passed An Act to Prevent Wage Theft and Promote Employer Accountability (S.B. 2434). If enacted, S.B. 2434 would afford the Massachusetts Attorney General the right to issue stop work orders to businesses violating certain Massachusetts wage laws, including the aforementioned minimum wage and Earned Sick Time Laws. The anticipated stop work orders, coupled



with the already significant penalties for wage theft (including treble damages and reasonable attorneys' fees awards, M.G.L. c. 149, § 150), will likely substantially decrease wage law violations. S.B. 41 represents the Massachusetts Legislature's recognition that laws increasing wages are toothless without corresponding laws increasing enforcement.

Enforcement efforts are also increasing at the Federal level. The Department of Labor has collected an average of nearly \$250 million per year in back pay for workers during fiscal years 2011 to 2015. This represents a nearly 35% increase from the annual average of \$184 million collected in back pay for workers from fiscal years 2006 to 2010. U.S. Secretary of Labor Thomas Perez has

credited the Department's enlarged roster of wage theft investigators for the success in this area, and has credited local and state government entities for serving as much needed "redundancies in law enforcement."

### Conclusion

This increased focus on wages, both in Massachusetts and federally, is unlikely to subside. Accordingly, employment lawyers must focus on educating themselves and their clients about new wage laws and increased efforts to enforce all wage laws. With proper education and guidance from their attorneys, employers can assist the federal and state governments to ensure that all workers are paid a fair wage. ■



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