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Pay Them Now or Pay More Later: SJC Holds Late Payment of Accrued Vacation Time to Terminated Employee Subjects Employer to Treble Damages, Attorney's Fees and Costs

By: Rich May, Ashley M. Berger

On April 4, 2022, the Massachusetts Supreme Judicial Court ("SJC") reaffirmed that employers, upon terminating employees, must strictly comply with M.G.L. ch. 149 § 148 (the "Massachusetts Wage Act") by paying out employees for accrued vacation time on the termination date. Otherwise, the employer will be subject to payment of mandatory treble wages, legal fees and costs. The decision is captioned *Reuter v. City of Methuen*, SJC-13121.



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Background

The Plaintiff was a school custodian employed by the City of Methuen (the "City") beginning in 1988. Plaintiff was convicted of larceny in February of 2013. On March 7, 2013, the City sent Plaintiff a letter terminating her employment, effective on the same date. At that time, Plaintiff had accrued $8,952.15 in unused vacation time.

The City paid Plaintiff, via four separate checks, the amount of $8,952.15 on March 28, 2013, 21 days following her termination. The Plaintiff attempted to contest her termination and was ultimately unsuccessful. However, while the appeal was pending, Plaintiff's counsel sent demand to the City for $23,872.40, representing trebling of the late vacation pay plus $5,986.10 for attorney's fees, minus a setoff for the late payment. After the Plaintiff's termination was affirmed the City timely responded to the demand letter with an "unconditional check" for $185.42, purporting to represent the "trebling of the twelve percent annual interest on the plaintiff's vacation pay accrued during the three weeks between her termination and payment."

Following a bench trial in the Essex Superior Court, the trial judge ruled that Plaintiff was only entitled to treble twelve percent interest for the three-week delay in receiving the accrued vacation pay, but did find that the Plaintiff was entitled to an award of attorney's fees. The City appealed on the issue of the award of attorney's fees and the Plaintiff cross-appealed on the issue of whether she was entitled to treble the late-paid wages.

SJC Decision

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The question for the SJC was whether the Plaintiff was entitled, under the Massachusetts Wage Act, to treble the amount of late-paid wages or trebling of interest. The SJC held, after *de novo* review, that the statute called for treble the amount of late-paid wages.

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." However, "any employee discharged from such employment," such as the Plaintiff, "shall be paid in full on the day of his discharge." M.G.L. ch. 149, § 148. Wages have been defined by the statute to include "any holiday or vacation payments due to an employee under an oral or written agreement." Id. Therefore, all accrued vacation benefits are due to a terminated employee on the day of discharge.

In coming to its decision, the SJC did recognize the ambiguity of the word "lost" as it is used to define the remedies available to aggrieved employees in the statute. The pertinent portion of M.G.L. ch. 149, § 150 allows employees not paid in full on time the ability to the right to bring an action "for injunctive relief, for any damages incurred, and for any lost wages and other benefits." The Court interpreted "lost wages" to encompass late payments under the statute. M.G.L. ch. 149 § 150. The SJC also highlighted the remedy under M.G.L. ch. 149 § 150 is mandatory, providing the employee "shall be awarded treble damages, as liquidated damages, for any lost wages and other benefits." Id.

The SJC was quick to distinguish a situation in which the employee quits or leaves his employment on his own volition, rather than being terminated by the employer. Where an employee voluntarily leaves his employment, the circumstances change for the employer because the employer in that case does not have knowledge or control of when the employee leaves or plans to leave. In that case, the Massachusetts Wage Act allows for employers to pay the employee in full on the next regular payday.

The SJC further held, contrary to the trial judge's ruling, that interest is not discussed in the Massachusetts Wage Act and is therefore not the appropriate measure of damages for any late payments made to an employee.

Impact and Takeaways

This case serves as a strong reminder to employers that when terminating any employee, the employer must be prepared to pay the employee in full on the date of discharge, including accrued, but unused vacation time. The burden rests with the employer to ensure compliance with the statute in providing immediate payout of accrued vacation time, otherwise the employer will be subject to paying significantly more in treble damages, legal fees and costs.

Disclaimer: This summary is provided for educational and information purposes only and is not legal advice. Any specific questions about these topics should be directed to Attorneys J. Allen Holland, Frank Gaeta, David Glod or Ashley M. Berger.