



## Dot Your I's and Cross Your T's Before Terminating an Employee

Employers in Massachusetts should be aware of a recent case out of the Supreme Judicial Court that cautions employers to ensure that before terminating any employee, full payment is made for all unpaid wages on or before the date of termination. A failure to do so may subject the employer to multiple damages under the Massachusetts Wage Act.

In *Beth Reuter v. City of Methuen*, the SJC reexamined the Wage Act G. L. c. 149, § 148 (the "Act"), which prescribes the consequences of failing to pay an employee what she is owed at termination. In that case, an employee was terminated from her position as a custodian for the Methuen School Department. The termination came upon the heels of the employee's conviction of larceny, which provided the City cause to terminate her employment. As of the date of the termination, however, the employee had accrued \$8,952.15 in vacation pay, which was not paid to the employee until three weeks after she was terminated.

"... if you choose to terminate an employee you must be prepared to pay him or her in full when you do so."

The City made the payment of the outstanding wage in response to a demand letter by the former employee's attorney seeking \$23,872.40 in damages, equivalent to three times the vacation pay plus \$6,000 in attorney's fees. In response, the City paid the former employee a mere \$185.42 extra, representing three times the amount of statutory interest accrued on the vacation pay over a period of three weeks. Unsatisfied by the City's response, the former employee brought suit against the City seeking the full amount demanded. The trial court ruled in favor of the City, holding that the former employee was only entitled to

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## Firm News



Payal Salsburg

Payal Salsburg honored with a community service award given by the Asian American Lawyers Association of Massachusetts.

Payal Salsburg facilitated a Women's Day of Conversation for equity in the legal profession and workplace for the Women's Bar Association of Massachusetts.



Jessica Conklin

Jessica Conklin served on the steering committee for and moderated a panel at the annual Boston Bar Association White Collar Crime Conference.



Marc Laredo

Marc Laredo authored a case comment on "Applicability of Chapter 93A to Intra-Enterprise Disputes in the Wake of *Governo Law Firm LLC v. Bergeron*" for the *Massachusetts Law Review*.

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treble 12% interest for the three-week delay in receiving her vacation pay plus attorneys' fees and costs. The employee appealed the decision, and the SJC transferred the matter on its own motion.

On review, the SJC considered whether the damages should be based on the total amount of the unpaid wages or only on the accrued interest in the event of late payment after termination by an employer. As a threshold matter, the SJC found that the City had indeed violated the Act, which states that "any employee discharged from such employment shall be paid in full on the day of his discharge." (emphasis added.) Under the Act, "wages" include "any holiday or vacation payments due to an employee under an oral or written agreement." Noting that there was "no wiggle room" in the Act, the SJC held that payment of the full \$8,952.15 for unused vacation time was due on the day the employee was terminated.

Next, the Court looked to the plain language of the statute to determine the appropriate amount of damages. The Act states that an aggrieved employee "be awarded treble damages, as liquidated damages, for any lost wages and other benefits." The focus on lost wages and the failure to limit damages to "interest" indicated that the Legislature intended the trebled amount to be based on the full amount of the lost wages.

The Court explained that the employer decides if and when to terminate an employee, while the employee has "no control" over the situation. The Legislature essentially deemed that "if you choose to terminate an employee you must be prepared to pay him or her in full when you do so." Anything less would be inconsistent with the fundamental purpose of the Act, which aims to protect employees who rely on wages to live. While the SJC acknowledged concern on behalf of employers who may want to immediately terminate employees for misconduct, the Court suggested that employers instead suspend the employee for a short period of time pending determination of their unpaid wages prior to termination.



In light of the significant consequences Massachusetts employers face under the Act, including multiple damages and attorneys' fees, employers must strictly comply with the Act, especially in situations where quick decisions are required to be made concerning the termination of employees for misconduct.