

# Late Pay Entitles Employees to Triple Wages Regardless of When Paid, Massachusetts High Court Holds

By Douglas J. Hoffman

April 12, 2022

## Meet the Authors



**Douglas J. Hoffman**

Principal

(617) 305-1235

[Douglas.Hoffman@jacksonlewis.com](mailto:Douglas.Hoffman@jacksonlewis.com)

## Related Services

Wage and Hour

When an employer does not pay an employee earned wages within the time frames set forth in the Massachusetts Wage Act (MWA), the employee is entitled to three times the wages owed, regardless of the length of the delay or whether the wages are paid prior to a civil suit being filed, the Massachusetts Supreme Judicial Court has held. *Reuter v. City of Methuen*, 489 Mass. 465, 2022 Mass. LEXIS 152 (Mass. Apr. 4, 2022). In so holding, the Supreme Judicial Court invalidated long-standing case law holding that treble damages attached only if the wages remained due after an employee filed suit.

### Massachusetts Wage Act

With certain exceptions, the MWA (G.L. c. 149 §§ 148 & 150) requires that employees be paid their wages within six days following the end of the pay period in which the wages were earned. However, an involuntarily discharged employee must be paid all earned wages on the date of discharge. Under the MWA, the term “wages” includes accrued but unused vacation pay and any earned commissions. The MWA’s private right of action (G.L. c. 149 § 150) provides:

An employee ... 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.

Prior to *Reuter*, a series of superior court (*i.e.*, trial court) cases held that an employee could not recover treble damages for late or otherwise owed wages, as long as those wages were paid before the employee filed suit. Beginning with *Dobin v. CIOview Corp.*, 2003 Mass. Super. LEXIS 291 (Mass. Super. Ct. Oct. 29, 2003), these cases focused on the MWA’s language, set forth in G.L. c. 149 § 150, that “[t]he defendant shall not set up as a defence [sic] a payment of wages after the bringing of the complaint.” *Dobin* concluded that the MWA’s language, by negative implication, permitted an employer to assert as a defense to treble damages that the wages were paid *prior to* the bringing of a complaint. It further concluded that damages under these circumstances would be limited to triple the amount of interest accrued on the wages from the time they were due until they were paid.

### The Lawsuit

In *Reuter*, the City of Methuen involuntarily discharged the plaintiff for misconduct. At the time of the plaintiff’s discharge, the City owed her accrued but unused vacation time equaling nearly \$9,000, but it did not pay her for that time until three weeks after her discharge. The plaintiff’s attorney then issued a demand letter to the City, seeking triple the amount of the late wages, less the amount already paid, plus attorney’s fees. Following the reasoning from the *Dobin* line of cases, in response, the City paid the plaintiff only an additional \$185.42, equal to triple the interest accrued during the three

weeks between the plaintiff's discharge and payment of her vacation pay. The plaintiff then filed suit under the MWA, seeking the additional damages requested. The trial court instead awarded her only the triple interest already paid by the City, plus attorney's fees. The plaintiff appealed the amount of actual damages awarded, while the City appealed the attorney's fee award.

### High Court Decision

On appeal, the Supreme Judicial Court held that the MWA's express language not only rendered any late payment, however brief, a clear violation of the statute, but also imposed mandatory treble damages for any "lost wages," which reasonably could be read only to impose as damages triple *wages*, not merely interest on those wages. By imposing strict liability on employers, the Supreme Judicial Court concluded, the legislature had decided that, regardless of an employer's intent, it should bear the cost of any delay or mistakes.

Addressing the *Dobin* line of cases, the Supreme Judicial Court rejected the "negative implication" conclusion of those cases as thwarting the legislative intent of the MWA. The Supreme Judicial Court added that the statute makes no mention of interest as the measure of damages for a violation of the Act and that limiting damages to interest only might encourage employers to delay late wage payments "right up to the filing of a complaint." Conversely, however, the Supreme Judicial Court did not address the incentive created by the *Dobin* line of cases for employers to avoid the potential for treble damages by promptly paying any late wages owed once discovered, particularly given that employers do not control, and often are not even aware of, when a civil complaint will be filed.

While acknowledging the hardship its ruling may impose on employers seeking to immediately discharge an employee for serious misconduct — especially where the amount of the wages owed the employee is not clear — the Supreme Judicial Court suggested that, if necessary, employers could suspend an employee for a short period of time while final wages are calculated, before finalizing the employee's discharge.

### Takeaway

In light of the Supreme Judicial Court's ruling, Massachusetts employers must take steps to ensure wage payments, including commissions and vacation pay, are timely made within the deadlines set forth in the MWA, particularly with respect to involuntarily discharged employees.

If you have any questions about this decision or any other wage and hour development, please contact a Jackson Lewis attorney.

©2022 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on labor and employment law since 1958, Jackson Lewis P.C.'s 1000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged, stable and diverse, and share our clients' goals to emphasize inclusivity and respect for the contribution of every employee. For more information, visit <https://www.jacksonlewis.com>.