



## S. 1059 Bill Passes - Mandatory Treble Damages Will Impact Massachusetts Employers

On April 14, 2008, Senate Bill No. 1059 (S. 1059) became law as a result of Governor Deval Patrick declining to take action on the legislation. The new law makes violations of Massachusetts's wage and hour laws, including inadvertent violations, subject to mandatory treble damage awards with no available defense. In so doing, the law effectively overturns a 2005 Supreme Judicial Court case, which held that treble damages are punitive in nature and should be awarded only to punish willful misconduct.

S. 1059 passed the Massachusetts Legislature on February 13, 2008. Governor Patrick returned the bill to legislators on February 21 recommending that it be amended to allow employers to avoid treble damages where they could show by clear and convincing evidence that they acted in good faith. The legislature rejected the proposed amendment by considerable margins in both the House and Senate, and the bill was again presented to the governor on April 3. By taking no action on the bill within 10 days, Governor Patrick allowed S. 1059 to become law without his signature.

The legislation will become effective in 90 days, on July 13, 2008. The bill was titled "An Act to Clarify the Law Protecting Employee Compensation," and the final section of the legislation reads, "[t]his act is intended to clarify the existing law and to reiterate the original intention of the general court that triple damages are mandatory." Plaintiffs' attorneys may argue that the law has a retroactive effect and that all wage and hour violations in Massachusetts are immediately subject to treble

damages, including violations for which no lawsuit has yet been filed. This argument will face substantial legal obstacles, but the mere prospect of such claims will be very costly to employers in litigating wage and hour cases.

In addition to increasing the size of awards in each case, the new law may also significantly increase the number of wage and hour lawsuits brought against Massachusetts employers. No other state provides for mandatory treble damages or any similar benefit to successful plaintiffs in such cases. The new law may, therefore, create an incentive for class action plaintiffs' attorneys from across the country to focus their efforts in Massachusetts, where they can now bring claims that have much higher value, regardless of whether they are settled or litigated to judgment.

In light of this legislative development, employers are encouraged to closely scrutinize their wage payment practices and policies to ensure compliance with all aspects of the Massachusetts wage and hour laws, including provisions pertaining to overtime pay, minimum wage, pooling and distribution of gratuities, vacation pay, prompt payment of wages due to active and terminated employees, Sunday and holiday premium pay under the Massachusetts Blue Laws, and restrictions on the use of independent contractors. Massachusetts's wage and hour laws are highly technical and often very complex, and employers who have any questions about compliance with these laws should immediately seek the advice of counsel with expertise in this area.



Seyfarth Shaw has more experience litigating state and federal wage and hour cases in Massachusetts than any other law firm, and we have provided audits and advice to numerous employers in a wide variety of industries on these issues. We have assembled a Response Team of experienced wage and hour attorneys to assist employers in assessing and addressing exposures posed by the new law. We have also provided ongoing coverage and analysis of S. 1059 throughout the legislative process. More information is available at [www.seyfarth.com/s1059](http://www.seyfarth.com/s1059), and our prior One Minute Memos on the subject are available at [www.seyfarth.com/omm022108](http://www.seyfarth.com/omm022108) and [www.seyfarth.com/omm022608](http://www.seyfarth.com/omm022608).

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