



## One Minute Memo<sup>®</sup>

# Massachusetts Legislature Passes Bill Mandating Harsh Punitive Damages in Wage and Hour Cases

On February 13, 2008, the Massachusetts Legislature passed Senate Bill No. 1059, which is titled "An Act to Clarify the Law Protecting Employee Compensation." The bill was presented to Governor Deval Patrick the next day and is currently awaiting his action. If this bill is passed into law, employers found in violation of the state's wage and hour laws would be subject to *mandatory* triple damages. Currently, the laws relating to minimum wage, overtime, and other wage and hour requirements *allow* a court to award triple damages as a punitive measure in cases where the employer's conduct is outrageous or reflects an evil motive or reckless indifference to employees' rights. Under the current law, judges can exercise discretion and deny awards of multiple damages in cases where the employer did not act maliciously, such as where an employer has made an honest mistake about the classification of an employee for overtime purposes or a miscalculation of wages due. This is similar to the balance struck under federal law in the Fair Labor Standards Act, which allows for awards of up to double damages but creates an express defense to multiple damages where the employer has acted in good faith.

Because state wage and hour statutes are notoriously difficult to interpret, and inadvertent violations are exceedingly common, the flexibility found in the current laws is important. The bill would punish employers by mandating the award of triple damages not only for violations of the relatively straightforward minimum wage requirement, but also in connection with overtime pay due as a result of exempt employee classifications ultimately determined to have been made in error, failure to pay for pre-shift and post-shift activities like those that have recently drawn the attention of the U.S. Supreme Court, and the often litigated Massachusetts tip law.

Despite the title of the bill ("An Act to Clarify the Law..."), there is no ambiguity about the availability of multiple damages, in appropriate cases, under the current Massachusetts wage and hour laws. The Supreme Judicial Court resolved any doubt on this subject in a 2005 decision, *Wiedmann v. The Bradford Group, Inc.*, 444 Mass. 698. That case held that under existing law in Massachusetts, multiple damages are available subject to the discretion of the trial court where an employer's conduct warrants the imposition of such damages.

The Senate Bill that passed both houses of the Legislature last week would change this standard and, effectively, make triple damages automatic regardless of an employer's motive, efforts to comply with the law, or the complexity of the legal issue involved. The bill is now before the Governor and will become law if he signs it. Plaintiffs' lawyers may even argue that the legislation has a retroactive effect and should be applied to cases currently pending in court. While such an argument would have serious legal problems, the result would not be certain.

Because the bill is awaiting Governor Patrick's action, we encourage you to contact his office immediately to express any concerns that you may have about this proposed change to the Massachusetts wage and hour laws.

*If you have any questions regarding this One Minute Memo, contact the Seyfarth Shaw attorney with whom you work, or any Labor & Employment attorney on our website, [www.seyfarth.com](http://www.seyfarth.com).*

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