



# MANCHEL BRENNAN

COUNSELLORS AT LAW

## CLIENT ALERT

(APRIL, 2008)

### MASSACHUSETTS EMPLOYERS FACE MANDATORY TREBLE DAMAGES FOR VIOLATIONS OF WAGE AND HOUR LAWS

On April 14, 2008, the Massachusetts Legislature amended the Massachusetts wage and hour laws, making treble damages (and attorney's fees) **mandatory** for all violations of the Commonwealth's complex wage and hour laws. The new law will be effective July 13, 2008, and dramatically increases the likelihood of wage and hour lawsuits as well as the amount of potential damages in such lawsuits for all companies doing business in Massachusetts.

Prior to this amendment, courts had the discretion to award treble damages for violations of Massachusetts wage and hour laws, and normally did so only when the employee demonstrated that the employer violated the law willfully or intentionally. The amendment, however, mandates treble damages and attorney's fees for all violations, even if the employer can demonstrate that it acted in good faith.

Numerous claims are now subject to mandatory treble damages including, for example:

- Failing to pay wages due;
- Failing to pay minimum wage;
- Failing to pay employees within statutorily-required timeframes (usually within 6 days of the end of the pay period);
- Misclassifying workers as independent contractors;
- Misclassifying an employee as exempt from overtime pay;
- Improperly calculating commissions, bonuses or overtime pay; and
- Improperly distributing tips to service employees.

While the text of the law is unclear, it is quite possible that the mandatory treble damages requirement will apply not just to new claims, but to

existing wage and hour lawsuits or claims as well. Also left unsettled is the question of whether an employer may avoid mandatory treble damages, or at least limit the amount of damages that are trebled, if the disputed wages are paid before the employee initiates a civil lawsuit.

This amendment to the wage and hour laws will likely result in an increase in the number of wage and hour lawsuits, particularly class actions, filed against Massachusetts employers. Settling these claims also could be more difficult, as employees and plaintiff's employment attorneys will have a greater chance of a substantial recovery if they prevail on a wage and hour claim.

#### What Do Employers Need To Do?

This amendment to the statute raises the stakes considerably for Massachusetts employers for even the most innocuous and technical violations of the wage and hour laws. Employers are particularly at risk of large damages awards for unintentionally misclassifying workers as independent contractors or as exempt employees – determinations that are fact-specific and can be very difficult to make. Manchel & Brennan recommends that employers review their pay policies and procedures for compliance with all applicable state and federal wage and hour laws. Employers also should review their job descriptions and other operational policies to ensure proper classification of employees.

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We hope that this information is useful. Please feel free to contact us if we can be of any assistance with regard to the issues discussed in this Client Alert or with any other labor or employment issues.