

Mandatory Treble Damages for Failure to Pay Wages

April 2008

Effective July 13, 2008

The Massachusetts wage and hour laws have just been amended to make violations of such laws, including inadvertent violations, subject to mandatory treble damage awards and awards of attorneys' fees.

On April 14, 2008, Senate Bill No. 1059 became law when Governor Patrick neither signed nor vetoed the legislation. Pursuant to this statute, several Massachusetts laws governing the payment of wages, including payment of overtime and minimum wages, were amended to require an award of treble damages to any employee who prevails in a wage claim against her/his current or former employer.

The law will become effective on **July 13, 2008** and applies to all Massachusetts employers, regardless of size or industry.

Senate Bill No. 1059 is entitled "An Act to Clarify the Law Protecting Employee Compensation" and states that it "is intended to clarify the existing law and to reiterate the original intention of the general court that treble damages are mandatory." Attorneys representing employees may argue that this law not

only applies to violations occurring after July 13, 2008 (when the law becomes effective), but also to any violation that occurred in the past, whether or not a lawsuit has been filed. It is clear, however, that employees must bring any such claim within three years after the violation occurs.

The mandatory award of treble damages is likely to increase the number of claims brought by employees (including potential class actions by employees). Because the amendment affects a number of wage and hour laws, employers should review their wage and hour policies and practices, including those related to:

- timely payment of wages for active and terminated employees,
- overtime pay,
- minimum wage,
- holiday premium pay,
- tip and service charge pooling and distribution,
- vacation pay, and
- bonus and commission earnings and payment.

Additionally, businesses who rely on workers classified as consultants and independent contractors should review these classifications since misclassification of workers may also result in treble damages.

If you need assistance reviewing your policies and practices or have any questions about wage and hour laws or how this change affects you, please contact Renee Inomata, Chair of the firm's Labor, Employment and Employee Benefits' Practice Group. at rinomata@burnslev.com or 617-345-3340.