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If Employers Don't Pay Employees Properly They Will Now Be Liable for Treble Damages, Litigation Costs and Attorney's Fees

What Happened?

On April 14, 2008, one of the most significant state labor law developments in Massachusetts in many years occurred when a legislative bill known as Senate Bill No. 1059 (S. 1059) became law. The law, which is entitled, "An Act to Clarify the Law Protecting Employee Compensation," makes employers throughout the Commonwealth subject to *mandatory treble damages* in all wage claims under state law, including situations involving inadvertent mistakes or where employers acted in good faith in interpreting the often confusing state wage and hour laws.

When does it go into effect?

The law goes into effect on July 13, 2008, despite Governor Deval Patrick's refusal to sign the bill. The Governor's refusal was prompted by the legislature's rejection of his proposed amendments recognizing situations involving inadvertent mistakes and/or good faith.

What Does It Mean For Employers?

Under the new law, treble damages will apply to an employer's failure to properly pay its employees under all state wage and hour laws including:

- Overtime
- Minimum wage
- Premium pay on Sundays
- Prevailing wage claims
- Vacation pay
- Tips and Tip Pooling
- Non payment of wages including wages due at termination of employment
- Improper "docking" of wages
- Wages due to employee misclassification as independent contractors

This could lead to a significant increase in state wage and hour claims being brought against employers in every corner of Massachusetts.

What Do We Expect to Happen?

The mandatory treble damages remedy takes away any discretion from the courts, and is likely to lead to many more state wage and hour claims by employees and their attorneys.

What Should Employers Do?

Employers of all sizes throughout Massachusetts are well-advised to consult labor counsel and review all wage and hour policies and practices to ensure that all state wage and hour and wage payment laws are being followed closely. Consider bringing your counsel to your facility to conduct a mock inspection or on-site review of wage and hour related records. Employers should utilize this period between now and July 13, 2008 to take proactive measures.

For more information or to schedule a mock inspection, please contact David Wilson at dwilson@rc.com or (617) 557-5935; Jeffrey Hirsch at jhirsch@rc.com or (617) 557-5915; Catherine Reuben at creuben@rc.com or (617) 557-5916; Peter Moser at pmoser@rc.com or (617) 557-5923; or Alida Bográn-Acosta at abogran-acosta@rc.com or (617) 557-5963.

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