

Who Is Entitled to Overtime?

Knowing the Answer Can Save Employers Much Aggravation

By HUNTER S. KEIL and PATRICIA M. RAPINCHUK

Whether an employer is obligated to pay its employee overtime should be a simple question to answer. A recent decision in the federal courts in Massachusetts, however, illustrates that this is not always the case.

A quick primer on certain aspects of wage-and-hour laws may be helpful. First, under Massachusetts wage laws, failure to pay wages, including overtime, on a timely basis leads to an automatic trebling of damages regardless of the employer’s knowledge or intent. Under federal wage laws, there is no automatic trebling of damages.

Second, under both federal and Massachusetts wage laws, employees must be paid at a rate of 1.5 times their normal hourly rate for all hours worked over 40 hours per week. There are, however, a number of exemptions to the overtime laws under both Massachusetts and federal wage laws.

While the Massachusetts and federal exemptions often overlap, they are not always identical. The most common exemptions are the ‘white-collar exemptions’ for executive, administrative, and professional employees, which exist under both Massachusetts and federal laws. There are also a wide range of less-common exemptions. For example, there are exemptions from federal overtime laws for farm implement salespeople, railroad employees and taxi drivers.

Under Massachusetts overtime laws, there are exemptions for employees employed in a gasoline station, as seamen, and in nonprofit schools or colleges.

A recent case involved one of these less-common exemptions. In *Lambirth v. Advanced Auto Inc.*, the plaintiff was an automotive technician. He routinely worked more than 40 hours per week. Although he was paid his regular hourly rate for all hours worked, he was never paid 1.5 times his regular rate of pay for his hours which exceeded 40 hours.

After he was terminated, the employee brought suit in federal court alleging that the failure to pay time and a half for his overtime over a period of approximately a year and a half violated federal wage laws, and that



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he was entitled to treble damages for that unpaid overtime under Massachusetts wage laws because he was not paid all wages owed to him on a timely basis. The employee did not bring a claim for overtime violations under Massachusetts wage laws, presumably because the Massachusetts overtime law contains an overtime exemption for ‘garagemen,’ which arguably applied to the employee.

The employer filed a motion to dismiss the Massachusetts claim, arguing that Massachusetts wage laws, and particularly its automatic treble-damages provision, could not apply to claims alleging a violation of federal wage laws.

The judge denied the employer’s motion to dismiss, ultimately holding that Massachusetts wage laws, including the treble-damages provisions, applied to the

untimely payment of all wages to which an employee is entitled whether under Massachusetts or federal law. While the judge declined to rule on the viability of the employee’s claimed right to overtime under the federal wage laws, and noted a federal exemption similar to the garagemen exemption found in the Massachusetts wage laws, the judge nonetheless allowed the claim to proceed.

The full impact of this decision, and others that preceded it, remains to be seen. As a practical matter, however, employers need to be sure that they are in compliance with both Massachusetts and federal wage laws concerning payment of overtime in order to be protected from judgments requiring mandatory treble damages for failure to pay overtime.

Because treble damages are mandatory for any violation, employers cannot defend a claim by arguing that they were in compliance with Massachusetts wage laws and did not know about the differences in federal wage laws. Presumably, the

employer in the *Lambirth* case believed that it was in full compliance with Massachusetts laws when it determined that the plaintiff fell within the garagemen exemption and was entitled not to time and a half, but only to straight time, for hours worked over 40.

The real takeaway from the decision is that all wages, regardless of their source, are covered by the Massachusetts wage act and subject to treble damages if they are not paid on a timely basis. ■

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