

First Circuit Clarifies Remedies for Retaliation Under the Wage Act

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On Tuesday, December 15, 2015, the United States Court of Appeals for the First Circuit issued a decision that addresses the potential remedies available under the Massachusetts Wage Act. In addition to requiring the timely payment of wages, the Wage Act prohibits an employer from retaliating against an employee for exercising her rights under the statute. The Wage Act provides that an employee who prevails on a claim of retaliation is entitled to “treble damages, as liquidated damages, for any lost wages and other benefits and shall also be awarded the costs of the litigation and reasonable attorneys’ fees.” In *Travers v. Flight Services & Systems, Inc.*, the First Circuit largely affirmed a significant jury award to the plaintiff and remanded the question of front pay to the trial court.

In *Travers v. Flight Services & Systems, Inc.*, the plaintiff, Joseph Travers (“Travers”), was employed as an airport skycap. He claimed that he was fired after he instituted a class action against his employer Flight Services & Systems (“FSS”) and JetBlue alleging that their service fee policy violated the Massachusetts Tips Act and the Wage Act. A jury found for Travers and awarded him \$90,000 in back pay, \$450,000 in front pay, and \$400,000 in emotional distress damages. After post-trial motions, the district court eliminated the award of \$450,000 in front pay altogether as speculative. As to the emotional distress damages, the court ordered that Travers accept only \$50,000 or a new trial, and Travers accepted this reduced amount. The court agreed to treble the back pay award (bringing the total to \$270,000) but declined to award treble damages on the emotional distress award. In addition, the court declined to award pre-judgment interest on any amount of the award. The district court awarded over \$180,000 in attorneys’ fees and costs to Travers.

Both parties appealed the judgment. FSS challenged the jury’s verdict in favor of Travers, but the First Circuit rejected those arguments. It concluded that there was sufficient evidence to support the jury’s conclusion that Travers’s termination was retaliatory.

FSS then challenged the award of backpay. Relying on evidence that Travers had underreported his tip income to the government, FSS claimed that he had unclean hands warranting an elimination or reduction of the backpay award. The First Circuit rejected this, explaining that the underreporting of income did not harm FSS. Alternatively, FSS argued that the backpay award should be cut off at the point when it learned of the underreporting of tip income, claiming that this would have been a legitimate basis for firing Travers. The Court held that FSS’s policy on tip income stated only that underreporting of income “may” lead to termination and there was no evidence that any skycap had been fired in the past for this infraction. It thus refused to cut off the backpay award.

FSS also challenged the emotional distress damages award of \$50,000. Notably, nothing in the decision indicates that FSS argued that emotional distress damages are not recoverable under the Wage Act. Rather, it argued that the amount of the award was not supported by the evidence. The First Circuit agreed with FSS that the evidence of emotional distress “was not particularly strong,” but it concluded that the evidence in the record was sufficient to support the already-reduced award of \$50,000.

In his cross-appeal, Travers argued that the \$50,000 award for emotional distress should be trebled. To fit within the language of the Wage Act, he claimed that payment of damages for emotional distress was an “other benefit” of employment. The First Circuit disagreed, holding that the statute carves out limited categories of damages available, and that it was simply untenable to read emotional distress as an “other benefit” of employment.

Travers also argued that the district court erred in eliminating the jury’s award of \$450,000 of front pay as speculative. While the First Circuit agreed with the district court that the evidence was too speculative to support the jury award of \$450,000, the evidence was not too speculative to warrant some smaller amount of front pay. The Court remanded the issue to the district court to determine the appropriate amount of front pay damages.

Finally, Travers appealed the district court’s refusal to award pre-judgment interest pursuant to M.G.L. c. 231, § 6B, at the statutory rate of 12% per year, in addition to treble damages. FSS argued that treble damages under the Wage Act are in lieu of pre-judgment interest

because they are “liquidated damages” and thus compensate the plaintiff for the time value of his damages. Travers argued that there was nothing in the legislative history or language of the Wage Act to suggest that the pre-judgment interest statute did not apply to Wage Act claims. The First Circuit held that the issue raised a “close question” of state law and asked the Supreme Judicial Court to answer it.

The *Travers* decision demonstrates that jury awards in retaliation claims under the Wage Act can be significant. Although the court refused to triple the emotional distress damages, the First Circuit nonetheless upheld \$320,000 in backpay and emotional distress damages, and instructed the trial court to revisit the jury’s \$450,000 award in front pay. Plus, if the Supreme Judicial Court ultimately holds that both the pre-judgment interest statute and the treble damages provision under the Wage Act applied in calculating Travers’s damages, employers could be exposed to a one-two punch that greatly increases the potential total liability. While much of the focus under the Wage Act has been on class claims involving the alleged non-payment of wages to a class of employees, *Travers* demonstrates that even a single plaintiff’s claim of retaliation can be costly.

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