

## Employers May Be Able to Limit Treble Damages for Violations of the Massachusetts Wage Act

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The Massachusetts Wage Act automatically entitles an employee who proves an unlawful failure to pay wages to treble damages. On June 18, 2015, however, a Massachusetts Superior Court judge ruled in *Littlefield v. Adcole Corporation* that when an employer makes a late but full payment of unpaid wages to an employee **before** the employee files a Wage Act lawsuit, the employee can only recover treble damages on the interest that accrued as a result of the delay. The employee is not entitled to treble damages on the entire amount of the delayed wages.

The plaintiff in the case, Kenneth Littlefield, was terminated by his employer, Adcole Corporation, without receiving a full and final paycheck on his last working day as required by the Wage Act. At his termination, Adcole owed Littlefield two weeks' salary and about \$30,000 in vacation pay. Adcole paid these wages to Littlefield shortly after his termination over a period of two weeks, but, during that time, Littlefield filed a Wage Act complaint with the Attorney General's Office. Then, despite receiving payment for any unpaid wages, Littlefield sued Adcole, seeking treble damages on the full value of the delayed wage payment, as well as his attorneys' fees and litigation costs.

The court rejected Littlefield's claim that he was entitled to treble damages based on the total value of his final pay. Citing a prior Superior Court case authored by Judge Gants, the current Chief Justice of the Supreme Judicial Court, the judge ruled that the provision of the Wage Act barring subsequent payment of wages as a defense to a Wage Act claim does not apply when the payment is made prior to the filing of a lawsuit. In other words, if the employer pays any unpaid wages in full before the employee files a Wage Act lawsuit, the employee's treble damages are limited to the interest forgone from the delay in payment. This remains true even when an employee files a complaint with the Attorney General's Office, so long as the employer has no notice of the complaint before paying the wages.

Importantly, *Littlefield* is a Superior Court case, and like Judge Gants' decision, its holding has not yet been tested on appeal. It also remains unclear whether the payment defense is available where the employer has notice of an Attorney General complaint before issuing payment. Nevertheless, this decision is an important signal that employers should consider remedying any Wage Act violations promptly after they become aware of them. Even when the payment is delayed, an employer may be able to minimize an employee's damages under the Wage Act substantially by correcting the error and making payment as soon as possible.

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