

Massachusetts Appeals Court Takes Expansive View of Retaliation Under the Wage Act

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In *Fraelick v. PerkettPR, Inc.*, the Massachusetts Appeals Court recently held that an employee had a claim for retaliation under the Massachusetts Wage Act, despite that her underlying complaint was not about wages. In that case, the employee worked from her home for a “virtual” public relations firm, and initially, the employer reimbursed her for business overhead costs such as telephone services fees and travel expenses. About two years after the plaintiff was hired, the company stopped reimbursing her for her overhead costs. When the plaintiff complained, the company paid her only a portion of the expenses she had incurred. The plaintiff later declared to senior management that due to financial hardship she could not travel to meet out-of-town clients until the company repaid her for her overhead costs. The company delivered a check to the plaintiff for the monies owed, but five days after the plaintiff raised these concerns, the company fired her. In doing so, the company cited the plaintiff’s unwillingness to continue paying for the firm’s business expenses associated with her traveling to meet with clients without receiving timely reimbursement.

The plaintiff sued the company, claiming that it violated the anti-retaliation provision of Section 148A of the Massachusetts Wage Act. Section 148A provides that an employer may not penalize an employee for asserting her rights under the Wage Act. The trial court dismissed her claim on the ground that “business expenses” are not wages covered under the Wage Act.

The Appeals Court reversed the dismissal of the Section 148A retaliation claim because the plaintiff reasonably believed that the expense reimbursement arrangement fell within the scope of the Wage Act. The Court acknowledged that the reimbursement of business expenses is not covered by the Wage Act “in the ordinary course” because the reimbursement is not compensation “earned” by “labor, service, or performance.” However, the Court suggested that a violation of the Wage Act could arise when an employer replaces its expense reimbursement policy with a practice of requiring the employee to advance expenses for the employer’s benefit under penalty of discharge. It reasoned that this effectively amounted to a reduction in the plaintiff’s wages.

Fraelick is the latest decision by Massachusetts courts to take a broad view of the scope of the Wage Act. By its logic, if employees raise concerns about monetary issues that do not appear at first glance to relate to wages, an employee may nonetheless be able to bring a claim for retaliation on the theory that costs incurred by the employee necessarily mean their take-home pay is reduced. Nevertheless, the *Fraelick* decision leaves open the question of whether a claim of retaliation under the Wage Act would exist if the employer had provided written notice that it was discontinuing its paid expenses policy prior to the time it stopped reimbursing the plaintiff. In this case, the employer did not dispute that the policy remained in effect or that the plaintiff was owed the reimbursement she sought.

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