

PAYING EMPLOYEES IN MASSACHUSETTS

By: *Anthony Augeri, Esq.*
Email: aaugeri@devinemillimet.com
Phone: 978.475.9100

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With all of the news the past year or so focusing on the downturn in the economy (to put it kindly), we thought it would be opportune to present an article focusing on a positive topic related to hiring and growth, though it does include dealing with terminations that are critical to be aware of, particularly those businesses based in New Hampshire that also have locations in Massachusetts. With that, here we go.

Massachusetts has many statutes and accompanying state regulations which require employers to keep track of the time their employees work, as well as defining when and how employees must be paid. Even if your company uses a payroll service, you should ensure that company policies and practices satisfy the following statutes and rules in addition to any applicable federal laws and regulations. Failure to comply with state law requirements may result in employee claims of wage and hour violations against the employer with the Massachusetts Attorney General, and also civil penalties. The following is a list summarizing some Massachusetts wage and hour issues, with citation to the applicable laws and regulations:

Payroll and Payment of Wage Issues:

(1) Employees may be paid weekly or bi-weekly. See *M.G.L. c.149, §148*. Employees employed in bona-fide executive, administrative and professional positions may be paid bi-weekly or semi-monthly, or may choose, without any form of coercion, to be paid monthly. All wages earned by an employee working five or six days in a calendar week must be paid within six days of the expiration of the pay period, or within seven days if the employee is employed on seven days in a calendar week. When paying employees, employers must provide the employee with a pay stub or similar document which includes the name of the employer; the

Labor, Employment & Employee Benefits

Mark Broth, Chair
603.695.8558
mbroth@devinemillimet.com

Newton Kershaw
603.695.8571
nkershaw@devinemillimet.com

Patricia McGrath
603.695.8537
pmcgrath@devinemillimet.com

Anthony Augeri
978.475.9100
aaugeri@devinemillimet.com

Margaret O'Brien
603.695.8631
mobrien@devinemillimet.com

Anne Scheer
603.410.1708
ascheer@devinemillimet.com

Laurel Van Buskirk
603.695.8565
lvanbuskirk@devinemillimet.com

Anne Trevethick
603.695.8725
atrevethick@devinemillimet.com

DEVINEMILLIMET.COM

EMPLOYMENT@DEVINEMILLIMET.COM

name of the employee; the day, month, and year; the number of hours worked; and the employee's hourly rate. The employee must also receive information regarding of the amounts of deductions or increases made for the pay period. Notice of a change in the time of payment from weekly to bi-weekly must be made 90 days in advance.

(2) Employers may not require employees to accept their pay by direct deposit, although this is a service which may be offered to employees. Employers who pay their employees by check or draft must provide facilities for cashing the paycheck with no deduction from its face value. This rule has been interpreted to require employers to cash the checks themselves or to have an arrangement with a bank or other establishment who will cash paychecks for the employees without charge to the employee.

(3) The term "wages" includes any holiday or vacation payments due an employee under an oral or written agreement. It also includes commissions that are "definitely determined and due and payable", which translated means commissions must be paid when they become "arithmetically determinable." See *M.G.L. c.149, §148*; *Wiedmann v. Bradford Group, Inc.*, 444 Mass. 698, 708 (2005). Therefore, any accrued but unused paid time off for vacation or sick time, and all "arithmetically determinable" earned commissions must be paid to an employee at the appropriate time following his or her separation from employment.

(4) No deductions from minimum wage may be made except those required by law or those permitted by regulation for lodging and meals. See *M.G.L. c.149, §148*; *455 CMR 2.04(1)*. Any employer who makes deductions from wages for mandatory or voluntary payments must notify the employee in writing of the amount and nature of the deduction at the employee's request. Also, each pay period, employees must be notified of the amount of any deductions or increases made to their wages during that pay period. All new employees must be given notice of the deductions and contributions made from their wages on receiving their first pay check, and all employees must be notified when any new contributions or deductions are taken from their paycheck.

(5) Minimum Wage in Massachusetts is \$8.00 per hour, not \$7.25 per hour that is currently the federal minimum wage that New Hampshire follows. See *M.G.L. c. 151, §§1-2*.

(6) There is a big difference in how wages are paid at the end of the employment relationship, largely depending on how an employee terminates employment. If the employee voluntarily

Office Locations:

111 Amherst Street
Manchester, NH 03101
T 603.669.1000
F 603.669.8547

300 Brickstone Square
Andover, MA 01810
T 978.475.9100
F 978.470.0618

43 North Main Street
Concord, NH 03301
T 603.226.1000
F 603.226.1001



terminates employment (resigns), he or she must be paid all earned wages (as defined above) due on the next regular pay day. Involuntarily terminated employees (fired, laid off) must be paid all wages due to them on the day of discharge. See *M.G.L. c.149, §§148, 150*; Please remember that in either instance, wages are defined under Massachusetts law to include; (i) all unused accrued vacation time, (ii) all unused accrued holiday time, and (iii) all commissions that are definitely determined and due and payable (aka commissions be paid when they become “arithmetically determinable”). Failure to pay wages in either instance is a violation of Massachusetts law mandating triple damages, costs, and reasonable attorney’s fees.

(7) Employers must give employees a 30 minute meal break if the employee works more than 6 hours in a day. See *M.G.L. c. 149, §§100-101*. The employer must pay employees for their meal break if the employee: (a) agrees to work through his or her meal, or (2) agrees to remain on the employer’s premises. Otherwise employers do not have to pay employees for the time taken for meal breaks.

Time Keeping/Recordkeeping Issues:

(1) Every employer must keep an accurate record of the name, complete address, social security number and occupation of each employee, of the amount paid each pay period to each employee, the hours worked each day, and the dates on which each employee worked each week. Such records shall be kept on file for at least two years after the entry date of the record, and must be maintained at the place of employment, at an office of the employer, or with a bank, accountant or other central location within the Commonwealth. See *M.G.L. c.151, §15*.

(2) An employer may round an employee’s starting and stopping time to the nearest five minutes, one-tenth, or quarter of an hour provided that this manner of computing working time averages out over a reasonable period of time so that an employee is fully compensated for all the time he or she actually worked.

(3) If an hourly employee scheduled to work three or more hours and reports to work at the time set by the employer, and then is not provided with the expected hours of work, the employee must be paid for three hours of work. See *455 CMR 2.03*.

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