



ML Strategies Alert

2017-2018 Legislative Session: Wage Theft and Other Employment Issues

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Massachusetts lawmakers continue to debate legislation this session with substantial implications for employers in the Commonwealth. Bills aimed at preventing wage theft by employers, establishing a paid family and medical leave program, and providing accommodations for pregnant workers have gained significant momentum and received widespread support from lawmakers. The legislature also recently voted to advance to the 2018 ballot the so-called “Millionaire’s Tax,” which imposes a 4 percent surtax upon incomes above \$1 million.

Wage Theft

Workers’ rights advocates and labor leaders have joined together with Attorney General Maura Healey and much of the legislature in support of legislation aimed at preventing wage theft by employers. The bill ([S.999/H.1033](#)), titled “An Act to Prevent Wage Theft and Promote Employer Accountability,” is currently pending in the Joint Committee on Labor and Workforce Development. Senator Sal DiDomenico introduced the Senate version and Representative Aaron Michlewitz introduced the House version. Wage theft – generally a business’s underpayment, non-payment, or denial of benefits to a worker – is defined in the bill as any violation of an enumerated list of labor violations within Chapter 149 of the General Laws.

The bill allows the Attorney General or the Director of the Department of Unemployment Assistance to issue a stop work order against wage violators requiring the cessation of all business operations. The stop work order may remain in effect until the violation has been corrected. A violator against whom a stop work order has been issued may request a hearing. Employees affected by a stop work order are to be paid for the first ten days lost pursuant to the order, and time lost not exceeding ten days is to be considered time worked.

The Attorney General’s office is given the power to bring wage theft cases to court for civil damages as an alternative to initiating criminal proceedings. If the Attorney General prevails in the action, the employee or employees are to be awarded damages for any lost wages and other benefits. The Attorney General can also be awarded the costs of the litigation and reasonable attorneys’ fees.

In an attempt to establish accountability in labor contracting and subcontracting, the bill subjects a lead contractor to joint and several civil liability and provides that the lead contractor will share civil legal responsibility for any wage theft violation. The bill defines a “lead contractor” as a business that obtains, engages or is provided one or more individuals directly from a labor contractor or indirectly from a labor subcontractor to perform labor or services that have a significant nexus with the lead contractor’s business activities, operations, or purposes. A “labor contractor” is any person or entity who obtains, engages, or provides one or more individuals to perform labor or services to a lead contractor and a “labor subcontractor” is any person or entity who obtains, engages, or provides one or more individuals to perform labor or services to a labor contractor.

The bill has received strong support from Healey, who at a June 24 press conference said that passing a wage

theft law is a priority for her office. Healey said her office has been aggressive in combating wage theft and she has hired new investigators and expanded multilingual outreach efforts to combat wage theft. She noted that in the past year her office has received over 20,000 calls from people reporting stolen wages and over 6,000 complaints and has cited 232 employers for more than \$6 million in wage violations since last summer.

Critics of the bill have said it would hold companies unfairly responsible for subcontractors' actions they may not have knowledge of. They have also expressed concern that it would deter companies from doing business in Massachusetts.

This is the second consecutive session the legislature has considered a wage theft bill. Similar legislation passed the Senate by a 38-2 vote at the end of formal sessions last year, but it did not make it out of the House Ways and Means Committee. Business groups opposed the legislation, saying it went further than measures in other states and its goals could be accomplished by existing laws.

This session's bill has received additional support from the House, as over 100 Representatives have signed on as cosponsors compared to 76 for last session's House bill. The bill has maintained strong support in the Senate, with 26 Senators currently signed on as cosponsors. The Labor and Workforce Development Committee is scheduled to hold a hearing on these two bills on June 20.

Paid Family and Medical Leave

Lawmakers continue to debate legislation requiring employers to provide employees with paid family and medical leave. Filed by Senator Karen Spilka in the Senate and Representative Ken Gordon in the House, An Act Establishing a Family and Medical Leave Insurance ([S.1048/H.2172](#)) creates an insurance program making workers eligible for paid leave due to the birth of a child, the placement of a child for adoption or foster care with the employee, or to provide for a family member with a serious health condition. Employees would be eligible for a maximum of 12 weeks (House version) or 16 weeks (Senate version) of job-protected family leave per benefit year. It also allows an employee to take temporary leave due to a serious health condition. Both proposals grant a maximum of 26 weeks of job protected temporary medical leave per benefit year. The House bill sets a maximum benefit of \$650 per week and the Senate bill sets a maximum benefit of \$1,000 per week.

The bills call for the leave to be financed in part by employer and employee contributions. Employers would be required to make contributions to a newly created Family and Employment Security Trust Fund proportionate to the employee salary at an amount determined by the newly created Department of Family and Medical Leave (Senate) or the State Treasurer (House). Employers are required to provide at least 50 percent of the contribution, though they may contribute more, and employees are to provide the other 50 percent.

Under the House proposal, employees are eligible for leave if they are financially eligible for unemployment insurance. Under the Senate proposal, employees would be eligible once they accrue at least 1,250 hours of service for an employer. Nearly all employers are required to participate in the leave program.

At a hearing before the Labor and Workforce Development Committee on June 13, a broad coalition of legislators, workers, business owners, and economists called for passage of the legislation. Senator Spilka testified that nearly every other country in the world, with the exception of Papua New Guinea and Suriname, provides paid leave to workers. Rep. Gordon explained that because a worker on leave is paid out of a separate insurance fund, the law relieves employers from the responsibility of the payroll for that worker, allowing the employer to hire another worker or extend shifts of current employees to make up that time. Economists from UMass Boston and Northeastern testified that the House bill would cost a total of \$560 million, or 0.355 percent of total employee payroll, and the Senate bill would cost \$786 million, or 0.498 percent of payroll. Several business owners testified that they need to offer paid family and medical leave to be able to attract and retain top talent.

Business advocacy organizations, including the Retailers Association of Massachusetts and the Associated Industries of Massachusetts, largely oppose the legislation, arguing that the program would be too costly for employers and hurt small businesses. One business organization, the Alliance for Business Leadership, testified in support of the legislation, however, saying that paid leave makes good business sense because it provides cost savings to employers and gives Massachusetts employers a competitive advantage.

Bill proponents have threatened to place the issue before voters as a ballot question if a bill does not pass the legislature this session. This possibility was referenced repeatedly at the hearing and Senate President Rosenberg has said that he would expect this to happen should the legislature not act. Last session the Senate passed a bill to create a paid family and medical leave program, but the House did not take up the legislation.

Pregnant Workers

On May 10, the House unanimously passed the Pregnant Workers Fairness Act ([H.3680](#)). The bill, which was filed by Senator Joan Lovely and Representative Dave Rogers, offers pregnant women reasonable accommodations, including “more frequent or longer paid or unpaid breaks, time off to recover from childbirth with or without pay, acquisition or modification of equipment, seating, temporary transfer to a less strenuous or hazardous position, job restructuring, light duty, break time and private non-bathroom space for expressing breast milk, assistance with manual labor, or modified work schedules” as long as the accommodation “would not impose undue hardship on the employer.” The bill represents a compromise among the Associated Industries of Massachusetts, the advocacy group MotherWoman, and other key stakeholders.

The legislation is currently pending in the Senate, where it resides in the Ways and Means Committee. The bill is highly likely to become law, as it has the support of a majority of the Senate and Governor Baker said he would sign the current version of the bill into law.

Millionaire’s Tax

On June 14, House and Senate members voted 134-55 to place a constitutional amendment, the so-called “Millionaire’s Tax,” before voters on the 2018 ballot. The measure imposes a 4 percent surtax on income above \$1 million and supporters say that, if approved, it will raise around \$2 billion for investments in education and transportation. Opponents of the Millionaire’s Tax have said that the measure is likely unconstitutional and have pledged to try to derail it through a legal challenge. They also argue that it will cause wealthy residents to leave Massachusetts, drive away jobs, and hurt businesses in the state.

Conclusion

In addition to these proposals, a conference committee composed of House and Senate lawmakers is currently trying to agree upon a final FY2018 budget that will include final versions of proposals relevant to employers. The budget will include the final version of the fair share assessment aimed at curbing rising MassHealth spending and tax provisions impacting employers’ tax burden in Massachusetts. ML Strategies will continue to monitor and report on legislation and budget provisions relevant to employers periodically throughout the session.

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