

---

## Increased Penalties for Wage Law Violations

1998-11-01

On November 7, 1998, the Massachusetts wage laws were amended and now carry both criminal and civil penalties for violations by employers. These amendments mean that the Attorney General now has authority to impose civil sanctions for wage violations, such as the failure to pay overtime or the prevailing wage rate, which in the past may not have warranted criminal sanctions.

Under the law:

- The persons who can be subject to liability for violations include employers, contractors, and subcontractors as well as officers, agents, superintendents, foremen and employees thereof.
- Criminal penalties, the amount of which depend upon the "wilfulness" of the employer, now carry greater penalties, including:
  - A maximum fine of \$25,000, a prison term of up to one year, or both, if it is a first offense. Subsequent intentional violations will result in a fine of up to \$50,000, imprisonment for a period of up to two years, or both.
  - If the violation is unintentional, a first offense may result in a fine of not more than \$10,000 or a term of imprisonment of up to six months. Additional unintentional violations will result in a fine of up to \$25,000 or imprisonment for up to one year. For unintentional violations, the party only will be subject to a fine or imprisonment, not both.
- If the Attorney General determines, upon inspection of a public works project or place of employment, that a violation is not significant enough to justify a criminal proceeding civil sanctions now may be imposed. For each violation, the Attorney General has the discretion to issue a written warning or a civil citation.
  - A civil citation may involve an order to (a) rectify the violation; (b) make restitution to the aggrieved party; and/or (c) pay a civil penalty of up to \$25,000 to the Commonwealth for each violation.

- It should be noted that the Attorney General's Office has discretion to deem each failure to pay an employee the appropriate wage or overtime rate in any 40 hour per week pay period as a separate violation.
- Contractors and subcontractors engaged in public works projects may face additional penalties, such as disbarment from contracting with the Commonwealth or any of its agencies or political subdivisions.

Under new law, employers may challenge the imposition of a civil penalty by filing a notice of appeal with the Attorney General and the Division of Administrative Law Appeals within 20 days of the citation. Upon a timely appeal, the employer will be scheduled to receive a hearing before an administrative hearing officer. The decision of the hearing officer may be appealed to the Superior Court.

---

## *Authors*

---

### **Neil Jacobs**

RETIRED PARTNER

☎ +1 617 526 6000



### **Jonathan Rosenfeld**

RETIRED PARTNER

✉ [jonathan.rosenfeld@wilmerhale.com](mailto:jonathan.rosenfeld@wilmerhale.com)

☎ +1 617 526 6000