



One Minute Memo[®]

Massachusetts Supreme Judicial Court Rules that Mandatory Treble Damages Statute is Not Retroactive

In a decision that will benefit many defendants in wage and hour cases in Massachusetts, the Massachusetts Supreme Judicial Court has declared that a statute mandating automatic treble damages for most violations of the Commonwealth's wage and hour laws only applies to conduct occurring after its effective date of July 12, 2008. In *Rosnov v. Molloy*, the SJC refused to retroactively apply the amended treble damages statute, rejecting a position advanced by the plaintiffs' bar that mandatory treble damages should be available to plaintiffs for violations of the state's wage and hour laws even before the new law became effective.

Attorney Rosnov was briefly associated with the Law Offices of John Molloy. After resigning from Molloy's firm, Rosnov alleged that Molloy orally agreed to pay her referral fees which she never received. Molloy denied entering into such a contract with Rosnov, and she sued for nonpayment of wages. The issues of liability and damages were bifurcated for trial, and after receiving a jury verdict in favor of Rosnov, the Superior Court held that Molloy was automatically liable for treble damages pursuant to the July 12, 2008 amendment even though his alleged conduct predated that amendment. Molloy appealed the finding regarding retroactive application of the treble damages statute and successfully petitioned the SJC for direct appellate review.

Molloy argued before the SJC that the amended treble damages statute could not apply retroactively for two reasons. First, prior SJC decisions held that statutory changes to parties' substantive rights can only be made on a prospective basis, whereas mere procedural or remedial legislation may apply retroactively. The SJC agreed that the mandatory treble damages amendment affected parties' substantive rights, holding that the amendment "effected a critical change in the language of the statute, removing the provision that treble damages 'may' be awarded, and replacing it with the directive that treble damages 'shall' be awarded." Noting that "only a potential for treble damages existed before," the SJC reasoned that the amendment affected defendants' substantive rights because it created a "marked increase" in liability.

Molloy further argued that the amendment's legislative history bore no indication that the legislature intended the amendment to apply retroactively. The SJC adopted both of Molloy's arguments, holding that language suggesting retroactive application was actually stricken from the bill before its enactment and noting that courts presume such "deletion[s] to have been intentional." Noting that the legislature's "intent on the retroactivity issue is murky" at best, the SJC found that Rosnov failed to present the "unequivocally clear" evidence of legislative intent necessary to support a finding of retroactivity given the marked change in substantive rights effected by the amendment.

Employers already defending wage and hour claims in Massachusetts that involve violations alleged to have occurred prior to the amendment's effective date of July 12, 2008, may now rely on the SJC's ruling in *Rosnov v. Molloy* to eliminate or reduce exposure. We remind employers that this decision does not insulate defendants from treble damages before the statutory amendment became effective. However, to obtain multiple damages prior to that time, plaintiffs must prove that the employer's conduct was "outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others." *Wiedmann v. Bradford Group*, 444 Mass. 698, 710 (2005). For violations after July 12, 2008, the statutory amendment mandating treble damages will apply, subject to a possible constitutional challenge that the court in *Rosnov* did not reach. Employers in Massachusetts are, therefore, well advised to maintain heightened vigilance in their wage and hour compliance measures.

Seyfarth Shaw LLP was appellate counsel for the Law Offices of John Molloy. For further information about this and other wage and hour cases of interest to employers, visit Seyfarth Shaw's [Wage & Hour Litigation Practice Group's blog](#).

By: [Richard Alfred](#) and [Beth Gobeille](#)

[Richard Alfred](#) is a partner in Seyfarth's Boston office and [Beth Gobeille](#) is an associate in the firm's Boston office. If you would like further information, please contact your Seyfarth Shaw LLP attorney, Richard Alfred at ralfred@seyfarth.com or Beth Gobeille at bgobeille@seyfarth.com.



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