

## Unpaid Hours and Wages

Employers who fail to pay wages as promised and as required are in violation of state and federal law. Employers who fail to pay wages to an employee are liable for 3x the amount of the unpaid wages, court costs, and attorney fees. (Mass. Wage Act, M.G.L. c. 149, s. 150) These treble damages are mandatory even when the employer has acted in good faith and took reasonable steps to comply with wage payment laws. Massachusetts has one of the strongest laws in the country when it comes to unpaid wages. Wages in Massachusetts include hourly or weekly pay, commissions, vacation time, and bonuses. The minimum wage in Massachusetts is \$12 per hour, and all employees must be paid at least the minimum wage on a regular basis. It is also required by law that if an individual works more than 6 hours then they need to be given a 30 min unpaid lunch. If the employee is restricted in movement during the break or must perform a job function during the break then compensation must be paid. (this can be waived by the employee)

### What is considered unpaid wages?

1. Must be paid within 7 days of the end of the pay period
2. Must be paid biweekly/weekly
3. If fired then must be paid all wages on the day she is fired (if employee leaves voluntarily then not owed his final paycheck until next regulatory pay period)
4. All commission from commissioned employees must be paid

### Steps to take?

- If you have outstanding unpaid wages you can complete a Wage Complaint and submit to the Fair Labor Division at the office of the Attorney General. Additionally, you can file your own lawsuit against an employer 90 days after filing a Wage Complaint or sooner if you have permission from the Attorney General.

\*An employer cannot withhold wages for damages caused by the employee or because the employee has not returned company equipment or materials. The employer is allowed to sue the employee for the damage, but withholding wages is illegal.

Massachusetts Independent Contractor Laws protect workers from being misclassified as independent contractors which deprives individuals of important benefits.

Under **M.G.L. c. 149, s. 148B** → workers must be classified as an employee UNLESS;

1. Service performed is outside the usual course of business of the employer
  2. Individual is free from control and direction in connection with the service and
  3. Individual is customarily engaged in an independently established trade that is involved in the service performed
- (NEED ALL 3 OTHERWISE AN EMPLOYEE)



*Wiedmann v. The Bradford Group*, where the Supreme Judicial Court held that commissions are protected under the Wage Act so long as they are “definitely determined” and have become “due and payable.”

### **Overtime Violations**

- Employers have to pay 1 ½ times an employee’s regular rate or all time worked over 40 hours in a given week
- Only ‘exempt’ employees are precluded from overtime pay
- In order to be exempt:
  - a. Paid on a salary basis of at \$445 per week AND
  - b. Must be classified as an executive/administrative on the basis of the specific job duties he/she performs