

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Joseph Barber and Barber Drywall Inc.,
Petitioners,

No. LB-25-0374

v.

Dated: May 13, 2026

**Office of the Attorney General, Fair Labor
Division,**
Respondent.

Appearances:

For Petitioners: Scott K. Semple, Esq.

For Respondent: Alex Sugerman-Brozan, Esq.

Administrative Magistrate:

Yakov Malkiel

SUMMARY OF DECISION

(1) The petitioners were late to increase their employees' prevailing wages under G.L. c. 149, § 27. A civil citation for that offense was issued without the benefit of exculpatory facts about the petitioners' proactive, good faith efforts to obey the statute. The division will receive an opportunity to reconsider the amount of the penalty imposed by the citation.

(2) A second civil citation originated with the petitioners' misclassification of a specific worker for purposes of the prevailing wage law. The error appeared in the petitioners' certified payroll records under G.L. c. 149, § 27B. But the records were "true and accurate" within the meaning of the statute: they correctly identified the classification on which the petitioners relied to calculate the employee's wages. The citation was therefore erroneously issued.

(3) A third citation alleged that the petitioners failed to produce true and accurate records to the division upon request. The requested records related to the petitioners' policies about earned sick leave under G.L. c. 149, § 148C. The petitioners were not required to keep the pertinent records, did not in fact keep them, and could not have produced them to the division. The citation was erroneously issued.

DECISION

This is an appeal from three civil citations issued to petitioners Barber Drywall Inc.

(Barber Inc.) and Joseph Barber by respondent the Office of the Attorney General, Fair Labor

Division (division). I held a hearing on April 7, 2026, at which the witnesses were Mr. Barber and division investigator Greg Reutlinger. I admitted into evidence joint exhibits 1-2, the division's exhibits 1-4, and the petitioners' exhibits 1-3 and 5-7.¹

I. Findings of Fact

A. Background

1. Barber Inc. is in the drywall construction trade. Its typical work assignments include drywall framing, carpentry, and insulation. Mr. Barber is the company's president. (Barber test.)

2. Several times per year, Barber Inc. serves as a subcontractor on public construction projects. Each time, the company enters into a written contract with the project's general contractor. Each contract requires Barber Inc. to comply with the prevailing wage law, G.L. c. 149, § 26, et seq. Each contract includes a wage schedule issued under that law. Typically, the wage schedule provides in advance for all employees to receive periodic wage increases. (Barber test.)

B. The Concord Project

3. CTA Construction (CTA) was the general contractor on a construction project at the Concord Middle School. In September 2023, Barber Inc. contracted to work on the project as CTA's subcontractor. The contract required Barber Inc. to comply with the prevailing wage law. It incorporated the project's wage schedule, which provided for future wage increases in March 2024 and September 2024. (Exhibits P3, P7.)

¹ The petitioners withdrew their exhibit 4 as originally constituted.

4. Barber Inc. employed approximately thirty workers on the Concord project. Each week, the company's foreman informed the company's payroll office whether each employee was a carpenter, a taper, or a general-purpose laborer. These three categories of workers were entitled to different pay scales under the project's wage schedule. (Exhibit P7; Barber test.)

C. The Misclassification

5. In February 2024, Barber Inc. hired Jose Ramirez-Gonzalez as a general-purpose laborer. Mr. Ramirez-Gonzalez soon began to perform carpentry work; but for a period of several weeks, Barber Inc. continued to pay him at laborer rates, apparently as a result of an oversight or miscommunication. (Exhibit P5; Barber test.)

6. Each week, Barber Inc. submitted standard-form certified payroll records to the city of Concord. During the period when Mr. Ramirez-Gonzalez performed carpentry work but was paid as a laborer, the certified payroll records described him as a laborer. The records accurately stated the amounts paid to him. (Exhibits P5, P6; Barber test.; Reutlinger test.)

D. The Late Wage Increase

7. During March 2024, a CTA employee emailed Mr. Barber and other individuals connected to the Concord project. The upshot of the email was that it was time for CTA's subcontractors to implement the March 2024 wage increases anticipated by the project's wage schedule. But later that day, a higher-ranking CTA employee wrote to the same group: "Please disregard [the original] email. Wage rates are not due to be updated until 1yr [from] contract execution." (Exhibit P1.)

8. Puzzled by CTA's updated guidance, Mr. Barber reached out to Lyle Coghlin, a CTA principal with whom he had a good relationship. Mr. Coghlin told Mr. Barber that the

contract for the Concord project enjoyed an atypical structure, under which CTA and its subcontractors were entitled to leave their employees' wages unchanged for one year. Mr. Barber accepted Mr. Coghlin's explanation. (Barber test.)

9. On October 3, 2024, a CTA employee sent another email to Mr. Barber and various other individuals, this time stating: "Here is the Prevailing Wage update 6.5.24 that was provided 10.3.24" Mr. Barber understood the email to mean that it was time for CTA's subcontractors to raise their pay rates. On the advice of Barber Inc.'s payroll manager, the company made its wage increases retroactive to September 1, 2024. (Exhibit P2; Barber test.)

E. The Document Production

10. In late 2024, the division began to investigate Barber Inc. A formal demand for documents directed Barber Inc. to produce, among other items: "The following documents concerning earned sick leave policies . . . (a) the contents of the policies; and (b) documents that reflect the methods and timing that such policies . . . were communicated to Massachusetts employees." (Exhibit R2.)

11. Accompanying the division's demand for documents was a preprinted "establishment information" form designed to collect various details about the business. Mr. Barber signed the form after it was filled in by Barber Inc.'s payroll manager. The signed version of the form included a "Yes" checkbox in response to the question, "Does your business have an earned sick time policy?" (Exhibits R2, R4; Barber test.)

12. Barber Inc. produced a collection of documents to the division. The production included no earned sick leave policy and no copies of communications about such a policy. In response to two follow-up requests, Barber Inc.'s attorney promised to provide additional

information, but did not deliver. As it turns out, Barber Inc. had no earned sick leave policy and possessed no documents relating to one. The payroll manager who marked “Yes” on the establishment information form was confused among different types of paid time off.

(Exhibit R3; Barber test.; Reutlinger test.)

F. The Citations

13. In June 2025, the division issued citations numbered 001-003 to the petitioners, who timely appealed. Citation 001 was later amended, and portions of it were resolved on summary decision and by agreement; all as discussed below. (Exhibits J1, J2.)

II. Analysis

The division is authorized to punish violations of various statutes through civil citations. See G.L. c. 149, § 27C(b). To obtain relief on appeal, an employer-petitioner bears the burden of “demonstrat[ing] by a preponderance of evidence that the citation . . . was erroneously issued.” *Id.* § 27C(b)(4).

A. Citation 001

The prevailing wage law requires employers on public construction projects to pay higher-than-usual minimum wages to their employees. G.L. c. 149, § 27. The prescribed wages for each project are stated in schedules issued by the Department of Labor Standards. *Id.* Citation 001 alleges that the petitioners failed to pay prevailing wages, “without specific intent.” As amended, the citation seeks approximately \$44,000 in restitution and a penalty of approximately \$16,000.

The citation rests on two theories. The first is that, for several weeks, Mr. Ramirez-Gonzalez received laborer wages instead of carpenter wages. The second is that all of

Barber Inc.'s employees on the Concord project continued to receive their pre-March 2024 wages even after the applicable wage schedule called for pay raises.

The restitution amounts sought by citation 001 do not need to be addressed here. The petitioners do not contest the restitution to which Mr. Ramirez-Gonzalez is entitled. And an interlocutory order granted summary decision to the division with respect to the restitution owing to the remaining employees. *Barber v. Attorney Gen.*, No. LB-25-374, 2026 WL 714137 (Div. Admin. Law App. Mar. 4, 2026) (*Barber I*). In a nutshell, *Barber I* concluded that employers are strictly liable for restitution under the prevailing wage law, and that the petitioners did not place the accuracy of the division's calculations in genuine dispute. *Id.*

What remains to be decided with respect to citation 001 is the propriety of the penalty amount. The dispute concentrates on the petitioners' belated pay raises to their employees. The petitioners argue essentially that they acted without fault, relying in good faith on the guidance they received from their general contractor.

The division's papers have not been entirely clear on whether, in the division's view, the petitioners' degree of fault is relevant to the amount of the penalty. The correct answer is that fault is central to the analysis. The authorities that refer to the prevailing wage law as a "strict liability" statute do so in discussions of the employer's obligation to compensate the affected employees. See *Lighthouse Masonry, Inc. v. Division of Admin. L. Appeals*, 466 Mass. 692, 699 (2013); *Rego v. Allied Waste Servs. of Massachusetts, LLC*, 100 Mass. App. Ct. 750, 755 (2022); *Donis v. American Waste Servs., LLC*, 95 Mass. App. Ct. 317, 324 (2019), *S.C.*, 485 Mass. 257 (2020). That form of strict liability is unsurprising in the context of a minimum wage law: no matter how blameless an employer may be, the employees remain entitled to their wages.

It would be much more surprising for a non-compensatory, punitive penalty to be imposed on a strict-liability basis, i.e., without regard for the employer’s degree of fault. As a conceptual matter, strict liability runs counter to the fundamental purpose of punitive statutes, i.e., to deter and punish guilty, condemnation-worthy behavior. *See generally Carter v. United States*, 530 U.S. 255, 269 (2000); *United States v. George*, 386 F.3d 383, 392-93 (2d Cir. 2004). Strict punitive liability is therefore the exception, *Commonwealth v. Kelly*, 484 Mass. 53, 58 (2020), including under statutes that provide for both criminal and civil penalties, *Vita v. New England Baptist Hosp.*, 494 Mass. 824, 847 (2024), which the prevailing wage law does, G.L. c. 149, § 27C(a)(1)-(2).

The statute that governs the division’s civil penalties is consistent with the foregoing points. On its list of the factors pertinent to the penalty amount is “the intent by [the] employer to violate the [law].” G.L. c. 149, § 27C. The relevance of the employer’s “intent” means that the penalty is not meant to be imposed on a strict-liability, no-fault basis. The penalty amount depends on whether the employer behaved badly, and how badly if so.

It is possible that the petitioners were less than 100% blameless in their belated implementation of their employees’ pay raises. To ensure their compliance with the law, they could have sought input from the city of Concord; they also could have consulted an attorney. It may be that some penalty is warranted here.

But when the division selected citation 001’s specific penalty amount, it was not aware of key exculpatory facts. The division did not know then that the petitioners were told by their general contractor in writing that they should not yet raise their employees’ wages. The division did not know that Mr. Barber double-checked the written guidance with a principal of

the general contractor.² These facts reflect more than a lack of “specific intent” to violate the statute. See G.L. c. 149, § 27C(b)(2); *Commonwealth v. Andrade*, 488 Mass. 522, 539-40 (2021). The petitioners took proactive, well-intentioned efforts to obey the law and to honor their employees’ rights. Their missteps were marginal.

This aspect of the case should significantly impact the amount of the penalty. In the circumstances presented, the division is best situated to determine the penalty amount, if any, that the updated set of facts warrants. The matter will therefore be “remanded to the Attorney General for penalty modification.” DALA Standing Order 23-001 ¶ 6.

B. Citation 002

Each week, employers on public construction projects are required to file certified payroll records with the awarding authority, in this case the city of Concord. G.L. c. 149, § 27B. Citation 002 alleges that Barber Inc.’s certified records were not “true and accurate” (without specific intent). The citation imposes a \$5,000 penalty.

Certified records under § 27B are required to identify five pieces of information about each employee. Reordered for convenience, they are the employee’s “name,” “address,” “hours,” “wages,” and “occupational classification . . . on [the pertinent project].” Citation 002 arises from the last of these items: it addresses the weeks during which Barber Inc.’s certified records classified Mr. Ramirez-Gonzalez as a laborer, even though he was working in practice as a carpenter.

² The division continued to call the pertinent facts “unproven” as recently as in its post-hearing brief.

Closely examined, the dispute revolves around the proper construction of the words “occupational classification” in § 27B. To “classify” a worker is to assign him or her to a category of comparable workers. See *Black’s Law Dictionary* 284 (9th ed. 2009); *Tanner v. Little*, 240 U.S. 369, 382 (1916). The uncertainty under § 27B arises when the law assigns a worker to one category, whereas the employer assigns him or her to a different category. The division maintains that a classification appearing in certified records is true and accurate when it matches the assignment prescribed by the law. But in the petitioners’ view, what the records are expected to state is the assignment made by the employer in practice. Contrast *Tremblay v. Attorney Gen.*, No. LB-17-219, at *23 (Div. Admin. Law App. Feb. 25, 2021).

It is important to appreciate the divide between the competing positions. Each one would pose a fundamentally different type of demand to employers. On the petitioners’ construction, the “occupational classification” piece of the certified records asks a simple question of fact: from which portion of the wage schedule did the employer take the employee’s pay rate? But the division’s view would require employers to address an essentially legal question: what is the classification to which the employee was entitled? The legal question often may be easy. But in some cases, the lines among two or more occupational classifications turn out to be blurry. See, e.g., *Lighthouse Masonry*, 466 Mass. at 694-95 & n.6; *Attorney Gen. v. Executive Off. for Admin. & Fin.*, No. 2006-5393, at *6-12 (Suffolk Super. Jan. 4, 2008); *DiStasio v. Attorney Gen.*, No. LB-10-545, at *9-10 (Div. Admin. Law App. May 13, 2013); *Scyoclrka v. Attorney Gen.*, No. LB-10-218, at *11-13 (Div. Admin. Law App. Sept. 27, 2011). See also Department of Labor Stds., [Prevailing Wage Opinion Letters](#) (last visited May 6, 2026).

With these observations in mind, the petitioners offer the better reading of § 27B. The other pieces of information that must be included in the certified records—the employees’ names, addresses, hours worked, and wages paid—are points of verifiable fact. The “classification” requirement should be read in light of its “associates” and “understood in the same general sense.” *Commonwealth v. Garafalo*, 495 Mass. 746, 755 (2025). It is also instructive that the division is entitled to request copies of the certified records “signed . . . under the penalties of perjury.” § 27B. The courts have generally seen the perjury offense as implicated only by statements about “basic facts,” not legal inferences. *See United States v. Endo*, 635 F.2d 321, 323 (4th Cir. 1980); *Goble v. State*, 766 N.E.2d 1, 8 (Ind. 2002); *Furda v. State*, 1 A.3d 528, 546 (Md. App. 2010); *People v. Longuemire*, 275 N.W.2d 12, 14 (Mich. App. 1978); *Schoenfeld v. State*, 119 S.W. 101, 103-04 (Tex. Crim. 1909); 70 C.J.S. Perjury § 11 (2026).³

To be clear, an employer who underpays an employee’s prevailing wages is liable under G.L. c. 149, § 27, no matter what the employer’s certified records may say. The point is that not every such employer has *also* violated § 27B. The “occupational classification” portion of the certified records is true and accurate when it identifies the classification that an employer

³ The division finds support for its position in *Commonwealth v. Diversified Contracting, Inc.*, 53 Mass. App. Ct. 1111 (2002) (unpublished memorandum opinion). But subsequent DALA decisions have declined to follow that opinion, which offers little analysis. *See DiStasio v. Attorney Gen.*, No. LB-10-545, at *6 & n.2 (Div. Admin. Law App. Jan. 29, 2013); *Briggs v. Attorney Gen.*, No. LB-11-168, at *19 (Div. Admin. Law App. May 16, 2013). The division argues that *DiStasio* and *Briggs* focused on the statute’s demand for “accurate” payroll records while deemphasizing the need for “true” records. But even if the pairing “true and accurate” is more than a rhetorical flourish, its first word more likely denotes completeness. *See Siravo v. United States*, 377 F.2d 469, 472 (1st Cir. 1967).

relied on to calculate the employee's wages. Because Barber Inc.'s certified records satisfied this requirement, citation 002 was erroneously issued.

C. Citation 003

Employers in all lines of work are required by statute to keep true and accurate records of their employees' names, addresses, occupations, wages, and hours, as well as any other information deemed "material and necessary" by the Attorney General. G.L. c. 151, § 15. Criminal or civil penalties may be imposed on an employer who either violates this obligation or "fails . . . to furnish a record to the [division] . . . upon request." *Id.* § 19(3).

Citation 003 imposes a \$5,000 penalty on the petitioners for violating these statutes (without specific intent). The citation arises from the division's request for documents reflecting the contents of Barber Inc.'s "earned sick leave policies" and its communications to employees about those policies.

The division's early submissions were ambiguous as to whether, in the division's view, employers are obligated to prepare and maintain the documents that the division requested, i.e., earned sick leave policies and communications to employees about those policies. *See Barber I*, 2026 WL 714137, at *2-3. No such obligation exists. *See id.* In terms of records related to earned sick time, what employers are required to do is to track their employees' "accrual and use" of sick time, to post a division-prepared notice in their workplaces, and to furnish employees *either* with a copy of that notice *or* with an employer-specific sick-leave policy. *See* G.L. c. 149, § 148C; 940 C.M.R. § 33.09.

At the evidentiary hearing, the division agreed to these points. The division clarified that citation 003 does not allege that the petitioners failed to keep any required documents.

The citation's theory is instead that the petitioners *had* the documents requested by the division yet failed to produce them. The division agrees that this theory depends on the premise that the requested documents existed.⁴

The evidence presented at the hearing established that the petitioners never possessed an earned sick leave policy or other documents relating to one. Because the wrongdoing alleged by citation 003 did not occur, the citation was erroneously issued.⁵

III. Conclusion and Order

Citation 001 is REMANDED to the division for a modification of the penalty amount.

Citations 002 and 003 are VACATED.

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate

Division of Administrative Law Appeals

⁴ Roughly transcribed, the exchange at the hearing ran as follows. "The Magistrate: 'As I read the statute . . . you can request whatever you want, but if it doesn't exist, it doesn't exist, isn't that true?' Attorney Sugerman-Brozan: 'That is true If they had said to us, we do not have a policy, then we would not have continued to request it' The Magistrate: 'So it's not your position that all employers are required to have a sick leave policy?' Attorney Sugerman-Brozan: 'That is not our position.'"

⁵ The petitioners' "establishment information" form did include an erroneous checkbox. But that form is not among the documents that G.L. c. 151, § 15, requires employers to keep, and the error was not identified by the division as the basis for a citation. *See generally Police Dep't of Boston v. Kavaleski*, 463 Mass. 680, 690-91 (2012); *Langlitz v. Board of Registration of Chiropractors*, 396 Mass. 374, 377-78 (1985).