



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
DEPARTMENT OF LABOR STANDARDS

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Christopher M. Pardo, Esq.
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Re: Application of Retaliation Provisions of Massachusetts Minimum Fair Wage Law

Dear Attorney Pardo,

I am writing in response to your request for this Department's opinion as to whether the retaliation provisions of the Massachusetts Minimum Fair Wage Law ("Minimum Wage Law"), M.G.L. c. 151, § 19 would support a claims for retaliation by an employee discharged because he complained that he was not making enough money - although the money he was making was in excess of the statutory minimum wage.¹

The Department of Labor Standards ("DLS") is of the opinion that such subjective complaints do not support a retaliation claim under the Minimum Wage Law. M.G.L. c. 151, § 7 gives DLS the authority to determine whether "persons in any occupation are receiving oppressive and unreasonable wages", as defined in M.G.L. c. 151, § 1. Pursuant to this statutory authority, DLS has promulgated regulations intended "[t]o clarify practices and policies in the administration and enforcement of the Minimum Fair Wages Act." 454 C.M.R. 27.00, et seq. The regulations define the "Basic Minimum Wage" and explain that "[a]t least the basic minimum wage ... must be paid to an employee in an occupation as defined in M.G.L. c. 151, § 2".

The Minimum Wage Law establishes only the bottom line, the "minimum wage". So long as an employer sets wages at or above the minimum standards established by the legislature and the Department of Labor Standards, they are free to pay any wage rates that the market will bear without running afoul of the Minimum Wage Law. Economic

¹ The same employee has made a simultaneous anti-retaliation claim concerning the Wage Act (M.G.L. c. 149, sec. 148). The Wage Act is regulated by the Attorney General's Office not the Department of Labor Standards thus this opinion only weighs in on the anti-retaliation claims under the Wage Act to the extent that they piggy-back on the purported Minimum Wage grievance.

principals, the law of supply and demand, and the art of negotiation, can all legitimately influence the salaries paid employees. If one is making more than \$10 per hour, then he has no complaint with respect to the Minimum Wage Law.

Pursuant to the Minimum Wage Law, “at least the basic minimum wage [i.e., \$10 per hour²] ... must be paid to an employee in an occupation as defined in M.G.L. c. 151, sec. 2, unless a lesser wage is expressly permitted by law or a waiver of the basic minimum wage is granted in writing by the Director [of The Department of Labor Standards] in accordance with M.G.L. c. 151, sec. 7 or 9”.³

The legislature established the current basic minimum wage at \$10 an hour. Simultaneously, it delegated to the Director of DLS the authority (in specific situations) to alter that wage and to regulate M.G.L. c. 151, § 1.⁴ The Director of DLS has never abrogated his statutory authority with respect to the Minimum Wage Law and any interpretation of the law that sanctions self-interested employees “choosing” their own minimum wage would be constitutionally suspect at best. See, Corning Glass Works v. Ann & Hope, Inc. of Danvers, 363 Mass. 409, 424, 294 N.E.2d 354 (1973), (it is unconstitutional to delegate legislative power to private parties).

Only the Director of DLS has the authority to set a minimum wage rate different than that provided by statute. More importantly, any retaliation claim in this regard has to relate back to a specific complained about violation of the Minimum Wage Law (for example, if a worker complained he was not making \$10 per hour and then was fired). In the matter at hand, however, an employee readily admits that he was paid in excess of \$10 an hour before he was fired. Thus, the firing may have been cruel, but it cannot be said to have been committed in retaliation for complaining about a violation of the Minimum Wage Law as the threshold of the Minimum Wage Law had been exceeded.

The anti-retaliation provision of the Minimum Wage Law prohibits retaliation against an employee “*because such employee has complained of a violation of the provisions of this chapter . . .*” M.G.L. c. 151, § 19 (emphasis added). As is detailed herein, the anti-retaliation provision requires a relation back to the Minimum Wage Law not to an individual’s request for an increased hourly wage where he was already paid above the statutorily prescribed minimum.

Accordingly, a worker cannot state a claim for retaliation as a matter of law under the Minimum Wage Law where the worker admittedly earned in excess of the applicable statutory minimum wage and the alleged protected activity was the worker’s demand for an even higher hourly wage.

DLS is concerned with the potential ramifications of a more expansive reading of these statutes that goes beyond the specifically stated public policy set forth by the legislature

² Pursuant to 454 CMR 27.02, the “Basic Minimum Wage” is the rate “in effect under M.G.L. c. 151, sec. 1”, that is, \$10 per hour.

³ 454 CMR 27.03

⁴ The terms “Commissioner of DLS” and “Director of DLS” are synonymous and used interchangeably.

in M.G.L. c. 151, § 1. Permitting retaliation claims under the Minimum Wage Law where the aggrieved person is alleging retaliation based on circumstances such as those here would result in at least two major and unintended consequences. First, workers would be able to establish their own “minimum wage”, usurping the authority of the Legislature and of the Director of the DLS, and effectively to circumvent the laws and regulations governing minimum wage in Massachusetts. Second, such a reading would expand the scope of the Minimum Wage Law and provide an independent cause of action for every disgruntled employee who thinks he is underpaid.⁵

I hope this information has been helpful. If you have any further questions, please feel free to contact me.

Very truly yours,

John H. Ronan,
General Counsel

JHR/jbd

⁵ *If an employee were able to unilaterally establish his own “minimum wage”, above that set by M.G.L. c. 151, § 1 and above the rate his employer was willing to pay him, then he would create for himself unanticipated additional causes of action outside the scope of the Minimum Wage Law by piggy-backing upon his uniquely created “minimum wage definition” other requirements relating to wages such as the Wage Act that requires the prompt payment of all wages earned.*