

# CLIENT ALERT: Massachusetts Supreme Judicial Court Relaxes Fee-Shifting Standard for Employee Wage Act Claims - By Shane R. Goodrich

On February 19, 2019, the Massachusetts Supreme Judicial Court unanimously adopted a broad fee-shifting standard making the recovery of attorneys' fees easier for employee-plaintiffs bringing claims for unpaid wages. The Court's holding establishes that a Massachusetts court can award attorneys' fees even after a settlement, not only after an actual court victory.

In *Ferman v. Sturgis Cleaners, Inc.* 481 Mass. 488 (2019), two former employees filed claims under the Massachusetts Wage Act alleging that their employer failed to pay them for all hours worked, including overtime hours. The case settled for approximately 70% of the unpaid wages sought, but the settlement agreement did not address the payment of attorneys' fees. After the settlement, the plaintiffs filed a motion in court seeking an award of their attorneys' fees, on top of the negotiated settlement payment.

Under the Wage Act, "prevailing parties" are entitled to the attorneys' fees associated with litigating their claims. The employer in *Ferman* relied on a 2001 U.S. Supreme Court decision, *Buckhannon Bd. & Care Home, Inc. v. West Virginia Dep't of Health & Human Resources*, 532 U.S. 598 (2001), in its opposition to the plaintiffs' motion. Under *Buckhannon*, either an enforceable judgment or court-ordered consent decree is required to establish "prevailing party" status, and so a settlement does not trigger a right to payment of attorneys' fees.

The plaintiffs in *Ferman* argued that a more generous "catalyst test" should apply to Massachusetts Wage Act claims. The catalyst test does not require some kind of final judicial determination for a party to "prevail" under a fee-shifting statute. Instead, the lawsuit can simply be a catalyst – by playing a "necessary and important" role in causing a defendant to pay out a material portion of the requested relief.

The *Ferman* Court agreed with the plaintiffs. The Court noted that the catalyst test promotes the purpose of fee-shifting statutes by encouraging attorneys to take on cases to correct unlawful conduct and would assist in avoiding unnecessary litigation of meritorious claims.

The *Ferman* decision should motivate employers even more than before to assess their payment practices and record-keeping to ensure they are meeting their obligations under the Wage Act. Plaintiff employees and their attorneys have certainly gained motivation to pursue claims, but also significant settlement leverage because fee recovery has become more likely. Most directly, employers are advised to specify in any settlement agreement concerning Wage Act claims that the settlement payments are inclusive of attorneys' fees, to avoid a post-settlement motion seeking fee recovery. Overall, the *Ferman* decision seems likely to provoke even more wage litigation in an already active arena.

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This alert was prepared on March 19, 2019.

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