

Are you Compliant with Massachusetts Pay Frequency Requirements?

With the new Overtime Final Ruling published by the Department of Labor (DOL), employers should be reviewing their pay practices across the board to ensure they are compliant with all timekeeping and payroll laws. Did you know that, in addition to the rules set forth at the national level by the DOL and the Fair Labor Standards Act (FLSA), most states have pay frequency and timekeeping laws that employers must follow? Massachusetts law governs how frequently employees must be paid, yet many employers inadvertently violate these rules.

When Must You Pay Wages?

Many employers have adopted a semi-monthly (24 per year) or monthly (12 per year) payroll schedule for all of their employees because it is convenient and more cost-effective from an accounting standpoint; however, under the Massachusetts Payment of Wages Law, [Section 148 of MA General Laws](#):

- **All hourly employees must be paid at least weekly or biweekly (every two weeks) — with no exceptions.**
- Salaried employees may be paid weekly, biweekly, semi-monthly, or monthly **if the employee elects on his or her own option to be paid monthly.**
- **All employees must be paid within six days of the end of the pay period during which wages were earned.** For example, if a pay period ends on a Friday, employees must receive all wages earned during that pay period, including overtime, by the following Thursday.

Employers that are paying hourly, nonexempt employees monthly or semi-monthly (twice a month) are not in compliance with Massachusetts pay frequency laws and violate these rules in two ways: by paying less frequently than biweekly, and by failing to pay within six days of the end of the pay period.

Payment upon Termination

The Massachusetts Payment of Wages Law also specifies the timing of payment upon termination of an employee. If an employee resigns, the employer must pay for all hours worked on the next regular pay day following the end of employment. When an employer discharges an employee, it must pay the employee all wages owed, including overtime for nonexempt employees, on the day of termination. Because Massachusetts includes vacation pay in the definition of wages, accrued but unused vacation pay must also be included in the final paycheck.

Damages for Noncompliance

The Massachusetts Payment of Wages Law (the "Wage Act") provides important protection for employees' wages. If your current or former employee has determined that you failed to pay their earned wages, including commissions and nondiscretionary bonuses, and earned vacation, they can bring a lawsuit against your organization. If found at fault, you could be liable for up to **three times the unpaid amount** and attorneys' fees due to the state's "automatic triple damages" for wage violations.

Key Next Steps

- Review your pay frequency to ensure compliance. Massachusetts law requires employers to pay hourly, nonexempt employees on a weekly or biweekly basis. Only salaried, exempt employees

can be paid on a semi-monthly basis, with limited exceptions. In Massachusetts, only exempt employees can elect, at their own option, to be paid on a monthly basis.

- **Important Note:** Most biweekly payrolls are paid in arrears versus semi-monthly payrolls, which are typically paid in line with the pay date. If you were to change your payroll frequency, there might be a transition period where your designated employees would see a delay in payroll payments that they must be made aware of in advance with written notice.
- Carefully review the types of compensation included in wages, as well as the frequency and timing of wage payments, to ensure compliance with the law.
 - **Important Note:** Changing your payroll frequency will affect your HR Knowledge administrative costs. Many employers may believe adopting two payroll frequency is the answer, however by choosing to keep a semi-monthly payroll frequency for exempt employees and adopting a new biweekly frequency for nonexempt employees. However, the best practice — and most efficient and cost-effective way — to adhere to this law is to move all your employees to a biweekly pay period.
- HR Knowledge clients who determine that their pay practices are not compliant should contact Melissa Gillespie, Vice President, HR Services, at melissa@hrknowledge.com.

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