

LAW OFFICE OF NICHOLAS F. ORTIZ, P.C.

ONE BOSTON PLACE, SUITE 2600
BOSTON, MASSACHUSETTS 02108

TEL (617) 338 - 9400
FAX (617) 507 - 3456
INFO@MASSWAGELAW.COM

FREQUENTLY ASKED QUESTIONS: WAGE AND OVERTIME CLAIMS

Do you have to get the agreement of more than one employee to bring a class action?

No, although class actions involve the rights of many employees, only the agreement of one employee is required to bring a class action. If you are an adequate representative of other workers, you may serve as a class representative for all of them. We prefer to have more than one employee as a representative of the class to help fend off any challenges, but we have brought many class actions with only a single class representative.

Do you have to have contact information for all workers for them to be part of a class action?

No, only one individual is required. Later, for purposes of proving the case, we obtain contact information of other employees directly from the company.

Do only the class representatives get paid?

No, class representatives (individuals whose name are in the court proceedings) represent all the workers doing the same work and getting paid similarly. Those other workers typically just sit back and do nothing during a class action, but they still receive a check if the case ends successfully. They do have to “join” the case to get paid if the court allows the class action. Class representatives also receive their share and, in addition, often receive a bonus for testifying and helping the lawyers win the case.

Is your name public?

Although state court records are not easily accessible to the general public, the existence of the case and the names of the class representatives are part of the public record. Some cases may also attract the attention of journalists who will publish information about the case.

Can you still get overtime pay if you are paid by two companies? For example, if one company pays you 20 hours and another pays you 30 hours, so that paystubs look like you are under 40 hours?

Yes, if your services are benefiting the same employer or an integrated group of employers, you are entitled to overtime.

How do the attorneys get paid?

We can answer for only our own firm, as practices may vary. We take cases on a contingent fee basis,

©LAW OFFICE OF NICHOLAS F. ORTIZ, P.C., 2024

THIS DOCUMENT SHOULD NOT BE CONSTRUED TO ESTABLISH AN ATTORNEY-CLIENT RELATIONSHIP. UNLESS THERE IS A WRITTEN AND FULLY-EXECUTED RETAINER AGREEMENT CONFIRMING AN ATTORNEY-CLIENT RELATIONSHIP WITH OUR FIRM, INFORMATION WE PROVIDE SHOULD NOT BE REGARDED AS LEGAL ADVICE, NOR SHOULD IT BE RELIED UPON AS SUCH.

and ordinarily petition the court for one-third of what we recover from the defendants. If the case is unsuccessful, we don't get paid.

What is the timeline for action to be taken on a wage claim?

Firms vary in how quickly they advance claims, so we can only answer based on our own experience. On average, we require two to three weeks to prepare and file a case once we have the required information from the class representative.

If you are "salaried," are you automatically exempt from minimum wage and overtime?

Absolutely not. Your right to minimum wage and overtime comes from your job duties, not any job title or method of payment. If it were otherwise, companies could easily evade wage requirements by simply paying everyone a salary.

If you are paid late by a couple weeks, can you still get triple (known as "treble") damages against a company?

Yes. All wage claims come with the leverage of a mandatory award of three times the late-paid or entirely unpaid wages at trial. People sometimes settle cases before trial for less than treble damages, but the law provides unpaid employees with this important right.

Can your employer retaliate against you for bringing a wage or overtime claim?

They can, but it would be unlawful. When retaliation happens after a claim (or before a claim if, say, you may complain to your employer about unpaid wages and are punished), it allows you to seek further damages for retaliation.

What is the prevailing wage?

This is a Massachusetts law that ensures that the wages of non-union workers on publicly funded projects are the equivalent union wages. Given that these rates are set by job type and issued to contractors as part of a winning bid, they ensure a level playing field with respect to labor costs, so bidders for government contracts can't win them on the backs of their employees by driving down pay rates. Prevailing wage claims also come with the right to treble damages.

How does blended rate for prevailing wage come into effect?

If you work some hours at the prevailing wage rate (on a publicly funded job site) and some regular hours (like, say, at company headquarters) during a workweek, overtime cannot be calculated only based on the regular-rate hours. The employer must calculate a blended rate factoring in the hours at both rates and pay you one and a half times this blended rate for hours over 40 in a workweek.