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Massachusetts Supreme Judicial Court OK's Attorneys' Fees for Wage Act Settlements

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As has been long anticipated, the Massachusetts Supreme Judicial Court recently gave a green light to plaintiffs' attorneys seeking a fee award under the Commonwealth's Payment of Wages Act, even where an action ends in settlement. The Wage Act (Mass. General Laws ch. 149 §§ [148](#), [150](#)) awards costs and fees when an employee "prevails" in an action arising under the statute. In [Ferman v. Sturgis Cleaners, Inc.](#), No. SJC-12602, decided Feb. 19, 2019, the highest court in the Commonwealth was faced with the question of whether an employee "prevails" when the parties settle the litigation. The parties had agreed on a settlement amount to be paid to the plaintiff, but agreed to leave the question of fees to the court. Defendants argued that the federal standard, which requires judicial approval of a private settlement in order for there to be a clear prevailing party, should apply. Plaintiffs asserted that the "catalyst test" should control the outcome, under which plaintiffs who reach a settlement may qualify as a prevailing party, even without court involvement, so long as their lawsuit was a "necessary and important factor in causing the defendant to provide a material portion of the relief demanded in the plaintiff's complaint." The SJC, examining the underlying purposes of fee-shifting provisions (such as discouraging unlawful employer conduct and encouraging attorneys to represent employees) adopted the Plaintiffs' approach.

Accordingly, in Massachusetts, employers should anticipate that Plaintiffs' counsel may be entitled to costs and fees even when the parties reach an extrajudicial resolution. Since a payment in respect of fees is already an integral component of most settlements, however, the decision should have little effect on current practice. Nothing in the Court's decision prohibits parties from reaching agreement on the amount of fees to be paid as part of the settlement.

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