

Employment Law Alert

Appeals Court Orders Massachusetts Employer to Produce Payroll Records

In April 2009, the Massachusetts Appeals Court's decision in *Metro Equipment Corp. v. Commonwealth* sent a clear message to employers: your payroll records may be subject to disclosure.

This Employment Alert highlights key aspects of the *Metro Equipment* decision which affect all employers doing business in Massachusetts.

The Background

Wage and hour laws in Massachusetts are strictly enforced. An individual employee with a complaint about a company's treatment of their wages may turn to the Attorney General to help enforce their rights. In turn, under several Massachusetts statutes, the Attorney General may seek to inspect and copy corporate documents that are relevant to the employee's complaint, or to any other wage-related investigation undertaken by that office. Under those laws, the Attorney General is declared to have "full power and authority...to investigate and ascertain the wages of persons employed in any occupation in the commonwealth".

The Case

In 2004, the Massachusetts Attorney General sought to inspect the payroll records of Metro Equipment Corporation, Inc., apparently without revealing to Metro Equipment the nature of the violation it was investigating. Without knowing whether the investigation was criminal or civil, Metro Equipment did not respond in a timely manner. As a result, the Attorney General issued a civil citation and fined the company. Metro Equipment appealed the fine and opposed the Attorney General's request to inspect Metro's records.

The Appeals Court opinion in *Metro Equipment Corp. v. Commonwealth*, 74 Mass. App. Ct. 63 (April 14, 2009) reminds companies that the Attorney General's power to inspect payroll records – and potentially any other type of document bearing on an issue related to wages – is extremely broad. The Attorney General need not even disclose the nature of its investigation before mandating disclosure.

Most importantly, the case concluded that even if the company's disclosure of corporate records would be self-incriminating, disclosure was nonetheless mandatory under the "required records" doctrine. Under that doctrine, records must be revealed if they are regularly kept by the company, sought pursuant to a regulatory inquiry, and are essentially public documents. The court held that because the maintenance of payroll records is required under Massachusetts law, those records have become "essentially public" for the purpose of disclosure to the Attorney General.

The Court ordered Metro Equipment to turn over its records and pay the \$1,000 fine assessed.

The Lessons

- An individual employee's complaint can sometimes turn into a government investigation into an employer's corporate records.
- Company executives should take steps to ensure that your company is in compliance with Massachusetts law concerning the maintenance of payroll records.
- Keep apprised of the developments in wage and hour law, and how to avoid significant repercussions for non-compliance, which can include fines, civil penalties, multiple damages awards, and even criminal sanctions.
- Whenever your company is the target of an investigation by the Attorney General or any other government entity, seek timely advice before responding.

The attorneys at Dwyer & Collora LLP have broad experience advising and representing companies in all aspects of employment law.

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