# Massachusetts Supreme Judicial Court Allows Award of Attorney's Fees in Settled Wage Act Cases

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On February 19, 2019, the Massachusetts Supreme Judicial Court issued a ruling in *Belkie Ferman v. Sturgis Cleaners, Inc.* 481 Mass. 488 (2019) affirming a trial court's ruling awarding attorney's fees and costs under the Massachusetts Wage Act, G.L. c. 149 § 148, 150, in a case where the plaintiffs reached a "favorable settlement agreement," short of trial. The court in considering the claims evaluated whether or not the plaintiff "prevailed" in their suit for purpose of an award of attorney fees under the fee-shifting provisions of the Wage Act. In making this determination the court ruled that the "catalyst test," was the appropriate measure for determining whether or not a settlement agreement may qualify the plaintiff as a prevailing party for fee-shifting purposes.

In *Ferman*, the court considered claims of plaintiffs who were former employees of the defendants' dry-cleaning business who brought suit seeking to recover approximately $28,000.00 in regular and overtime wages pursuant to G.L. c. 149 §148 and §150 and G.L. 151 §1A and §1B. Each of these statutes provide "an employee so aggrieved who prevails in such an action shall be awarded treble damages … and shall also be awarded costs of litigation, and reasonable attorney's fees." After two (2) years of litigation, including discovery and pre-trial motions and only several weeks before the trial date the parties agreed to a settlement the dispute at mediation in consideration of $20,500.00, but reserved the attorney fees issue for resolution of the court.

The plaintiffs' attorneys sought to recover $40,000.00 in attorney fees and $1,000.00 in costs. The trial court, in applying the catalyst test found that the plaintiffs' recovery of 70 percent of the monetary relief sought in their initial demand, qualified them as a prevailing party and therefore the court awarded the plaintiffs a percentage of their attorney fees totaling $16,153.00, and all of their costs.

The SJC stated that the two major purposes of the statutory fee-shifting provisions were to (1) de-incentivize against unlawful conduct; and (2) provide an incentive for plaintiffs' attorneys to provide representation in cases that they otherwise would not be financially able to take on.

Importantly, the Court noted that select statutes in Massachusetts including the Massachusetts Civil Rights Act, G.L. c. 12 § 11I, the Massachusetts Consumer Protection Act, G.L. c. 93A §9 and §11, as well as the Wage Act at issue in the underlying case provided a right

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to recover attorney fees for the prevailing party. According to the Court, the catalyst test promotes both purposes and "provides attorney's fees if a party's lawsuit was a 'necessary and important factor' in causing the defendant to provide a material portion of the requested relief, but does not require litigation to a final judgment determination or judicial imprimatur. *Hand v. Penal Insts. Comm'r of Boston*, 412 Mass. 759, 765 (1992). The court considered whether or not the relief obtained by the plaintiff was material and not de minimis, and causally related to the defendants' actions. The court cautioned against an employer's attempt to escape liability for attorney's fees by an "11th hour" settlement of a meritorious case.

The Court next noted that public policy concerns built into these statutes support the use of the catalyst test which promotes prompt settlement of meritorious cases therefore avoiding the need for protracted litigation and unnecessary involvement of the court. The Court further noted that the general rule in Massachusetts supports that individuals "prevail" for attorney's fees purposes if they succeed on any "significant issue" in litigation which achieves some of the benefit the parties sought in bringing suit or when the plaintiff's lawsuit acts as a 'catalyst' in prompting defendants to take action to meet plaintiff's claims. The Court found that because 70 percent of the plaintiff's monetary demands were eventually met that the plaintiff met the criteria of the catalyst test, prevailed, and affirmed the award of attorney fees.

The SJC's decision in *Ferman* court awarding attorney fees based upon the "prevailing" provision in the Wage Act is a decision of first impression in Massachusetts. We believe that this decision broadens the opportunities for parties seeking statutory attorney fees after settling their respective claims. In *Ferman*, the Court weighed the value of the asserted claim versus the value of settlement and found that because it was 70 percent of the value asserted the claim was successful and qualifies as "prevailing" under the statutes. The SJC gave no indication about how low the percentage of "success" may dip before a court in Massachusetts may rule that a party did not prevail for purposes of these fee shifting statutes.

As a result of the *Ferman* decision, we recommend that settlement negotiations involving all claims involving statutes that afford the prevailing party attorney fees and costs, include consideration of and resolution of the attorney fee issue, rather than leaving open the opportunity to a party to argue that any measure of recovery by settlement satisfies the "prevail" requirement. This will afford the parties also to negotiate not only the level of success, but the allocation of reasonable attorney fees, which would otherwise be left to the court to determine. As in *Ferman*, in these fee shifting cases, the attorney fees sought often exceed the settlement value reached by the parties.

In the future, please feel free to contact Aaron R. White, Esq. for evaluation of your employment law disputes.

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