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# Wilson & Orcutt, P.C.

## Business Law Newsletter

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Wilson & Orcutt, P.C.  
201 Great Road  
Acton MA 01720

## Aggressive Creditors Beware

It is only prudent business practice to make at least some effort at collecting your own overdue accounts receivable before considering the alternatives of a collection agency or lawyer. After all, you get to keep one hundred cents of every dollar you collect on your own.

However, in a recent decision a Massachusetts Judge, for the first time, ruled that creditors collecting their **own** debts from consumers are subject to the same provisions of the Debt Collection Practices Act which up until now were thought only to apply to collection agencies and lawyers.

In that case, a credit card company violated a provision of the Act which prohibits a creditor from continuing to contact a debtor after being informed that the debtor is represented by an attorney. While only nominal damages of \$25 were awarded to the debtor, the credit card company was also required to pay the debtor's attorneys fees. The credit card company was awarded the amount owed by the debtor, and came out in positive territory, but the message is clear; a violation could result in an aggressive creditor paying out a lot more than the amount they are owed.

### Some of the things that you can't do are:

1. Communicate or threaten to communicate the existence of the debt to a third party who is not liable (e.g. parent, spouse, employer, landlord).
2. Communicate with the debtor after being told to communicate with the debtor's attorney.
3. Communicate with the debtor in a threatening or harassing manner, at unreasonable times or with unreasonable frequency.
4. Communicate with forms that simulate the form and appearance of official Court forms.

If you presently collect your own accounts directly from consumers, you may want to review your procedures.

Although the Debt Collection Practices Act does not apply to the collection of commercial accounts, care should be taken in such cases, since overly aggressive tactics may constitute unfair and deceptive trade practices which may result in liability for treble damages and attorneys fees.

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# Posting Requirements

Did you ever wander into a business employee lunch room and wonder what all the posters were all about? The ones with strange language about obscure laws?

There are several federal and state statutes which require employers to post notices advising employees of their legal rights. A failure to post a notice can result in a fine or a loss of availability of some legal defenses to lawsuits.

Almost all of the required posters are available free of charge from the governmental agencies responsible for enforcing each statute. See the following chart for a listing

POSTER REQUIRED	EMPLOYERS COVERED	RESPONSIBLE AGENCY	TELEPHONE NUMBERS
Minimum Wage, Maternity Leave	All	Attorney General's Office, Fair Labor and Business Practices Div.	(617) 727-3465
Sexual Harassment, Fair Employment Practices	All	Mass. Commission Against Discrimination	(617) 727-3990
Workers' Compensation	All	Mass. Department of Industrial Accidents	(617) 727-4900
Unemployment Insurance	All	Div. of Employment and Training	(617) 727-6560
Employment Discrimination	Employers with 15 or more employees	Federal EEOC	(617) 565-2500
Americans with Disabilities Act	Employers with 15 or more employees	Federal EEOC	(617) 565-2500
Job Safety and Health Protection	Employers engaged in interstate commerce	Federal OSHA	(617) 565-9860
Employee Polygraph Protection Act	Employers engaged in commerce or producing goods for commerce	U.S. Dept. of Labor	(617) 565-2095
Federal Family and Medical Leave	Employers engaged in interstate commerce w/50 or more employees	U.S. Dept. of Labor	(617) 565-2095
Federal Labor, Minimum Wage	Employers engaged in interstate commerce	U.S. Dept. of Labor	(617) 565-2095

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There is a general number for the Department of Labor and Workforce Development that updates the caller on which posters are mandatory for employer's in Massachusetts. The number is (617)727-6573.

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## On Line Help From The Commonwealth Of Massachusetts

In an attempt to remove the stigma of the nickname Taxachusetts, and in an effort to create a more business friendly environment, various state agencies provide free, on-line support for local businesses. Your tax dollars pay for it. Why not take advantage?

- Massachusetts Small Business Development Center
  - counseling and training for small businesses
  - [www.umassp.edu/msbdc](http://www.umassp.edu/msbdc)
- Massachusetts Technology Collaborative
  - focus on high-tech businesses
  - [www.mtpc.org](http://www.mtpc.org)
- Massachusetts Technology Development Corporation
  - supports entrepreneurs in starting new companies
  - [www.mtdc.com](http://www.mtdc.com)
- Massachusetts Development Finance Agency
  - help with financing and obtaining local tax incentives
  - [www.state.ma.us/mdfa](http://www.state.ma.us/mdfa)
- Massachusetts Alliance for Economic Development
  - help with relocations
  - [www.massecon.com](http://www.massecon.com)
- Massachusetts Office of Business Development
  - coordinates financing, permitting and site location
  - [www.state.ma.us/mobd](http://www.state.ma.us/mobd)

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# Legal Alert Update

A recent legal alert we published on our Web Page concerned a change in the Unemployment Compensation Law requiring all employers, including those with as few as one employee, to provide departing employees with a form containing information on how to file unemployment claims and which provided that a failure to do so would result in a waiver of the employer's right to contest a claim for unemployment benefits. That statute has now been changed in three important ways.

1. The form (which is now available on DET's website at <http://www.magnet.state.ma.us/det>) may now be provided to the terminated employee as soon as practicable, but not more than 30 days after termination.
2. The same information contained in the form must now be posted at the place of employment (see Posting Requirements on page 2 of this Newsletter).
3. Instead of losing the right to contest the employee's right to benefits, an employer's failure to give the required notice will allow an employee to file a late claim for benefits.

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## IN HOUSE NEWS

Please visit our new and redesigned Web Page at [www.wilsonorcutt.com](http://www.wilsonorcutt.com) where you can find legal alerts and links to other interesting websites, communicate with us by e-mail and download previous issues of this Newsletter.

Let us know what you like and what you don't like about our Page.

### **The Wilson & Orcutt, P.C. Business Law Newsletter**

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