
Wilson & Orcutt, P.C.

Business Law Newsletter



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

The Times They Are A Changing

In the inaugural issue of this Newsletter (October 1995) we addressed the question, what to you do with a check endorsed "payment in full"? At that time, the law on this issue in Massachusetts was far from clear, and we advised caution. Since then, Massachusetts has joined the vast majority of states in adopting a revision to the Uniform Commercial Code §3- 311 which has answered the question.

The cashing of any check submitted in regard to a disputed debt and marked "Payment in Full", or with similar language, which is accompanied by correspondence containing a statement to the effect that the check is tendered in full satisfaction of a claim, now constitutes what the law calls an accord and satisfaction, discharging any remaining balance, even if the limiting language is crossed out and even if the recipient adds an endorsement that the check is "accepted under protest".

There are at least two ways to prevent application of this rule;

- **Designate a Special Recipient For Payment In Full Checks**

If you are an organization with more than one person who may handle and deposit checks, and you

have previously sent the maker of the check a written notice that communications concerning disputed debts, including checks intended to be in full satisfaction of a debt, are to be sent to a designated person, office or place, and the disputed check is not received by the designated recipient, then the remainder of the debt is not discharged.

- **Agree With the Debtor In Advance That This Rule Will Not Apply**

This rule can be varied by an agreement in advance with the debtor. This can be done by inserting in contracts, leases and other agreements language that "payments submitted as payment-in-full for any disputed amounts due hereunder will not act to discharge the remainder of the disputed debt or account".

If a payment in full check slips through the cracks and is deposited under circumstances not covered by either of the above exceptions, the law provides that the full debt will not be discharged if, within 90 days after payment, the recipient returns the amount paid to the sender.

August 2000
Vol. 6 No. 2

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

The Massachusetts Blue Laws

The Massachusetts Blue Laws, which restrict business openings on Sundays and Holidays, are set out in one of the more confusing sets of rules, exceptions and exemptions ever contemplated by our legislature. And to top things off, they keep changing the rules. For Example, the definition of "Legal Holiday" has been amended not less than 35 times from 1856 to 1985. There are 55 exemptions to the general rule that businesses are not allowed to open on Sundays. No wonder that both employers and employees are confused.

In a nutshell, here are the rules:

Holidays	
Retail	
Unrestricted Holidays	Restricted Holidays
Martin Luther King Day ¹	New Year's Day ²
President's Day ¹	Memorial Day ²
Evacuation Day ¹	Independence Day ²
Patriot's Day ¹	Labor Day ²
Bunker Hill Day ¹	Columbus Day, after noon ²
	<u>Veteran's Day, after 1:00 p.m.²</u>
	Columbus Day, before noon ³
	Veteran's Day, before 1:00 p.m. ³
	Thanksgiving Day ³
	Christmas Day ³
Non-Retail	
Unrestricted Holidays	Restricted Holidays
New Year's Day ¹	Memorial Day ⁴
Martin Luther King Day ¹	Independence Day ⁴
President's Day ¹	Labor Day ⁴
Evacuation Day ¹	Columbus Day, before noon ⁴
Patriots Day ¹	Veteran's Day, before noon ⁴
Bunker Hill Day ¹	Thanksgiving Day ⁴
Columbus Day, after noon ¹	Christmas Day ⁴
Veteran's Day, after 1:00 p.m. ¹	

SUNDAYS

Retail, Non Exempt • May operate at any time on Sunday. Employees may not be required to work. Retailers employing more than 7 persons (including the proprietor) must pay time and one-half to all non-administrative and non-professional employees who agree to work on a Sunday.

Retail, Exempt • May operate at any time on Sunday. Not required to pay time and one-half to employees who work.

Non Retail, Non Exempt • May not operate on Sundays without special

continued on page 3

permit issued by local Police Chief or temporary manufacturers exemption issued by State Attorney General.

Non Retail, Exempt • May operate on Sunday

- The 55 exemptions set out in G.L. c. 136 §6 apply to a number of rules in this area and can be found on the internet at www.state.ma.us/legis/laws/mgl/136-6.htm
-

¹ Work may be performed without a permit. Time and one-half and voluntariness of work requirements do not apply.

² Work may be performed without a permit. Time and one-half pay and voluntariness of work requirements do apply.

³ Work may be performed only with local police permit and approval by the State Department of Labor and Workforce Development. Time and one-half and voluntariness of work requirements do apply.

⁴ Work may be performed only with local police permit. Time and one-half pay and voluntariness of work requirements do not apply.

¹ Work may be performed without a permit. Time and one-half and voluntariness of work requirements do not apply.

² Work may be performed without a permit. Time and one-half pay and voluntariness of work requirements do apply.

³ Work may be performed only with local police permit and approval by the State Department of Labor and Workforce Development. Time and one-half and voluntariness of work requirements do apply.

⁴ Work may be performed only with local police permit. Time and one-half pay and voluntariness of work requirements do not apply.

Investigating Complaints of Workplace Sexual Harassment

For many reasons, personal, psychological, legal and practical, the handling of a complaint of sexual harassment in the workplace is one of the most difficult jobs a manager may face. The interests of management, the accuser and the accused can differ in fundamental ways, and decisions have to be made in a highly charged emotional environment, always with at least one eye on the requirements of law.

The first decision to be made when faced with possible harassment is whether to conduct an investigation at all. Often times, the accuser is embarrassed and does not make an accusation directly to management. In such cases, the “rumor mill” may be the only initial source of information. Particularly when the accused is a valuable employee, there may be reluctance to take any action without more than a third or fourth hand rumor. However, no matter what the source, the law requires some form of investigation whenever a supervisor becomes aware of sexual harassment. Of course, the manner and scope of the investigation ought to be determined by the nature and seriousness of the alleged misconduct.

Once the decision is made to conduct an investigation, management should immediately decide whether to involve counsel. Aside from any technical expertise which counsel may bring in, there are occasions when it would be advantageous to management for certain information developed by the investiga-

continued on page 4

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

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

4

continued from page 3

tion to be protected from disclosure by the attorney-client privilege.

Any investigation must be conducted fairly, and be thorough enough to determine the basic facts necessary to reach a conclusion as to how management should act. Those basic facts include:

- what happened
- when and where did it happen
- who was present
- who has been told of the incident
- is there a history of complaints about the accused

The first interview will almost always be with the accuser, who should be encouraged to tell his or her full story. Often, the accuser will insist upon the complaint being kept “confidential”, out of fear of embarrassment or retaliation. While management should be sensitive to these issues, the desires of the complainant are only one of many factors to be taken into account in deciding whether to take further action. A failure to act may result in liability later, should the accused sexually harass another employee.

On the other hand, the accused’s reputation must also be protected from unwarranted accusations. Therefore, the accused should be advised to keep the accusation confidential and should be assured that management will do likewise, limiting disclosure to those that have a legitimate need to know. The accuser should also be told that, in order to complete an investigation, it is most likely that the accused will be told of the accusation.

All interviews, from the initial report of the incident through the completion of the investigation should be documented in writing, preferably with at least one credible witness present in case the participants later question the accuracy of any written description of what they have said. The accuser should be encouraged to submit a full written complaint as early in the process as possible in order to prevent later embellishment.

Following the investigation, management must decide on a course of action, with the following possible responses:

- no action
- oral warning to the accused
- written warning to the accused
- suspension, with or without pay, and with or without requirements for reinstatement, such as counseling
- demotion or transfer
- termination

As always, the decision and the reason for it should be well documented.

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

EDITOR: DANIEL B. GREENBERG