

Massachusetts Supreme Judicial Court Holds That Retention Bonuses Are Not ‘Wages’ Under the Massachusetts Wage Act

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On October 22, in *Nunez v. Syncsort Inc.*, the Massachusetts Supreme Judicial Court (SJC) held that retention bonuses are not “wages” under the Massachusetts Wage Act. 496 Mass. 706 (2025). The *Nunez* decision continues the trend of Massachusetts courts concluding that conditional or contingent compensation falls outside the scope of the Wage Act.

The Wage Act

The Wage Act requires employers to pay employee wages weekly or biweekly, and to pay final wages promptly upon termination. Mass. Gen. L. c. 149, § 148. In the case of involuntary terminations, the Wage Act requires final wages to be paid on the date of termination.

The Wage Act does not explicitly define the term wages. Instead, the Act provides that wages *include* “any holiday or vacation payments due an employee under an oral or written agreement,” and “commissions when the amount of such commissions, less allowable or authorized deductions, has been definitely determined and has become due and payable.” The question of what constitutes a “wage” under the Act has been frequently litigated since its enactment.

The Wage Act is a strict liability statute with severe penalties. If an employer fails to comply with the requirements of the Act, a prevailing employee can recover the unpaid wages and is entitled to mandatory treble damages and attorneys’ fees. G.L. c. 149, § 150.

Background

In *Nunez*, the defendant employer offered the plaintiff employee a \$15,000 retention bonus payable in two tranches on two separate retention dates. Under the retention bonus agreement, the plaintiff had to be employed by the defendant and be in “good performance standing” on the retention dates to be eligible for the retention payment. The plaintiff remained employed and in good standing through the first retention date but was terminated on the second retention date. The employer paid the plaintiff’s final wages on the date of termination, but did not pay the second retention payment until eight days later.

The plaintiff filed a lawsuit against the employer, asserting, among other claims, a claim under the Wage Act for failing to timely pay the second retention payment on the date of termination. The parties cross-moved for

summary judgment on the Wage Act claim, and a district court judge denied both motions without explanation. After the parties jointly moved for reconsideration, a different district court judge granted summary judgment to the employer on the Wage Act claim, finding that the retention bonus payment was a form of contingent compensation and therefore not a “wage.” The plaintiff appealed that judgment, and a panel of the Appellate Division of the District Court Department affirmed. The plaintiff then appealed the Appellate Division’s decision to the SJC. The issue before the SJC was whether the retention bonus payments were “wages” within the meaning of the Wage Act.

The SJC’s Decision

The SJC affirmed the lower courts’ holdings that the second retention payment was not a wage under the Act, reasoning that the payment was not “made solely in exchange for the plaintiff’s labor or services” (*i.e.*, wages), but instead was “additional contingent compensation outside the scope of the Wage Act.” 496 Mass. at 713.

In reaching that conclusion, the SJC relied on the limited definition of “wages” under the Act and the long line of appellate cases that “have uniformly rejected attempts to include other forms of contingent compensation within the meaning of ‘wages’ where the contingency at issue imposed some requirement beyond the services or labor an employee provides in exchange for his or her compensation.” *Id.* at 710. The SJC saw “no reason why retention agreements should be treated any differently from other types of compensation that are contingent upon continued employment to a particular date and are in addition to the compensation the employee receives in exchange for his or her labor and services.” *Id.*, at 712.

Takeaways

While the *Nunez* decision provides clarity for Massachusetts employers that use retention bonuses for their employees, employers should review their agreements to ensure that such arrangements condition payment on contingencies such as continued employment and good standing, and avoid contingencies such as sales output that could be viewed as compensation for work performed and therefore a wage under the Act. Employers should also consider including language that the retention bonus is in addition to base salary and not earned pro rata for services performed.

If you have questions about the Massachusetts Wage Act, please reach out to your Troutman Pepper Locke employment counsel.

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