

MASSACHUSETTS HIGH COURT CLARIFIES RETENTION BONUSES ARE NOT WAGES: WHAT EMPLOYERS SHOULD DO NOW

Insights
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Retention bonuses – which are payments conditioned on continued employment through a fixed date – are not “wages” under the Massachusetts Wage Act, even when all contingencies have been met, according to the Massachusetts Supreme Judicial Court (SJC). In *Nunez v. Syncsort Inc.*, the bonus was contingent on the worker remaining employed in good standing through specified dates, so the court considered it additional, conditional compensation, not ordinary pay for labor or services. The decision reinforces that the Wage Act’s strict timing and triple-damage provisions apply only to compensation earned solely in exchange for work performed, not to incentives tied to continued employment or other contingencies. What does your company need to know about this surprisingly employer-friendly ruling?

Here’s What Happened

The case involved a senior director of finance earning \$185,000 per year who entered into an agreement with his employer for a \$15,000 retention bonus, payable in two equal installments if he remained employed and in good standing through specified “retention dates.” The employee met the conditions of the bonus but was subsequently terminated.

The company issued the second bonus payment eight days after his termination. The employee claimed this delay violated the Massachusetts Wage Act, arguing that the payment was a “wage” that should have been paid on his final day, and because he was not, **he was entitled to**

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mandatory triple damages. The SJC unanimously rejected that argument, holding that retention bonuses are not wages because they are contingent on conditions beyond an employee's ordinary job performance.

The Court's Reasoning

In declining to find the retention bonus was a wage, the court emphasized four key principles:

- 1. Wage Act coverage is limited.** The act covers "wages earned," including salary, holiday/vacation pay, and commissions that have been "definitely determined and due." Beyond that, the statute does not extend to other forms of contingent compensation.
- 2. Retention bonuses are contingent by design.** Their purpose is to secure continued service during uncertain times, not to compensate for day-to-day work. Because the payments depended on both continued employment and satisfactory performance through fixed dates, they were not "earned" until those contingencies were met.
- 3. Contingent compensation ≠ "wages."** The court drew parallels to past rulings excluding stock options, profit distributions, and severance payments from the Wage Act's ambit. Like retention bonuses, these involve "additional contractual conditions" and fall outside the statute's reach.
- 4. Ordinary contract law governs.** Disputes over retention bonuses are contractual, not statutory. Late or missed payments may breach the agreement, but they won't trigger Wage Act penalties like triple damages or personal liability for company officers.

Why It Matters

This decision provides welcome clarity for Massachusetts employers that use retention or stay bonuses during mergers, reorganizations, or leadership transitions. It aligns the SJC's approach with federal courts and avoids expanding the Wage Act's reach to discretionary or contingent pay arrangements. Employers should still exercise caution: mislabeling true earned pay as a "bonus" won't shield you from Wage Act liability.

What Should You Do Now?

- **Review bonus and incentive agreements.** Ensure the language clearly states that any retention, sign-on, or performance bonuses are conditional (tied to continued employment, performance milestones, or other criteria) and are in addition to regular wages.
- **Separate “earned wages” from contingent pay.** Payroll systems and offer letters should distinguish base compensation (which must follow Wage Act timing) from conditional payments (which may be paid later under contract terms).
- **Audit termination-day payments.** Confirm that “wages earned” – such as salary, accrued vacation, or commissions that are due – are paid on an employee’s last day. Retention or incentive payments owed under future conditions need not be accelerated.
- **Train HR and payroll teams.** Emphasize the importance of making timely final payments. All HR professionals should understand that delayed final wage payments will trigger automatic triple damages.
- **Document purpose and conditions.** When issuing a retention offer, include a clear statement that the payment is to encourage continued employment and will be forfeited if the employee leaves early or is terminated before satisfying any contingency.

Conclusion

We will continue to monitor developments and provide updates as warranted, so make sure you are subscribed to [Fisher Phillips’ Insight System](#) to get the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney, the [author](#) of this Insight, or any attorney in our [Wage and Hour Practice Group](#) or [Boston office](#).