

CLIENT ALERT: Federal Court Finds Employer Cannot Deny Commissions to Employee Who Resigned – By Daniel S. Field and Andrea E. Zoia

A recent federal court decision clarifies that Massachusetts sales employees may still be entitled to their commissions after resigning, even when their commission plans expressly require current employment to qualify for payment.

The Massachusetts weekly payment of wages law (the “Wage Act”) defines commissions as “wages” that must be paid promptly under certain circumstances. Sales commissions are considered earned wages if the amount is “definitely determined” and the commission is “due and payable.” There has been little guidance from Massachusetts appellate courts on the enforceability of plans that require current employment in order to receive commissions. However, in a March 16, 2017 decision, *Israel v. Voya Institutional Plan Services, Inc.*, U.S. District Court Judge Allison Burroughs declined to uphold the terms of a compensation plan calling for no payment of commissions after an employee resigns. The judge ruled unenforceable an express compensation plan provision that required an employee to be “actively employed (not . . . terminated) to receive payment” and that stated that an employee “who resigns . . . will not be entitled to any pro-rated payment.”

In 2014, Voya had notified Israel that he was to be terminated, and offered him the opportunity to resign in lieu of termination. Israel, a registered agent, opted to resign gaining the benefit of having his departure reported to the Financial Industry Regulatory Authority as “voluntary”. Consistent with the express terms of the compensation plan, Voya did not pay any pending commissions because of the resignation. Israel sued under the Wage Act, claiming that because the commissions were “definitely determined” at the time of his separation, they were “due and payable.” The court agreed. As Voya could “definitely determine” the amount due in commissions, the commissions had become earned wages payable to Israel. The plan’s continued employment condition was held to be unenforceable, and could not be relied

upon to circumvent the Wage Act's requirement to pay earned wages.

Massachusetts employers who offer sales commissions should review their commission plans closely to ensure that they comply with the Wage Act as it has now been interpreted by the federal court –especially any provision that denies commissions to an employee who has resigned. Under Massachusetts Law, employers face substantial liability for unpaid commissions, even when disputed, including automatic triple damages, statutory interest, plus mandatory payment of plaintiffs' attorneys' fees and costs.

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