

CLIENT ALERT: Massachusetts Wage Act Compliance: Details Matter.

Massachusetts Decisions Clarify When Compensation Is (and Isn't) a "Wage"

As most employers in Massachusetts are aware, the Massachusetts Wage Act, G.L. c. 149, § 148, requires employers to pay all "wages" – including salary, holiday and vacation pay, and commissions – in a timely manner. As discussed in a prior MBJ [client alert](#), the Massachusetts Supreme Judicial Court ("SJC") held in *Reuter v. City of Methuen*, 489 Mass. 465 (2022) that if an employer pays final pay late, treble damages and reasonable attorneys' fees are mandatory.

While the *Reuter* framework is now familiar to employers, more recent decisions continue to refine when certain benefits are "wages" that must be paid at separation from employment – and are therefore subject to automatic treble damages – and when other benefits are not. While these distinctions can be subtle, given the harsh penalties for employers, the details of whether a compensation arrangement constitutes "wages" can be enormously consequential. The recent decisions discussed below focus on the contingent nature of certain types of compensation and whether or not those fit into the definition of "wage" as defined by the Wage Act and Massachusetts case law.

1. *Nunez v. Syncsort, Inc.*: Contingent Retention Bonuses May Not Constitute "Wages."

In *Nunez v. Syncsort, Inc.*, 496 Mass. 706 (2025) the SJC addressed whether a retention bonus constituted "wages" under the Act that must be paid to an employee on the last day of their employment. The SJC determined that the retention bonus in *Nunez* was not a "wage" because it was conditioned on a specific contingency – the employee's employment through a defined date.

The SJC explained that the only contingent compensation expressly labeled as "wages" under the Act is commissions, and that the definition of "wages" does not encompass other types of contingent compensation. The Court saw no reason why retention bonuses such as these should be treated differently than other

types of compensation that is contingent on continued employment, which Massachusetts courts have regularly held not to be “wages.”

As a result, where a form of additional compensation (that is not a commission) is subject to a clearly defined contingency (*i.e.*, remaining employed to a certain date), employers will have strong arguments that such compensation is not a “wage.”

2. *Fontana v. City of Boston*: Public Sector “Compensatory Time” May Not Constitute “Wages.”

Similarly, in *Fontana v. City of Boston*, 106 Mass. App. Ct. 780 (2026), the Massachusetts Appeals Court addressed whether unused “compensatory time” (a common benefit for public sector employees), which was not paid out to the plaintiffs upon their separation from employment, constituted “wages” under the Wage Act.

The Court held that the “compensatory time” granted to the plaintiffs in *Fontana* did not constitute a “wage.” Compensatory time was provided to the employees pursuant to the employer’s “Essential Duties and Compensation Schedule.” This policy set out that employees may convert unused vacation time through a multistep, conditional vacation redemption. Employees were permitted to convert up to ten days of unused vacation time into cash and then *also* convert *the same* unused vacation time into compensatory time. In other words, employees could convert unused vacation time into *both* cash and compensatory time. However, the policy did not explicitly provide for the cashout of amassed compensatory time.

In finding that this bank of “compensatory time” did not constitute “wages” under the Act, the Appeals Court declined to grant this “compensatory time” the status of “wages” where it was not included in the statutory definition. Furthermore, the Appeals Court explained that because this benefit was created by converting vacation time to cash *and* compensatory time, it did not represent compensation for additional labor or services beyond the cash they already received, and was more akin to a contingent bonus. As such contingent compensation is not “wages” under the Act, the Appeals Court determined that the compensatory time at issue here was similarly not “wages” owed to the plaintiffs.

The Appeals Court notably differentiated the case from *Plourde v. Police Dep’t of Lawrence*, 85 Mass. App. Ct. 178, 179-180 (2014), which treated

compensatory time earned in lieu of overtime under a collective bargaining agreement as accrued compensation that could not be withheld. The critical difference from *Plourde*, however, was that the compensatory time at issue in *Fontana* did not constitute payment *in lieu of overtime*. In other words, where “compensatory time” is earned in exchange for labor – such as overtime work – it would likely be characterized as “wages” under the Act, but where it does not arise from such labor and is simply a contingent benefit, it likely will not be.

The *Fontana* decision therefore highlights that there is no blanket rule as to whether “compensatory time” is or is not a wage; rather a fact specific inquiry into the contingent (or not) nature of the benefit is necessary to make that determination. As a result, employers should closely review any compensation and time off policies to ensure that such contingencies are clearly defined.

3. *Pres v. Sensys Gatso USA, Inc.*: Undefined Bonus Criteria Convert “Contingent” Pay into Wages.

By contrast, in *Pres v. Sensys Gatso USA, Inc.*, No. 2313CV00918 (Jan. 22, 2026), the Lynn District Court found that a quarterly bonus qualified as “wages” under the Act because the bonuses were not tied to any contingency.

Here, the plaintiff’s offer letter specified that they would receive annually, “four bonus payments totaling \$9,000, against measured objectives.” In determining that this did not represent a contingency that would take the bonuses outside the reach of the Wage Act, the Court explained that the employer never provided any definition for the “measured objectives” described in the offer letter. As a result, there was no contingency for payment of the bonus, except the employee’s continued performance. The bonuses were therefore different than the bonuses at issue in *Nunez*, fell within the scope of “wages” under the Act, and the plaintiff was awarded treble damages.

The contrast presented by these cases is stark. Simply labeling a payment as “contingent” or a “bonus” alone will not take it outside the scope of the Wage Act. Rather, careful attention should be paid to the actual circumstances of any additional compensation, and any contingencies should be clearly defined. Given the significant exposure associated with Wage Act violations, small drafting details can have outsized consequences.



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Should you have any questions about these decisions, or other Massachusetts Wage and Hour issues, please contact your Morgan, Brown & Joy attorney.

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