



A Massachusetts state appellate court recently ruled a retention bonus is a form of “contingent compensation” not subject to Massachusetts’s wage laws.

In *Nunez v. Syncsort, Inc.*, No. 23-ADCV-63, employee Carlos Nunez executed a retention bonus agreement with his employer, Syncsort. Under the terms of the agreement, Nunez was eligible to receive a retention bonus in two installments, subject to the satisfaction of a few conditions. When Nunez did not receive the second half of the retention bonus upon his termination despite satisfying all the conditions, he sued Syncsort, alleging the employer violated the Massachusetts Wage Act (Act) by failing to pay his wages in a timely manner.

The only question before the court was whether the retention bonus constitutes “wages” under the Act. The court likened the conditions for Nunez’s retention bonus to the conditions for payment of unused sick time

contemplated in *Mui v. Massachusetts Port Authority*, 478 Mass. 710, 712 (2018). In *Mui*, the Supreme Judicial Court of Massachusetts held the unused sick time payment was a “contingent bonus” because its payment relied on the satisfaction of specific conditions. Because the only contingent compensation expressly recognized in the Act as wages is commissions definitely determined and due and payable to the employee, the contingent bonus at issue in *Mui* was not considered “wages.” Applying *Mui*, the court found that the retention bonus Nunez was promised was like the contingent bonus in *Mui*, as the retention bonus was to be paid only if certain conditions were met. The court acknowledged that Massachusetts courts have “never broadly construed the Wage Act to include any type of contingent compensation” other than commissions that are definitely determined and due and payable to the employee. Accordingly, like the unused sick time in *Mui*, the retention bonus could not be considered wages.

Massachusetts employers facing claims under the Massachusetts Wage Act or who have questions about wage and hour compliance should consult experienced counsel for guidance.

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