

# Profit-Sharing Arrangement Tied to Employer's Overall Profits Not Subject to Massachusetts Wage Act

Article By:

Geri L. Haight

Tom J. Pagliarini

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Employers with Massachusetts-based employees know that the Massachusetts Wage Act (the "Wage Act"), with its [strict liability and automatic treble damages and attorneys' fees](#), is a powerful and exacting statute with which they must comply. Powerful as it may be though, application of the Wage Act has its limits. Recently, in *Mehra v. Boston Globe Media Partners, LLC*, the Business Litigation Section of the Massachusetts Superior Court held that profits under a profit-share agreement were not "wages" regulated by the Wage Act.

## The Decision

The Wage Act applies to wages, including accrued unused vacation pay and "commissions when the amount of such commissions, less allowable or authorized deductions, has been definitely determined and has become due and payable to such employee." In *Mehra*, a former executive alleged that a specified percentage of the company's profits above a certain threshold under a profit sharing agreement was the same as a "commission" subject to the Wage Act. The Court rejected the argument that the plaintiff's alleged direct involvement in his employer's increased profitability transformed the profit-sharing arrangement into a "commission" subject to the Wage Act.

## Key Takeaways

The decision brings a measure of relief to employers with profit-sharing and other types of complex compensation arrangements. Below we summarize some key takeaways from the decision:

- **Commissions are Only Form of Contingent Compensation Subject to Wage Act:** It is well-understood that the Wage Act applies to ordinary earned salary and hourly wages. With respect to contingent compensation, in its *Mehra* decision, the Court emphasized that the only form of "contingent compensation" recognized expressly under the Wage Act are earned commissions.
- **Understanding of Commissions:** The Court explained that "commissions" governed by the Wage Act are typically understood to be compensation that an individual receives from their own efforts in selling goods, services, or real estate (typically as a percentage of the sale

price).

- **Compensation Arrangements Not Subject to the Wage Act:** In dismissing the Wage Act claim, the Court determined that the compensation arrangement at issue, i.e., entitlement to a share of the employer's overall profits above a specified threshold, was a profit-sharing arrangement and not a commission. While the facts and circumstances of each situation is different, the Court reiterated other types of complex compensation arrangements that are not subject to the Wage Act's requirements, such as profit-sharing arrangements, promote arrangements (a type of profit that developers can earn if a project is successful); and certain bonuses contingent upon an employer's profitability.

### Next Steps for Employers

- **For Profit-Sharing Arrangements:** Employers with compensation arrangements that include profit-sharing that seek to avoid the Wage Act's grasp should be clear in their agreements with employees that eligibility for profit-sharing is tied to the employers' overall profitability (or other defined subset of the company), and not tied to individual performance or revenue targets.
- **For Commission Arrangements:** While the *Mehra* decision provides some additional flexibility for profit-sharing arrangements, it remains that there will still be certain compensation arrangements that are found—intentionally or otherwise—to be “commissions” subject to the Wage Act. Employers should review their commission arrangements to ensure that the governing agreements specify when and how a commission can be “definitely determined and due” (i.e., when it is deemed “earned”), including making clear any contingencies that must be satisfied (e.g., that company receives payment in full before commission deemed earned).

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