

A Percent-of-Profit Incentive Payment is Not “Wages” Under the Massachusetts Wage Act

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The Massachusetts Wage Act (MA Wage Act) is one of the most punitive wage payment laws in the country.

Employers who violate the MA Wage Act^[1] are liable for treble damages, attorney's fees, and costs. The question of what constitutes “wages” has been the subject of litigation for many years.

Recently, in the case of *Mehra v. Boston Globe Media Partners, LLC*^[2], Vinay Mehra, the former President of Boston Globe Media Partners (the Globe), brought an action against the Globe alleging, among other claims, that payments owed under a profit-sharing agreement between him and the Globe were commissions entitled to protection as wages under the MA Wage Act. The Superior Court found in favor of the Globe, determining that the payments were not commissions, but profit shares outside of the scope of the statute.

Background

After a number of unprofitable years, in 2017 the Globe hired Mehra to turn the Globe into a profitable enterprise. In addition to his base salary, the Globe agreed to pay Mehra incentive payments equivalent to 5% of the Globe's profits beyond \$5 million for the third calendar year of his tenure and thereafter.

As a result of Mehra's efforts, by 2019, the Globe was profitable, and Mehra was looking forward to a significant incentive payment. As the incentive payment grew, the Globe unsuccessfully negotiated

with Mehra in an attempt to reduce the profit share. The Globe threatened to terminate Mehra if he did not accept the reduction. Mehra refused to engage in the negotiation and received a full payment in 2019 of over \$1.4 million.

On June 30, 2020, the Globe terminated Mehra's employment. When profits for 2020 were finalized in 2021, Mehra sought payment of his incentive compensation under the agreement. The Globe refused to pay Mehra the percent-of-profit incentive payment for 2020. Mehra commenced litigation, raising claims for violation of the MA Wage Act and breach of contract, among others.

The Globe moved to dismiss the MA Wage Act claim, arguing that the incentive compensation is not a commission. Mehra, on the other hand, contended that because he was responsible for the Globe's turn to profitability, including its increased revenue and reduced costs, the incentive compensation measured as a percentage of the Globe's profits operated as a commission covered by the MA Wage Act.

Analysis

In general, other than commissions, contingent compensation is not covered by the MA Wage Act. Commissions are only considered wages once they have been "definitely determined and ha[ve] become due and payable to the employee." M.G.L c. 149, § 148. Commissions are generally calculated as a percentage of the sales price of a good or service. It is well-established by Massachusetts courts that sharing in the overall profits of a business, without regard to personally generated revenue, does not qualify as a commission covered by the MA Wage Act.

Mehra argued that his profit-sharing compensation was tied to revenues entirely dependent on his actions to augment revenues and cut costs, thus making it akin to a commission. This argument did not persuade the court. Instead, the court found that because the agreement did not entitle Mehra to a percentage of revenues he personally generated, but instead a percentage of the Globe's overall profits, the compensation was not a commission deserving of protection under the MA Wage Act.

Takeaways

This case underscores and reinforces the long-standing distinction between profit-sharing payments and commissions. Profit-sharing payments may be recovered on a breach of contract claim, but failure to make such payments will not entitle a plaintiff to treble damages and attorneys' fees under the MA Wage Act. Nevertheless, case law under the MA Wage Act is constantly evolving. And, because the Act entitles a successful plaintiff to significant punitive damages, employees are incentivized to attempt to construe its application as broadly as possible, making this case unlikely to be the last attempt to broaden the scope of what constitutes wages.

[1] M.G.L c. 149, §148.

[2] *Mehra v. Boston Globe Media Partners, LLC*, No. 23-1483-BLS1 (Mass. Sup. Ct., Suffolk Jan. 31, 2024).

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