

## Payment for Sick Time Not Considered “Wages” Under Massachusetts Law

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In [Tze-Kit Mui v. Massachusetts Port Authority](#), Massachusetts’ highest court held that Massachusetts law does not require employers to pay departing employees for accrued, unused sick time within the timeframe prescribed for “wages,” as the term is defined by the Massachusetts Wage Act.

In reaching its decision, the Court analyzed the plain meaning of “wages” under the Act and concluded that the legislature did not intend that “wages” would include sick time. The decision removes a significant concern for Massachusetts employers who are strictly liable for treble damages — and can face criminal liability — for failing to pay wages in a timely manner.

The case involved an employee Massachusetts Port Authority (“Massport”), who retired while disciplinary charges were pending against him. Massport discharged the plaintiff for cause weeks after his retirement. Following a grievance procedure, his discharge was overturned by an arbitrator who found that the plaintiff could not have been discharged because he had already retired.

The plaintiff had 2,232 hours of unused sick time at retirement. Since a discharged employee is not eligible for sick pay under Massport’s sick time policy, Massport did not pay the plaintiff for his unused sick time until after the arbitrator’s decision finding that he had retired prior to being discharged. The payment occurred more than one year after the plaintiff’s retirement.

The plaintiff filed suit, seeking treble damages for alleged violations of the Massachusetts Wage Act. Under the act, an employer must pay wages or salary earned by a departing employee “in full on the following regular pay day.” A discharged employee must be paid wages or salary earned “in full on the day of his [or her] discharge.”

The plaintiff argued that Massport had violated the act by failing to timely compensate him for his unused sick pay. The plaintiff’s motion for judgment on the pleadings in the Superior Court was granted. Massport appealed, and the Massachusetts Supreme Judicial Court transferred the case from the Appeals Court.

In evaluating whether sick pay qualifies as wages under Massachusetts law, the Court looked to the plain language of the Act to discern legislative intent. The act defines “wages” to include “any

holiday or vacation payments due an employee under an oral or written agreement,” but does not reference sick pay. The Court declined to read sick pay into the definition where it had not been expressly included by the legislature.

In addition, the Court explained that vacation time is different from sick time. The crucial distinction is that sick time, as defined by Massachusetts law, can only be used if the employee or a family member is ill, whereas vacation time can be used for any reason. The Court reasoned that, because employees do not have an absolute right to use sick time, Massachusetts law does not require employers to compensate employees for accrued, unused sick time, and employers can adopt “use it or lose it” sick time policies. Since employers are not required by law compensate employees for unused sick time, the court concluded “such time is clearly not a wage under the act.”

Under its policy, Massport agreed to pay departing employees for accrued, unused sick time as long as the employee had worked at Massport for two years and had not been terminated for cause. The Court characterized this arrangement as a “contingent bonus.” Commissions are the only contingent compensation considered wages under the act provided that they “ha[ve] been definitely determined and due and ha[ve] become payable to [the] employee.” The Court declined to extend the definition of “wages” to include other types of contingent compensation.

Finally, the Court concluded that, under the circumstances of the case, it would have been impossible for Massport to comply with the Act. The issue of the plaintiff’s separation date was not resolved until the payment deadline provided by the Act had lapsed. Because compliance would not have been possible in this case, interpreting the act to include sick pay as wages would lead to an absurd result.

While the decision is a favorable one for employers who do business in Massachusetts, given the significant liability that employers may incur for failing to comply with the Act, Massachusetts employers should confer with counsel when wage payment issues arise.

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