

Massachusetts Court Rules Retention Bonuses Are Not Wages – Key Implications for M&A Transactions

Description

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On October 22, 2025, in *Nunez v. Syncsort Incorporated, et al.*, the Massachusetts Supreme Judicial Court affirmed the decision of the Massachusetts appellate court holding retention and change-of-control bonuses are not considered wages under the Massachusetts Wage Act. The decision provides important assurance for employers that failure to pay such bonuses in full on the date of termination or in the event of a dispute does not trigger the draconian Wage Act penalties, such as automatic triple damages and attorneys' fees, as well as potential personal liability.

Nunez v. Syncsort Incorporated, et al.

The Court's decision arose from a tech employee's claim against his former employer, Syncsort, for a delayed retention bonus payment following its merger with another company. The employee, a senior finance director, had a retention bonus agreement contingent on remaining employed in good standing through certain dates following the merger. After the company terminated him on the last day he needed to work to earn the bonus and paid the final bonus eight days later, he sued, alleging a violation of the Massachusetts Wage Act and sought treble damages for the company's failure to pay the bonus on his last day of employment.

The Court held that the retention bonus was not "wages" under Massachusetts law because the bonus was not paid in exchange for services or labor rendered by the employee. Instead, the bonus was contingent on the employee remaining with the company during a "time of change and integration", specifically, the merger with another company and subsequent rebranding.

As the Court explained, "[w]e see no reason why retention agreements should be treated any differently from other types of compensation that are contingent upon continued employment to a particular date and are in addition to the compensation the employee receives in exchange for his or her labor and services."

M&A Considerations

In M&A transactions, retention bonuses and change-in-control bonuses are commonly used to incentivize key employees and designed to encourage employees to remain with the company through critical periods, such as the due diligence process and closing of the transaction. Change-in-control bonuses, specifically, are triggered by a change in ownership or control and provide additional compensation if employees are terminated or are asked to stay through the post-transaction integration.

For sellers, these agreements help ensure a smooth transition during and following the sale process. In closely held businesses, retention or change-in-control bonuses can be particularly important in ensuring the business owners navigate the complexities of a sale. These agreements reduce the owner's administrative and operational burdens, such as responding to due diligence requests, by making the continued employment of staff that perform those functions more likely. Retention agreements also help avoid the buyer becoming nervous due to attrition by key employees.

Depending on the structure of the transaction, employees may very well be terminated by the selling company on the day of closing. The termination triggers the requirement to pay all wages due to an employee on the last day of employment. *Nunez* provides the much needed clarity that an employer does not need to pay the retention bonuses or change-in-control bonuses, even if earned, on the date of termination under the

Massachusetts Wage Act. Practically this is important to employers because the employer may not know if the employee satisfied the contingency until the date of termination (as the contingency often requires the employee to work until the date terminated to get the bonus) and logistically may not be able to make the payment through payroll if the employer attempts to do so the same day. In addition, sellers can now be confident that if a dispute arises over whether such a bonus is owed, they will not face the stringent liability provided in the wage statute if they do not simply pay the bonus.

Implications for Employers

Under the Massachusetts Wage Act, wages, such as normal pay, overtime, accrued but unused vacation pay, and “commissions that are definitely determined and due and payable to the employee”, must be paid in full on the last day of an employee’s employment. Failure to do so results in mandatory treble damages, attorneys’ fees, and interest under the Wage Act. In addition, nonpayment or partial payment of wages when the wages are otherwise owed (if owed prior to termination), or deduction from wages owed for amounts owed by the employee, triggers the harsh penalties. The Massachusetts Wage Act also includes the potential for personally liability for violations.

Nunez makes clear that, like discretionary bonuses and severance payments, retention bonuses made not solely in exchange for the employee’s labor and services do not need to be paid on the employee’s last day of employment under the Massachusetts Wage Act. *Nunez* also means that withholding or offsetting such payments does not carry the risk of automatic damage multipliers, attorneys’ fees, or personal liability under the statute.

Employers are cautioned, however, that if the employer does not pay the retention bonuses according to the terms of the contract, the employee can still sue for breach of contract (but without recovering triple damages and attorneys’ fees, unless otherwise negotiated in the contract). In addition, employers need to clearly draft retention and change-in-control agreements so that they are distinct from regular wages. Finally, employers should be mindful that commissions that are definitely determined and due and payable to the employee should not be masked as retention bonuses to avoid wage treatment.

For more information regarding retention agreements in the context of M&A transactions and the Massachusetts Wage Act, please contact Partridge Snow & Hahn’s [Mergers & Acquisitions](#) attorneys [Lawrence J. Sheh](#) and [Madeline M. Ursini](#) or [Employment & Labor](#) partners [Alicia J. Samolis](#) and [Michael A. Gamboli](#).

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