

Navigating 2026: Key Trends/Developments in Employee Leave and Wage and Hour Law

Jermaine Kidd, ACC Northeast

Alan Tannenwald, BitSight

Kate Rigby, Epstein Becker Green

Scott Connolly, Epstein Becker Green

January 13, 2026



Navigating Complex Leave Issues

Jermaine Kidd, ACC Northeast

Alan Tannenwald, BitSight

Kate Rigby, Epstein Becker Green

January 13, 2026

Presented by



Jermaine Kidd

In-house Counsel and Member
of the ACC Northeast Chapter's
Board of Directors



Kate Rigby

Member of the Firm
Epstein Becker Green
krigby@ebglaw.com



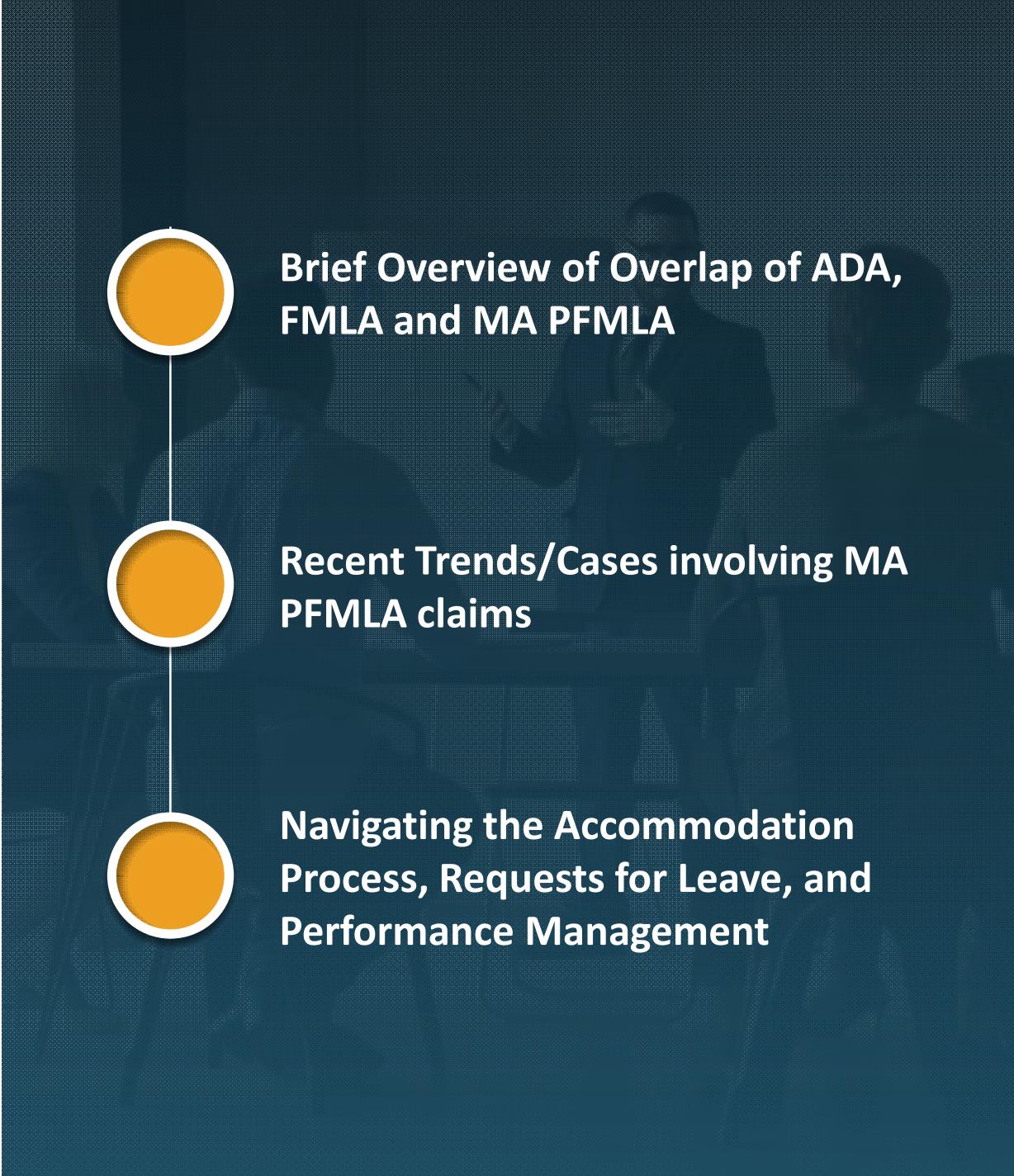
Alan Tannenwald

VP, Assistant General Counsel & Assistant Secretary
Bitsight



Agenda/Topics

ADA, FMLA, and PFMLA



Overlap of ADA, FMLA and MA PFMLA

Reasons for Leave under the MA PFMLA

- Bonding with your child during the first 12 months after birth, adoption, or placement
- Caring for a family member with a serious health condition.
- Caring for your own serious health condition.
- Caring for a family member who is a covered service member with a serious health condition that was received or aggravated while they were deployed on active duty.
- Managing affairs while a family member is deployed or about to be deployed on active duty
- “**Serious Health Condition**”
- Condition that prevents you from doing your job for more than 3 consecutive days, and requires ONE of the following:
 - Overnight stay in a medical facility
 - 2 or more treatments by a HCP within 30 days of whatever prevented you from doing your job
 - At least 1 treatment by a HCP within 30 days of whatever prevented you from doing your job, with plans for continued treatment, including prescriptions

Reasons for Leave Under the FMLA

- The birth of a child or placement of a child with the employee for adoption or foster care,
- The care for a child, spouse, or parent who has a serious health condition,
- A serious health condition that makes the employee unable to work, and
- Reasons related to a family member's service in the military

- **“Serious Health Condition”**
 - An illness, injury, impairment, or physical or mental condition that involves
 - Inpatient care in a hospital, hospice, or residential medical care facility; or
 - Continuing treatment by a health care provider

Reasons for Leave Under the ADA/MA Disability Law

- Qualified individuals may receive a reasonable accommodation because:
 - They have a physical or mental impairment that substantially limits one or more major life activity, or
 - They have a record of such an impairment
- ADA/MA law does not require an employer to provide a *reasonable accommodation* allowing the individual to care for a *family member* with a disability
- But, ADA/MA law prohibits associational discrimination - an employer may not discriminate against individuals because of their association with a person with a known disability

Recent Trends and Cases

Trends



- Sharp increase in demand letters and litigation in MA concerning disability and serious health conditions, especially with claims under the MA PFMLA
- The presumption of retaliation under the MA PFMLA makes these claims attractive to Plaintiff's attorneys
- 2025 Statistics for **MA PFMLA** Cases
 - Motions to Dismiss Granted – 4
 - Motions to Dismiss Denied – 1
 - Motions for Summary Judgment Granted – 4
 - Motions for Summary Judgment Denied – 2

Recent Cases



Harris v. National Grid US - (D. Mass. Mar 26, 2025)

- The court granted summary judgment in favor of National Grid. The plaintiff's failure to submit sufficient medical documentation concerning a claimed disability and to cooperate in the interactive process hindered a plaintiff's ability to substantiate his request for accommodations.

Kendrick v. Zwicker & Assoc., P.C. - (D. Mass. Sep. 30, 2025)

- Summary judgment granted for Zwicker & Assoc, P.C. who terminated the plaintiff for repeated policy violations.
- Plaintiff alleged her termination was in retaliation for seeking leave under MA PFMLA.
- Here, the company had ample evidence of Plaintiff's performance issues which Plaintiff was unable to rebut and her request for leave was more than a year before her termination
- Notably, the court never analyzed the MA PFMLA "presumption" of retaliation standard in this decision because the adverse action occurred well after the 6 month "presumption" time period.
- Instead, the federal district court used the same *McDonnell Douglas* burden shifting framework for MA PMFLA claims as it did for FMLA claim because, as it noted, state courts have not yet had an opportunity provide guidance on the PFMLA given its recent enactment.

Recent Cases



Tardiff v. Laborers International Union - (D. Mass. Aug 15, 2025)

- Court granted motion to dismiss the MA PFMLA interference claims against all defendants (including *individual defendants*) because (for among other reasons):
 - The individuals were not “employers” under the statute
 - The court analyzed interference claims under the MA PFMLA by using the same standard as the FMLA. To be liable, the individual must have had some responsibility, whether partial or full, for the alleged violation of interference (e.g., refusal to approve or other actions preventing use of PFMLA leave). Just being a manager is not enough.

Recent Cases



Wright v. Micro Focus, LLC - (D. Mass. May 29, 2025)

- Denied summary judgment because the court found a dispute of fact existed regarding decisionmaker's motivation for lowering Plaintiff's performance rating.
- Managers who knew of Plaintiff's MA PFMLA leave gave Plaintiff an inaccurate performance review.
- Senior leadership, unaware of the inaccuracy of the review, selected the Plaintiff for lay off *based* on the performance review rating.
- While senior leadership – the actual decisions makers for termination – were not influenced by Plaintiff's leave, the court found that leadership was influenced by manager's inaccurate performance assessment (which may have been influenced by leave).
- Thus, SJ denied under the “cat's paw” theory.
- Reiterates the need for deep analysis of performance ratings even in a RIF setting

Recent Cases



Bennani-Persechini v. Rippling PEO 1, Inc. - (D. Mass. Apr. 30, 2024)

- Motion to Dismiss granted.
- Plaintiff alleged that her former employer had unlawfully paused the accrual of certain restricted stock units to which she was entitled under a Restricted Stock Unit agreement during a leave she had taken pursuant to the MA PFML.
- The court dismissed Plaintiff's complaint, concluding that the MA PFMLA statute and regulations does not require *accrual* of stock benefits during leave.

Bodge v. Commonwealth - (SJC Sep. 13, 2024)

- Affirming dismissal of MA PFMLA claims and holding that PFMLA does not require an employer to guarantee the *accrual* of vacation and sick time during an employee's PFMLA leave.
- The Court found that the statute does not confer accrual rights but instead ensures only that any rights that the employee already has are “not affect[ed]” while the employee is on leave.

Recent Cases



***Persichini v. AutoZoners, LLC*, No. 23-10835-GAO, 2025 WL 1869269 (D. Mass. July 7, 2025)**

- Denied summary judgment as to MA PFMLA and FMLA retaliation claims.
- After months of disputed performance management issues, Persichini took a 30-day medical leave of absence.
- The day after he returned from leave, the company transferred him to manage a smaller store.
- Plaintiff sued for, among other things, retaliation under the FMLA and MA PFMLA.
- AutoZoners claimed it made the decision to transfer him before the leave of absence. Plaintiff established sufficient facts to question whether the decision to transfer him was actually final before he took a leave of absence.
- Without analyzing the “presumption” of retaliation, the court found that temporal proximity of the leave and transfer combined with the dispute over the timing of the decision required denial of summary judgment.

DOL Opinion Letter – Travel time

Intermittent Leave Question Answered by the DOL: When an eligible employee travels to or from a health care provider for a medical appointment regarding the employee's serious health condition, may the employee take FMLA leave not only for the actual appointment, but also the time traveling to and/or from the appointment?

Example: Certification form states that the employee needs 45 minutes once a month to attend a doctor's appointment, but it does not include any time for "travel" to and from the appointment, which adds another 1.5 hours to the time out of work per month. Is the additional travel time covered by the FMLA?

Answer: Yes

<https://www.dol.gov/sites/dolgov/files/WHD/opinion-letters/FMLA/FMLA2026-2.pdf>

Does travel time unrelated to commuting to/from doctor's appointment count? (e.g., driving to get coffee or lunch)? No.

How do you practically manage that?



Reasonable Accommodations and the Interactive Process

Reasonable Accommodations

The ADA

- **Requires** employers to provide **reasonable accommodation** to qualified individuals with a disability who can perform the essential functions of the job with or without accommodation, unless doing so would constitute **“undue hardship”**
 - ADA always requires an individualized inquiry into the ability of a particular person to meet the requirements of a particular position that is context-specific
- Employers are not obligated to grant the employee exactly what is requested.
 - An employer can select an accommodation of its choosing, provided it is reasonable and effective

Examples of Reasonable and Unreasonable Accommodations

Reasonable

- Acquiring or modifying equipment or devices
- Job restructuring
- Part-time or modified work schedules
- Providing leave of absence
- Reassignment to a vacant position
- Adjusting or modifying examinations, training materials, or policies
- Providing readers and interpreters
- Making the workplace readily accessible and usable

Unreasonable

- Eliminating essential functions
- Lowering qualitative or quantitative performance or productivity standards
- Providing personal use items or amenities
- Providing indefinite leave of absence
- Allowing unpredictable, erratic attendance
- Violating seniority rights
- Changing supervisor

The Interactive Process

The employer and individual must discuss the limitations.

The employer and individual may discuss other accommodations that may enable the employee to perform the essential functions of their job, if the initial request is not a reasonable accommodation.



The Interactive Process is triggered by notice from an employee or third party, or an employer independently becoming aware of the need for a reasonable accommodation.

The employer may request documentation/information about the individual's medical condition if the disability is not obvious and it is unclear whether it is a "disability" as defined under the ADA.

Notify the employee of the decision & document!

Interactive Process

General Dos and Don'ts of the Interactive Process

- **Do** train managers to recognize an employee's request or need for an accommodation.
- **Do** train managers to engage HR to discuss reasonable accommodations.
- **Do** train managers to assess the true essential functions of the job.
- **Do** discuss reasonable accommodation options.
- **Do** try to get buy in from the individual.
- **Do** document!
- **Do not** immediately reject an accommodation request, no matter how unreasonable it may appear.
- **Do not** permit managers to make arbitrary reasonable accommodation decisions.

Navigating Difficult Accommodation Requests & Performance Management

Mental Health

The following disorders are the most widely reported mental health concerns in the workplace:



Anxiety



Depression



ADHD/ADD



**Post-traumatic stress
disorder (PTSD)**

Mental Health Accommodation Requests and Performance

- Mental health disability *causing* performance issues
- Or, shortly before or after performance management begins, employee seeks a leave of absence
- Difficulty in handling accommodations related to anxiety/depression allegedly *triggered or exacerbated* by performance management, supervisory style/approach
 - Accurate assessment of performance
 - Accurate *and* timely documentation
 - “Do you have any suggestions for how I or the company can help you perform your job duties, meet these performance metrics, meet these deadlines, etc.”

Performance Documentation Do's and Don'ts

Documentation

Do:

- ✓ State accurately (don't sugar coat)
- ✓ Use objectivity (state facts, not opinions)
- ✓ Provide specifics (projects, achievements, errors)
- ✓ Identify how individual's performance, good or bad, impact the team and organization
- ✓ Be consistent (same for all similar offenses by the same or other employees)

- ✓ Evaluate the performance, not the person
 - ✓ "Rafi doesn't care" vs. "Rafi fails to meet deadlines"
- ✓ Provide balanced feedback
- ✓ Be clear about consequences where improvement is needed
- ✓ Use detailed phrases to describe performance
 - ✓ Initiates and executes creative ideas such as [example]
 - ✓ Excels at developing programs / strategies that have delivered X results
 - ✓ Achieves optimal levels of performance and accomplishment with / for ...

Performance Documentation Do's and Don'ts

Documentation

Don't:

- ✗ Create *damaging* documents
- ✗ Don't include stereotypical/biased language or phrases
 - “Bri would have hit her target if she hadn't been off on maternity leave.”
 - “Her anxiety is getting the best of her”
- ✗ Don't mention/complain about leave or medical condition
- ✗ Don't speculate the reason for under performance
 - ✗ “Rafi is unlikely to improve his performance given recent diagnosis”

Remote Work as an Accommodation

Remote Work

*Is in person work **essential**?*

- Job-specific inquiry
- Focus on collaboration

Important to understand the specific underlying need/limitation

- Being around crowds
- Stress/anxiety around commuting
- Sensitivity to lighting, noise, or smells
- Diminished immune system
- Specific long COVID symptoms

Investigate the broader impact of the alleged need/limitation

- Obtain further, more precise, information from a health care provider
- Explore the impact on other areas of life

Consider alternative accommodations that address the limitation—be creative and flexible

- Changing the days the employee works in the office
- Changing working hours outside of peak commuting hours
- Paying for parking/alternative transportation
- Changing seating to a less crowded area of the office

Document and manage the accommodation

- Consider a trial/temporary period
- Clearly set forth performance and conduct expectations
- Document, document, document
- Maintain proper levels of confidentiality
- Reassess as needed

Leave as an Accommodation

Leave as a Reasonable Accommodation

Indefinite Leave

1

Most federal courts have held that an employer does not have to provide **indefinite leave** as a reasonable accommodation under the ADA

2

Indefinite leave can be

- A leave without an end date
- Numerous extensive requests for an extension of a leave

3

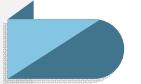
Many federal courts treat it as *per se* unreasonable and do not require an employer to demonstrate undue hardship

Leave as a Reasonable Accommodation

Extended Leave



Each leave and extension must be analyzed on an individualized basis



When is another extension unreasonable? Undue hardship?



Example:

Employee exhausts the max 26 weeks of consecutive leave under the MA PFML.

Employee seeks and is approved an additional month of unpaid leave

Employee then seeks an additional 2 months of leave, with her healthcare provider an additional two more months will “likely” get employee back to work.

Is this reasonable? Will it cause an undue hardship?

What factors will come into play?

Questions?

We value your input! Scan the QR code below to share your feedback.





EPSTEIN
BECKER
GREEN

Wage & Hour Compliance

Scott Connolly, Epstein Becker Green
Jermaine Kidd, Esq., ACC Northeast

January 13, 2026

Presented by



Scott Connolly

Member of the Firm
Epstein Becker Green
sjconnolly@ebglaw.com



Jermaine Kidd

In-House Counsel and Member of the ACC Northeast
Chapter's Board of Directors



Agenda/Topics



Recent Cases and Trends



Federal Law Developments



Agency Enforcement Priorities



MA Pay Transparency Act



Recent Cases and Trends

MA Wage Act

How We Got Here

Reuter v. City of Methuen - (SJC April 4, 2022)

- Reversing dismissal of MA Wage Act claim and holding that employer was responsible for three times the amount of vacation time paid three weeks after discharge (plus attorneys' fees and costs), and not only trebled interest.
- The Court interpreted the MA Wage Act to require automatic treble (triple) damages when an employer fails to pay an employee wages on time, even if the employer corrects the error and pays the full amount due before the employee files a lawsuit.
- The Court rejected an influential trial court decision (*Dobin v. CIOview*) that had recognized a partial defense for late payments made before a court complaint was filed.
- Even a payment that is one day late triggers treble damages on the full amount of wages. Explains surge of late payment claims and efforts to expand definition of wages under the Wage Act.

MA Wage Act

Recent Cases



Weick v. President and Fellows of Harvard College - (D. Mass. October 24, 2025)

- Motion to dismiss for failure to state a claim pending.
- Harvard provides employees 3 personal days off annually for additional flexibility in balancing work and life.
- Former employees claim Harvard violated Wage Act by failing to pay out unused personal time when their employment was terminated.
- Harvard has moved to dismiss arguing that personal time is not a wage covered by the Wage Act. Harvard maintained a separate bank for vacation time and paid out unused vacation.

MA Wage Act

Recent Cases



Nunez v. Syncsort Incorporated (Mass. SJC) – Affirming Summary Judgment for Employer; Retention Bonus Payments Not “Wages” Under the MA Wage Act

Date: October 22, 2025

Summary:

Carlos Nunez, Syncsort’s former Senior Director of Finance, claimed two retention bonus payments constituted “wages” under Wage Act. To retain Nunez after his salary and working hours were reduced following a merger, Syncsort entered into a retention bonus agreement with him, which provided for two equal payments on separate retention dates. Nunez remained employed through the retention dates and Syncsort paid him both bonuses, but Syncsort made the second payment eight days after the second retention date and Nunez’s termination date. Nunez sued claiming that the second tranche payment was late. A District Court Department judge entered summary judgment for Syncsort finding that the retention bonus was a form of contingent compensation and not a “wage” within the meaning of the Wage Act. The Appellate Division affirmed. The SJC affirmed holding that the retention bonus payments were contingent, or conditioned, upon Nunez’s continued employment to the retention dates and his remaining in good performance standing with no reduction in his regular work schedule – additional contractual conditions apart from Nunez’s performance of labor or services.

Key Takeaways:

Nunez is a favorable case refusing to expand the definition of “wages” under the Wage Act. It also highlights the importance of timely paying final and other agreed-upon compensation to avoid being targeted for late payment claims. Agreements providing for additional or incentive compensation, such as retention bonus agreements, should be drafted carefully to emphasize the contingencies that must be met apart from the employee’s performance of labor or services.

MA Wage Act

Recent Cases



Serebrennikov v. Proxet Group, LLC (D. Mass.) – Summary Judgment, MA Wage Act Applied Extraterritorially to Misclassified Contractor's Compensation Claims

Date: October 20, 2025

Summary:

George Serebrennikov, a “consultant” based in Florida with a Florida-based company, provided services to Proxet, a MA-based business. The parties’ business relationship was complex. The services were performed outside of MA, primarily in Ukraine, Turkey, and Poland. After Plaintiff was terminated by Proxet, he sued claiming unpaid salary, unused vacation, an unpaid bonus, and unreimbursed business expenses. On cross motions for summary judgment, the Court allowed Plaintiff’s motion finding that he was Proxet’s employee and that the MA Wage Act applied to his claims. MA had the most significant relationship to Plaintiff’s claims because IRS forms listed MA as Proxet’s location, Proxet paid Serebrennikov from MA, Proxet’s headquarters were in MA, its management team to whom Plaintiff reported was either based in MA or worked remotely during the relevant period, Proxet had no other location in the US, and the parties’ Consulting and Confidentiality Agreements both included MA choice of law provisions.

Key Takeaways:

Employees who work or reside outside of MA can bring claims under the Wage Act if Massachusetts has the “most significant relationship to the plaintiff’s employment.” This depends on multiple factors: the state where employer’s headquarters is located; the place(s) the worker performed the work; the frequency of interactions between the worker and the employer in MA; whether another state has a significant connection to the worker and work performance; and whether the contract between the worker and employer has a choice of law provision.



Fall v. Batten (D. Mass.) – Summary Judgment, Individual Liability of Corporate Officer under MA Wage Act

Date: October 3, 2025

Summary:

Lisa Fall, the former CEO of defunct Boston Security Token Exchange, LLC (“BSTX”), sued David Batten, the former Executive Chairman of BSTX under the Wage Act for deferred salary that was never paid. The court granted summary judgment in favor of Batten holding that there was insufficient evidence for a jury to find that Batten, as a corporate officer or agent, “had management of” BSTX to impose individual liability.

Key Takeaways:

Batten’s exercise of officer-agent powers did not include “overall management of the financial and payroll function of BSTX.” Rather, the evidence showed he had “stayed in his lane as a board member.” His actions related to raising capital and relaying information about efforts to fund BSTX, but did not direct the payment of wages. His other acts lay clearly within a corporate board’s supervisory purview, including requests for reporting and transmission of information to the Board, which did not implicate BSTX’s financial or payroll functions. Individual liability under the Wage Act does not flow from a board member’s or corporate officer’s “active” participation in a corporation that does not implicate the company’s financial and payroll function.

MA Wage Act

Recent Cases



Curtin-Wilding v. Trustees of Boston University (D. Mass.) – Judgment on the Pleadings, Non-Profit Immunized from Wage Act Frequency of Pay Claims

Date: August 27, 2025

Summary:

Lydia Curtin-Wilding, a salaried Lecturer at BU, individually and on behalf of a putative class of employees, claimed BU's payment of salary on a monthly basis resulted in some wage payments being paid approximately nine days late in violation of the Wage Act. The court allowed BU's motion for judgment on the pleadings based on Section 113 of Chapter 9 of the Acts and Resolves of 2025. Section 113 immunized nonprofit institutions of higher education and nonprofit organizations that comprise a health care delivery system from Wage Act lawsuits targeting the employers' monthly payment of wages to employees commenced between July 1, 2024 and September 30, 2028.

Key Takeaways:

Plaintiffs' bar continues to assert new theories for alleging late payments under the Wage Act. Section 113 provides a temporary respite from such claims for colleges and universities and hospitals to change their pay practices or obtain employee elections for monthly pay.

See also: MacIntyre v. Curry College (D. Mass.) – Motion to Dismiss Allowed; Section 113 Forecloses Monthly Pay Claim.

MA Wage Act

Recent Cases



Noreke v. Gideon Taylor Consulting (D. Mass.) – Partial Summary Judgment, Compensation Tied to Company Performance Not “Commissions” Under MA Wage Act

Date: August 14, 2025

Summary:

Holger Noreke, former Managing Director of Gideon Taylor's Newbury Division, alleged independent contractor misclassification and violation of the Wage Act for failure to pay "commissions." Although labeled by the employer as "commissions," the court determined that the additional remuneration at issue was not compensation covered by the Wage Act because it was, pursuant to the terms of the employer's "Commission Plan," tied to the Newbury Division's net income rather than Noreke's individual sales efforts.

Key Takeaways:

The fact that compensation is labelled as "commissions" is not dispositive, rather, "the nature and purpose of a particular form of remuneration, not the label applied to it by the employer, determines whether it is covered by the statute." Profit-sharing arrangements that are expressly based on the financial performance of the employer or a subpart of the employer are not commissions under the Wage Act.



Rivard v. Nice Systems, Inc. (D. Mass.) – Summary Judgment, Commissions Not Due and Payable Where Conditions to Payment Not Met Prior to Employee's Resignation

Date: August 20, 2025

Summary:

Christine Rivard, a former sales executive, sued software seller Nice Systems for unpaid commissions after she voluntarily resigned from employment. The commission plan specified that participants shall not earn any commissions following termination of employment. Commission payments at termination would be based on completed orders and invoices through the last day of employment, and, further, that commissions were subject to reversal or reduction because of cancellation by the customer after order completion. The court granted summary judgment for Nice holding that the conditions were valid contingencies to payment, which had not been met prior to Rivard's resignation.

Key Takeaways:

The default rule is that an employee earns a commission and it becomes “due and payable” when the employee closes a sale even if there is delay in actual payment on the sale. But an employer and an employee may agree to different terms. Commissions are not due and payable to an employee where valid contingencies contained in the compensation plan have not occurred. Contract milestones between the employer and its customers for the sale of goods and services, such as the completion of ordering and invoicing, are valid contingencies. An employer may require that such conditions are met while the employee remains employed.

MA Wage Act

Recent Cases



Ford v. Vacationeer, LLC (MA Sup. Ct.) – Summary Judgment, Commissions Not Due and Payable Where Contingencies Not Met

Date: July 23, 2025

Summary:

Jessica Ford worked as an independent contractor travel planner for Vacationeer selling customers vacation packages to Disney World. She serviced each booking through the customers' trip and return date. Disney paid Vacationeer a commission after a customer completed their trip. Vacationeer, in turn, paid a percentage of the commission received to the travel planner assigned to the booking. Commissions were not due and payable to Ford by Vacationeer until after the customer completed the trip because the customer could cancel after booking. Vacationeer discharged Ford and paid her commissions on all trips that had been completed as of her date of termination. Ford sued Vacationeer claiming employee status and failure to pay commissions "she would have received but for" her termination. The court granted summary judgment for Vacationeer finding that, at the point of Ford's termination, Vacationeer was not unconditionally entitled to a commission from future trips that had not been completed because they were subject to cancellation. This unfulfilled contingency meant that no commissions were "due and payable" to Ford for those future trips.

Key Takeaways:

Commissions are only considered "wages" under the Wage Act when they are "definitely determined" and "due and payable," meaning that all contingencies have been satisfied. Commission and incentive compensation plans should be drafted carefully and clearly describe contingencies that must be met before a commission is earned and payable.

Federal Law Developments

FLSA Litigation Trends

Compensable “off-the-clock” work – unpaid computer boot-up time

Regular rate of pay errors – how bonuses and other compensation factor into overtime pay calculation



Clarifying policies on system log-in/ log-out time, pre-shift and post-shift activities, remote work and mobile access

Compliance audits – auditing bonus and other compensation; ensuring payroll systems correctly allocate remuneration across workweeks

Federal Law Developments



US DOL Shelves Independent Contractor Rule -- May 1, 2025

- Wage and Hour Division issued Field Assistance Bulletin No. 2025-1 announcing that it is currently working to reformulate the test as to how independent contractor status is determined under the Fair Labor Standards Act, signaling a clear intention to make it easier for businesses to classify workers as independent contractors. The rulemaking process will take time. FAB 2025-1 accordingly provides that, during the interim, the DOL will no longer enforce a 2024 rule established under the Biden administration.
- The 2024 rule, which consisted of a non-exhaustive multi-factor test, is largely viewed as placing a difficult hurdle with respect to independent contractor classification. FAB 2025-1 relaxes the DOL enforcement standard by reverting to the “economic reality” framework outlined in Fact Sheet #13 (July 2008).

The “economic reality” framework asks whether the worker is an independent contractor in business for themselves, or an employee economically dependent on the business they serve. While this does not involve a single rule or test, significant factors include:

1. The extent to which the services rendered are an integral part of the principal’s business.
2. The permanency of the relationship.
3. The amount of the alleged contractor’s investment in facilities and equipment.
4. The nature and degree of control by the principal.
5. The alleged contractor’s opportunities for profit and loss.
6. The amount of initiative, judgment, or foresight in open market competition with others required for the success of the claimed independent contractor.
7. The degree of independent business organization and operation.

Federal Law Developments



WHD May No Longer Supervise or Seek Liquidated Damages in FLSA Settlements

- Effective June 27, 2025, Wage and Hour Division issued Field Assistance Bulletin No. 2025-3, which rescinded prior guidance and stated that WHD may not supervise or seek liquidated damages in administrative settlements under the Fair Labor Standards Act.
- This policy change limits WHD's authority in pre-litigation matters to the pursuit of unpaid minimum wages and overtime compensation only, reserving liquidated damages exclusively for judicial proceedings.

DOL's Regulatory Agenda Announced on September 4, 2025

- DOL's press release announced its regulatory agenda, which includes plans to reevaluate overtime regulations, joint-employer, and worker classification standards under the Fair Labor Standards Act.
- Related to overtime regulations, on April 24, 2025 the DOJ filed a motion asking the U.S. Circuit of Appeals for the Fifth Circuit to temporarily suspend the Labor Department's appeals in two cases challenging its 2024 Final Rule for FLSA overtime, citing plans to review and revise the rule. That Final Rule expanded overtime eligibility to millions of workers; it would have increased the annual minimum threshold for overtime exemption to \$58,656 in 2025 with automatic, additional increases every three years beginning in July 2027. An initial increase to \$43,888 per year took effect in 2024 before Texas federal judges blocked it along with the rule's other components. The Fifth Circuit granted DOJ's request, pausing the appeal, meaning the previous 2019 salary thresholds remain in effect for now, with the new rule's future uncertain.

DOL Opinion Letter – Must Include Incentives in Regular Rate

Overtime Regular Rate Question Answered by the DOL: Must employer include incentive compensation rewarding punctuality, attendance, consistency in completing daily tasks, driving safety, traffic law compliance, proper attire, and performance efficiency in the employee's regular rate of pay for calculating overtime pay?

Answer: Yes, the payments are incentives and do not qualify as a discretionary bonus.

<https://www.dol.gov/sites/dolgov/files/WHD/opinion-letters/FLSA/FLSA2026-2.pdf>



Agency Enforcement Priorities

Agency Enforcement Priorities

MA Attorney General's Fair Labor Division



1,542 enforcement actions against 1,405 employers in FY 2025

Top 5 industries

- Transportation/delivery drivers
- Construction
- Restaurant/hotel employees
- Janitorial/cleaning services
- Skilled nursing/rehabilitation/home healthcare

Top 5 violations

- Failure to make timely payment
- Failure to keep true and accurate payroll records
- Failure to furnish records
- Failure to pay overtime
- Failure to obtain proper child labor work permit

Agency Enforcement Priorities

US DOL WHD's Northeast Region



- “Wage theft” in food service, construction, agriculture, and healthcare
- Child labor violations, especially in hazardous workplaces, *e.g.*, fish processing
- 2025 consent judgments:
 - Fast food franchisees – overtime pay
 - Construction – failure to maintain records/retaliation/instructing employees to not cooperate with investigators
 - Healthcare – employees working through breaks and not paid

MA Pay Transparency Act

MA Pay Transparency Act

- On October 29, 2025, the Pay Transparency Act took effect in Massachusetts, requiring employers with 25 or more employees whose primary place of work is in Massachusetts to disclose hourly or annual pay ranges in all job postings, to employees who are offered a promotion or transfer, and upon request from a current or prospective employee.
 - Primary place of work and remote roles
 - Defining “reasonable and in good faith” pay ranges
 - Variable pay such as commissions, which can be difficult to project accurately
 - Multi-state compliance
 - Third-party oversight

Questions?

We value your input! Scan the QR code below to share your feedback.

