

Are Out-Of-State Employees Afforded Protections Under The MA Wage Act & Anti-Discrimination Statute?

By Michelle De Oliveira on January 25, 2024



The question of whether an out-of-state employee may reap the benefits of Massachusetts law, including the Massachusetts Wage Act, requires an important analysis that is both in-depth and fact specific.

In *Wilson v. Recorded Future, Inc., et al.*, the United States District Court for the District of Massachusetts held that the Massachusetts Wage Act and the Massachusetts Fair Employment Practices Law (the state's anti-discrimination statute, M.G.L. c. 151B) may apply even if an employee works and resides outside of Massachusetts. In *Musachia v. Abiomed, Inc.*, the Essex County Superior Court, however, held just the opposite, finding that the Massachusetts Wage Act did not apply to an out-of-state resident even though the employer's headquarters were in Massachusetts. The prominent factual differences between the two cases ultimately resulted in the contrasting results.

In *Wilson*, the employee neither lived nor worked in Massachusetts. Contrary to the result that the employer had hoped for, the court emphasized the fact that the Massachusetts Wage Act does not foreclose extraterritorial application, and its remedies are not limited to employees who live or work in Massachusetts. To that end, out-of-state employees may reap the benefits and protections of the statute.

The relevant inquiry is whether Massachusetts has "the most significant relationship" to the individual's employment. Factors to consider include, among other things, the following:

- The state where the employer's headquarters are located.
- The place where the employee performed the work.
- The frequency of interactions between the employee and the employer in Massachusetts.
- Whether another state has a significant connection to the employee and the work performance.
- Whether a contract between the employee and the employer has a choice-of-law provision.
- Whether the employee regularly communicates with colleagues in Massachusetts.
- Whether the employee's job duties required travel to Massachusetts.

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- Whether the decisions regarding the employee's termination and his compensation and commission payments were made in Massachusetts.

Relying on this framework, the court focused on the following facts:

- The employee resided in Virginia.
- The employee frequently interacted with leadership and employees in the company's Massachusetts headquarters.
- The employee received frequent support for sales tools that he utilized from Massachusetts-based employees.
- The employee traveled to Massachusetts to attend trainings, and for client meetings.

Based on the forgoing, the court concluded that Massachusetts had the most significant relationship to Wilson's employment.

As to the discrimination claim under c. 1518, the court emphasized that employees may plead a discrimination claim in situations in which "the employment decisions at issue were made in Massachusetts, though their effects were felt in another state." To that end, the employee was allowed to proceed with his discrimination claim (and defeat the employer's request that the claim be dismissed) for the following reasons:

- The employee regularly communicated with employees who were in Massachusetts.
- The employer was headquartered in Massachusetts.
- The employee's job duties required that he travel to Massachusetts.
- Decisions relating to the employee's compensation, commission and termination were made in the employer's Massachusetts headquarters.

Contrast this result with that in *Musachia*, where the Court applied a "functional choice-of-Law approach," and, as a result, refused to broadly apply the Massachusetts Wage Act to an employee who worked remotely in Illinois. Specifically, the Court emphasized the following:

- The employee worked remotely from his home in Illinois.
- The employee's assigned work region was Illinois.
- The employee did not interact with Massachusetts employees when performing his job duties.
- The employee's managers were in Utah and Tennessee.
- The employee did not perform any work in Massachusetts.
- Other than to attend an initial training, the employee never traveled to Massachusetts.
- Illinois taxes were withheld from the employee's paycheck.

- The employee's offer Letter stated that the state in which he resided (Illinois) would apply to the employment relationship.

Although the employer's headquarters were in Massachusetts, the court held that the above factors supported the conclusion that Illinois-not Massachusetts-had the most significant relationship with the plaintiff's employment. and therefore, the Massachusetts WageAct did not apply. Moreover, the court highlighted the fact that there was no ambiguity in the offer letter's choice-of-law provision, and the employee knew that Illinois law would apply.

These two cases are prime examples of how critical it is for employers to closely examine the employer-employee relationship to determine whether Massachusetts law may apply to an out-of-state employee.

Whether an employee resides or works in Massachusetts are important factors to consider-but the inquiry cannot end there. Employers should take proactive steps to assess the factors outlined above to determine whether Massachusetts law may be applicable to the employer-employee relationship. The analysis is critical because if the Massachusetts Wage Act applies, then employers will be well-served by ensuring that, among other things, employees are timely paid both while employed and when the employment relationship ends. Failure to adhere to the strict parameters regarding timely payment of wages inevitably triggers employer liability for treble damages (or three times the amount of late paid wages), plus attorney's fees and costs-and employers may avoid any such liability by carefully assessing the employer-employee relationship to ensure compliance with the applicable state-specific laws.

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