Employers Must Make Separate and Additional Payments for Overtime and Hours Worked on Sundays to Commission-Based Employees, or Risk Violating the Massachusetts Wage Act

By Michelle De Oliveira on May 28, 2024



Commission-based employees are entitled to, and must receive, separate and additional payments for overtime and hours worked on Sundays-and an employer's failure to issue such payments violates the Massachusetts Wage Act.

On March 28, 2024, the Massachusetts Supreme Judicial Court ("SJC") issued a decision in *Sutton v. Jordan's Furniture Inc.,* holding that Jordan's Furniture's commission plan/structure for commission-based sales employees violated the overtime and Sunday pay statutes because rather than issuing additional payments to employees for overtime and hours worked on Sundays, payments for overtime and hours worked on Sundays were applied to future commission payments or draws. That, the SJC held, employers cannot do.

When issuing this decision, the SJC applied an earlier 2019 decision *(Sullivan v. Sleepy's LLC)* to the class action against Jordan's Furniture in this case. Not surprisingly, the *Sleepy's* decision had made it clear that commission-based employees are entitled to, and must receive, separate and additional payments for hours worked on a Sunday and for all overtime hours worked.

Jordan's Furniture: Commission Structure

Between June 2016 and June 2019, Jordan's Furniture's sales employees typically worked 40 hours each week. In addition to working a 40-hour workweek, they often worked overtime and/or on Sundays. Sales employees only earned commissions when they made sales. They received an advance on their commission equal to their compensation for a 40-hour workweek; and they had to pay back the advance from their earned commissions (once the commission was earned). Employees also received time-and-a-half for overtime and for hours worked on a Sunday-but all advances were recoverable from future commissions, meaning that employees had to pay back all advances with their earned commissions.

Ultimately, the commission plan resulted in scenarios in which an employee who worked fewer than 40 hours per week and worked on a Sunday could end up earning the same as an employee who worked 40 hours per week and did not work on a Sunday. Because Sunday pay and overtime pay were used to offset employee commissions for the following week, the SJC held that a commission structure/plan as such violated the Sunday pay and overtime laws.

Key Takeaways

The *Sleepy's and Sutton* decisions have far-reaching implications for employers that employ commission-based sales employees. Indeed, employers must ensure that they make

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separate and additional payments to employees for overtime and for hours worked on Sundays-and these additional payments cannot be used to offset commission payments or advance draws. Sunday pay and overtime pay must be provided to employees as separate and additional pay, in addition to any earned commissions. To that end, employers should ensure that they review their commission plans and payroll practices to avoid potential exposure under Massachusetts' wage and hour laws.

This alert is for informational purposes only and may be considered advertising. It does not constitute the rendering of legal, tax, or professional advice or services. You should seek specific, detailed legal advice prior to taking any definitive actions.

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