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Unused Sick Time Does Not Count as “Wages” Under Massachusetts Law

BY ARIEL G. SULLIVAN • FEBRUARY 1, 2018

On January 29, 2018, Massachusetts’ highest court ruled that accrued, unused sick time does not count as “wages” under state law. The case, *Mui v. Massachusetts Port Authority*, involved an employee who claimed that Massport violated the Massachusetts Wage Act by failing to timely pay him for his accrued, unused sick time upon retirement. Aptly noting that the Wage Act does not include sick time in its definition of “wages,” the Supreme Judicial Court (SJC) held that it would not “add language to a statute where the Legislature itself has not done so.”

In its decision, the SJC took the opportunity to distinguish between unused sick time and unused vacation time: “Like vacation time, sick time is often accrued as one works for an employer. However, unlike vacation time, which can be used for time away from work for any reason, sick time is to be used only when the employee or a family member is ill.” Thus, the SJC reasoned, relying on the language of the Sick Leave Law, “because its usage is conditional, i.e., employees do not have an absolute right to spend down their sick time, employees are not typically compensated for accrued, unused sick time....And although an employee may use accrued sick time under appropriate conditions, such time may be considered ‘lost’ if not used. Because accrued, unused sick time is not compensable under a “use it or lose it” sick time policy, such time clearly is not a wage under the act.”

Client Tip: Employers in Massachusetts can rest a little easier knowing that the highest court has confirmed the common understanding that sick time does not count as a wage under the Wage Act, which imposes strict liability for treble damages for unpaid wages. Nevertheless, employers should continue to explicitly state in their sick leave policies that accrued, unused sick time will not be paid out upon separation from employment, to avoid any confusion.