Client Alert: Garden Leave Payments Under MA Noncompetition Agreement Act Not Covered by Wage Act

BY BENJAMIN J. HINKS AND ROBERT G. YOUNG • DECEMBER 21, 2022

A Massachusetts Federal District Court has held that an employer's garden leave payments to a former employee pursuant to a non-compete provision are not considered "wages" under the Massachusetts Wage Act.

As a refresher, the Massachusetts Noncompetition Agreement Act (MNAA) sets forth certain conditions that must be included in any noncompete agreement for it to be deemed valid and enforceable. One such requirement is the provision of garden leave or other mutually agreed upon consideration. Under the MNAA, "garden leave" is where the former employee is paid at least 50% of their highest base salary on a pro rata basis during the entire restricted period.

In *Carroll v. Mitsubishi Chemical America*, the plaintiff, a former commercial operations director at Mitsubishi Chemical America ("MCA"), resigned from her position and took a job with a non-competitive employer in compliance with the non-compete provision of her employment contract. When MCA then sought to opt out of the non-compete provision and cancel related garden leave payments, Carroll sued, alleging breach of the employment contract and violation of the Wage Act.

On MCA's motion to dismiss, the court declined to dismiss Carroll's contract claims, but sided with MCA as to the Wage Act claim, reasoning that the garden leave payments were not "wages" within the meaning of the Wage Act. Moreover, the court stated that "there is no evidence that the Legislature intended to provide treble damages and attorneys' fees and costs to professionals enforcing their asserted contractual rights. Courts have therefore found that money due an employee under contractual obligations, regardless of whether work was performed, is not included within the definition of earned wages."

As we wrote in a prior client alert from April 2022, in *Reuter v. City of Methuen*, the Massachusetts Supreme Judicial Court held that employers are strictly liable for treble damages on late wage payments even when an employee has not yet filed suit asserting a wage claim.

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Thus, the *Carrol* decision is a narrow interpretation of the Wage Act's applicability and, significantly, signals that employers will not be subject to treble damages under the Wage Act for breaches of non-compete payment obligations.

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