



## **e-Alert: MA Court Rules that Sick Pay Does Not Constitute Wages**

### **Background**

On January 29, 2018, the Massachusetts Supreme Judicial Court ruled that under state law, accrued and unused sick time does not count as wages that must be paid out to workers when they leave their jobs. This decision was based on the case of Tze-Kit Mui v. Massachusetts Port Authority, where the plaintiff argued that his accrued paid sick time qualified as wages, and thus he was entitled to these wages when he resigned.

In 2013, after Massport initiated disciplinary proceedings against Tze-Kit, he applied for retirement. Soon after, Massport terminated him for cause. Under Massport's sick time policy, employees are eligible for a portion of the value of their accrued, unused sick time upon termination, unless they were discharged for cause, in which case they would receive no sick time payment. Following litigation, an arbitrator determined that Tze-Kit's termination for cause was ineffective because at the time, he had already retired, and thus could not be fired. Massport did pay Tze-Kit for his unused sick time, but it was more than a year after his last day of employment. Tze-Kit then filed suit, contending that Massport had violated the Massachusetts Payment of Wages Law by failing to pay his sick leave within the time required by the law, which mandates payment of wages owed to employees who depart voluntarily on or before the next regular payday. The decision was appealed and went to the Supreme Judicial Court.

### **What Massachusetts employers need to know**

Under the Massachusetts Payment of Wages Law, employers must pay terminated employees in full for all "wages" earned by the employee. Employees who resign must be paid in full by the next regular payday. Employees who are discharged or involuntarily terminated, must be paid in full on the day of discharge. These "wages," under the Massachusetts statute definition include vacation time earned "under an oral or written agreement" and commissions that have been definitely determined and become due and payable to the employee. The statute makes no mention of sick time and, in its decision on this case, the Supreme Judicial Court held there was no reason to interpret the law to include sick time within the definition of wages.

While not part of this court ruling, as a reminder, employers who have Paid Time Off (PTO) policies, which is used for both vacation *and* sick time, will still be required to pay out any accumulated, unused PTO upon termination, as these would be considered wages under the statute.

### **Employer takeaway**

The Court's ruling that sick time is not considered wages and thus is not compensable upon termination, is good news for employers. Moreover, the decision is significant because it appears to limit the scope of any claims under the state law, where employers could face liability and damages in connection with contingent compensation not specifically defined in this statute.

Employers should review and revise their current time-off policies to ensure compliance and appropriate payout procedures. Those who operate outside of Massachusetts should also be aware of any final payment laws in those states, where timing of the final paycheck may be different.



**How can HR Knowledge help keep you compliant?**

If you are one of our full-service clients or a Virtual HR Client, we have updated our sick time policy with appropriate language to ensure it is compliant with this new ruling. We are happy to update your current policy and handbook if you [email us](#). If you are not a current client but are interested in learning more about our services, please [contact us](#).

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