

The Latest in Labor, Employment + Benefits: Nutter's Legal Roundup

October 2025 Edition

***The Nutter Labor, Employment + Benefits' Legal Roundup* is a periodic newsletter highlighting notable developments, decisions, and enforcement actions impacting employers and plan sponsors in Massachusetts and beyond. We provide updates, summaries of recent cases, and agency directives to help identify trends, compliance priorities, and emerging areas of risk. For more information about these developments or how they may affect your organization, please contact your Nutter attorney.**

- **New Salary and Wage Disclosure Requirements for Massachusetts Employers**
- **Court Rules Parent Companies Cannot Enforce Non-Competes Against Subsidiaries' Employees in Massachusetts**
- **Reminder: A Day Makes a Difference for Final Pay**
- **SJC Rules Retention Bonuses Excluded from Definition of "Wages" Under the Wage Act**

New Salary and Wage Disclosure Requirements for Massachusetts Employers

Beginning October 29, 2025, employers with 25 or more Massachusetts employees must comply with the Massachusetts Wage Transparency Act (officially, "An Act Relative to Salary Range Transparency"). The Act requires covered employers to:

- Disclose pay ranges in the job posting for any position;
- Provide the pay range to an existing employee who is offered a promotion or transfer to a new position;
- Provide the pay range for a particular position to an employee who already holds such position, upon request; and
- Provide the pay range for a specific position to an applicant for such position, upon request.

To determine whether an employer or a position is subject to the law, the statute applies the same "primary place of work" standard used under the Massachusetts Earned Sick Time Act. For purposes of calculating headcount, employers must count all full-time, part-time, seasonal, and temporary employees, as well as remote employees whose primary place of work is Massachusetts.

Similarly, the pay-range disclosure obligations apply to all positions where the primary place of work is Massachusetts, including positions that can be performed remotely to a Massachusetts worksite and remote workers with a primary place of work in Massachusetts.

The Act also provides that an employer must submit its EEO reports (such as the EEO-1) to the Commonwealth, **but only if** the employer is already required by federal law to file such reports with the EEOC.

Though employers are subject to penalties for noncompliance with either the disclosure or EEO filing requirements, at least for the next 24 months, the Attorney General will offer employers the opportunity to correct mistakes before assessing penalties. However, retaliation against employees or applicants who exercise their rights under the Act is prohibited and could result in liability.

Court Rules Parent Companies Cannot Enforce Non-Competes Against Subsidiaries' Employees in Massachusetts

A Superior Court in Massachusetts recently blocked an employer's attempt to enforce a non-compete against one of its former employees on the grounds that the pertinent agreements were signed by the employer's parent company. In *Anaplan Parent, LP, et al. v. Brennan*, C.A. No. 2584CV02350, currently pending in the Business Litigation Session of Suffolk Superior Court, the court analyzed the definition of "employer" set forth in the Massachusetts Noncompetition Agreement Act (MNAA) and ultimately found that the legislature did not intend for the definition to include any affiliated entities of the actual employer.

By way of background, the defendant employee was employed by Anaplan, Inc. from March 2019 until his resignation in July 2025, when he left the company to work for one of its competitors. In connection with his employment, the employee had entered into three separate equity grant agreements, each of which contained a non-compete provision. Based on those agreements, Anaplan and its parent company sought an order enforcing the non-competes and preventing the departing employee from working for the competitor. The agreements, however, were signed by the parent company, Anaplan Parent, LP, and not the employee's actual employer, Anaplan, Inc.

The court first concluded that the Legislature intended the ordinary definitions of "employer" to apply, noting that such definitions "presume a direct provision of services for payment relationship and neither contemplates that a parent or affiliated company of an employer can also or instead be an employee's employer." The court also looked to the definition of "employer" in other analogous labor law statutes in the Commonwealth, including the Unemployment Insurance Act, Workers' Compensation Act, Wage Act, and Chapter 151B, and concluded that none of those statutes suggest that an "employer" includes a parent or subsidiary of the actual employer. Additionally, the court cited to the long-recognized "default rule" of corporate separateness: "Here, by declining to define employer to include any affiliated entities of the actual employer, I presume the Legislature understood the general and well established doctrine of corporate separateness, which has been long recognized as the default rule, absent express statutory terms or a compelling reason in equity to the contrary." Lastly, the court noted that, as a policy matter, including a parent corporation would frustrate the purpose of the MNAA by allowing the actual employer to "invoke the much broader business interests of parents, subsidiaries, and/or affiliates to enforce more onerous restrictions on the ex-employee."

The court's ruling in the *Anaplan* case has significant drafting implications for companies seeking to enter into or enforce non-compete agreements with Massachusetts-based employees subject to the MNAA. Companies must take care to ensure that the actual employer is a signatory to any such agreement, and should carefully consider whether their corporate structures have any unintended implications with respect to restrictive covenant agreements with their employees.

Reminder: A Day Makes a Difference for Final Pay

When planning to terminate an employee, it is important for employers to consider state-by-state rules regarding the timing of the employee's final paycheck. The Massachusetts Wage Act provides that employees who resign from employment shall be paid in full on the company's next regular payday, whereas employees discharged from employment shall be paid in full—their final pay, including any accrued but unused vacation—on the date of discharge.

Employers are reminded that in situations where the employee is being terminated involuntarily, ensuring that payment will actually be received by the employee on their last day of employment is critical to comply with the Massachusetts Wage Act. This year, the U.S. District Court for the District of Massachusetts had occasion to revisit the question of whether one day makes a difference with respect to employer compliance with the Wage Act. The court held that in Massachusetts, it does: "The parties in this case urged this Court to grapple with a seemingly harmless question: does one day make a difference? Perhaps to many, the answer is no. However, to some, the difference could mean a day earlier parents can purchase groceries; or a student's ability to pay rent on time; or the faster a patient can pay for a medical procedure. This Court answers the question posed to it in the affirmative: a day matters for the many people in this Commonwealth who live paycheck to paycheck." See *Turgut v. Hitachi Rail STS USA, Inc.*, CA No. 24-CV-10660-AK (February 27, 2025).

Violation of the Wage Act carries significant penalties, including triple damages and attorneys' fees. Thus, it is important for employers to ensure prior to any termination that the employee's final pay will be received on time. If it is clear that payment cannot be made to the employee on their final day, employers should consider whether to set the date of termination to a day or two later when payment can be accomplished.

SJC Rules Retention Bonuses Excluded from Definition of “Wages” Under the Wage Act

On October 22, 2025, the Massachusetts Supreme Judicial Court issued an opinion in *Nunez v. Syncsort Incorporated* (SJC-13709, Oct. 22, 2025), holding that retention bonuses are a form of “additional, contingent compensation” and therefore fall outside the ambit of the Massachusetts Wage Act.

The plaintiff was hired by the defendant, Syncsort, as a senior director of finance. The plaintiff and Syncsort entered into a retention bonus agreement whereby the plaintiff would be eligible to receive a retention bonus of \$15,000 in two equal tranches on two retention dates of November 18, 2020 and February 18, 2021, respectively, so long as the plaintiff remained employed and in good standing through the retention dates. The plaintiff remained employed through the first retention date and received the first payment eight days later. In January 2021, the plaintiff was notified that his employment would be terminated on February 18, 2021, the second retention date. Even though his employment ended on February 18, he did not receive the second payment until eight days later, on February 26, 2021. He subsequently filed suit, alleging that Syncsort violated the Wage Act by failing to pay out the second payment on his last day of employment.

The Supreme Judicial Court held that the retention bonus did not fall within the meaning of “wages” for purposes of the Wage Act. In so holding, the court noted that appellate cases in the Commonwealth have uniformly rejected attempts to include other forms of contingent compensation in the definition of “wages” where the contingency imposed some requirement on the employee beyond simply the past services or labor provided in exchange for compensation, citing examples such as unused sick time, discretionary stock options, profit distributions, and severance pay. The court further held that the purpose of the retention agreement at issue was to incentivize the plaintiff to remain with the company during a period of uncertainty following a merger, and that the payments were in addition to his salary and conditioned on his continued employment in good standing. In other words, the retention payments were not made solely in exchange for his labor or services, and thus, fell outside the scope of the Wage Act.

While this decision mitigates some of the risk employers face with respect to the significant penalties imposed under the Wage Act, it is also a reminder that any agreements for conditional payments to employees such as retention bonuses should be clearly drafted and describe any contingencies with specificity.

For further guidance or if you have questions regarding any of the topics discussed in this newsletter, please contact your Nutter attorney or a member of Nutter’s Labor, Employment and Benefits group.

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