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

March 2026 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.**

Class Action Addresses What Constitutes "Other Mutually-Agreed Upon Consideration"

Plaintiffs in the class action lawsuit *Boyd v. The Boston Beer Company, Inc.* (D. Mass.) are challenging the sufficiency of consideration offered to them for a non-compete, arguing that a $3,000.00 payment does not meet the requirements of the Massachusetts Noncompetition Agreement Act (MNAA), thereby rendering their non-competes are unenforceable. *Boston Beer Works* may finally shed some light on what, as an alternative to garden leave payments (i.e., 50% pay for the duration of the restricted period), is sufficient consideration to support a non-compete in Massachusetts.

Under the MNAA, sufficient consideration to support a non-compete agreement can be either (1) garden leave payments, or (2) "other mutually-agreed upon consideration" that must be set out in the non-compete agreement. The term "other mutually-agreed upon consideration" is not defined in the statute and has perplexed employers and attorneys alike since 2018, when the MNAA became effective.

Since then, and in the absence of a definition of the term and limited interpretation by the courts, employers have slowly but steadily moved away from offering garden leave payments (essentially 6 months of a former employee's salary) and moved toward providing "other mutually-agreed upon consideration." Employers have offered all sorts of consideration, hoping it is enough to support the restriction: percentages of an employee's salary, sign-on bonuses, bonus or equity plan eligibility, extra vacation days, even Door Dash gift cards. In all cases, the consideration is provided up front. Interestingly, in the *Beer Works* case, the $3,000.00 payment was offered to be paid *at the time of termination*, offering a stark contrast to the 6-months' salary required per the MNAA's garden leave payment provision.

But does the timing make a difference? Is a $3,000.00 payment at the beginning of employment more sufficient than if paid at the end of employment? We will be keeping a close eye on this case, which could provide some concrete guidance to employers as to the meaning of this key phrase in the MNAA—and may require employers to make significant changes to their non-competes depending on how the case unfolds.

Exempt No More? Watch Out for Salary Threshold Increases

A quick reminder to evaluate the impact of 2026 increases in state salary thresholds on your workforce's exempt/non-exempt status. Though the exempt salary threshold under the Fair Labor Standards Act remains at $684 per week, a number of states have significantly higher salary thresholds that may increase each year. Failing to increase a "bubble" employee's salary to account for the statutory increase may cause the employee to lose their exempt status and become eligible for overtime.

This year, the minimum salary requirements for overtime exemptions will increase in five (5) states, each of which surpass the FLSA salary level: California ($1,352 per week/$70,304.00 per year), Colorado ($1,111.23 per week/$57,783.96 per year), Maine ($871.16 per week/$45,300.32 per year), New York ($1,275.00 per week/$62,353.20 per year for NYC and Nassau, Suffolk, and Westchester counties, and $1,199.10 per week/$66,300.00 per year for the rest of the state), and Washington ($1,541.70 per week/$80,168.40 per year). Note that in many states, employers cannot simply remedy a loss of exempt status by retroactively paying an employee an amount equal to the delta between their actual salary and the minimum salary requirement.

Increases in state salary thresholds are also impacting non-competes across the country. Currently, 11 states prohibit enforcement of non-competes against employees that earn below a set salary/wage threshold ("low-income worker bans"). Seven of these states' salary thresholds change annually. This year, be ready for the following increase:

State	2025 Threshold	2026 Threshold
Colorado	$127,091 (non-competes) $76,254.60 (non-solicits)	$130,014 (non-competes) $78,008.40 (non-solicits)
Maine	$60,600	$63,840
Oregon	$116,427	$119,541
Rhode Island	$39,125	$39,900
Virginia	$76.081.20	$78,364.52
Washington	$123,394.17 (employees) $308,485.43 (contractors)	$126,858.83 (employees) $317,147.09 (contractors)
Washington DC	$158,364	$162,164

Massachusetts Court Finds Wage Act May Have Global Reach

For many years, Massachusetts courts and employers alike understood that the Massachusetts Wage Act (the "Wage Act")—and its draconian mandatory triple damages and attorneys' fees provisions—only applied to employees located in Massachusetts. But this thinking began to change in 2013, when the Massachusetts Appeals Court affirmed in *Dow v. Casale* that the Wage Act applied to a Florida resident based on his relationship to the Commonwealth.

Massachusetts courts have since used the "significant relationship" test to determine whether a non-Massachusetts employee is protected by the Wage Act, and have come to different conclusions based on the applicable facts. This analysis depends on a variety of considerations, including:

- the state where the employer's headquarters is located;
- the place(s) the worker performed the work;
- the frequency of interactions between the worker and the employer in Massachusetts, including if the employee is receiving directions from or reporting to colleagues in Massachusetts;
- whether the employee's job duties require travel to Massachusetts;
- whether decisions regarding the employee's termination, compensation, discipline, etc. are made in Massachusetts;
- whether another state has a significant connection to the worker and work performance; and
- whether the contract between the worker and employer has a choice-of-law provision.

Using this test, Massachusetts courts have found the Wage Act did not apply to an employee who moved to Massachusetts from New York (*Crowe v. Harvey Klinger Inc.,* D. Mass. 2018), did not apply to a person who mostly lived and worked in Florida (*Viscito v. Nat'l Planning Corp.,* 1st Cir. 2022), did apply to an employee who lived and worked in Virginia (*Wilson v. Recorded Future*, D. Mass. 2022), did not apply to an employee who lived and worked in Illinois (*Musachia v. Abiomed*, Super. Ct. December 2023), and did apply to an employee who lived and worked in Rhode Island (*Dubois v. Staples, Inc.*, Super. Ct. April 2025) based on the particular facts in those cases. The result has very much depended on the facts of the case, and often the court and judge making the decision.

But until now, courts had resisted extending the Wage Act's reach outside of the United States. However, in *Serebrennikov v. Proxet Grp. LLC*, No. 1:22-CV-12051-IT, 2025 WL 2962807 (D. Mass. Oct. 20, 2025), Judge Indira Talwani of the United States District Court for the District of Massachusetts expanded her earlier holding in *Wilson v. Recorded Future*, finding that the Wage Act applied to an employee based not in another state, but in another country (Ukraine).

In support of this holding, Judge Talwani noted that the Wage Act does "not expressly foreclose extraterritorial application," and that based on the facts of the case—the employer was organized and headquartered in Massachusetts, the employee reported to the management team located in Massachusetts, the company had no other US location, the employee's work benefited the employer in Massachusetts, and the operative contracts had a Massachusetts choice of law provision—Massachusetts had the most significant relationship to the employee, even though the employee largely lived in Ukraine during the relevant employment period.

Of note, in many of these cases, the particular employment contract at issue had a Massachusetts choice of law provision. Though just one of many factors courts consider, and not dispositive, employers may want to take a close look at their employment-related agreements (including confidentiality agreements, which were relevant in the *Serebrennikov* decision) and consider whether another state's—or the home state of the employee—choice of law would be more appropriate.

The New Frontier of AI Litigation: The *Workday* Case and Implications for Employers

Employers are well aware that they may face direct liability under federal, state, and local anti-discrimination and civil rights laws for actions taken by their employees in the course of employment, including in screening and hiring applicants. But the litigation unfolding in *Mobley v. Workday*, a class action filed in federal court in California in 2023, has now set the stage for whether an employer is liable for bias in automated screening tools, even if provided by third-party vendors like Workday, an HRIS software platform. Liability arises under the theory of "vendor as agent" of the employer: in other words, that the employer delegated traditional hiring functions to Workday and its tech influenced hiring decisions.

In the *Workday* suit, the plaintiff brought claims under the ADEA, Title VII, and the ADA, alleging that he was rejected from over 100 jobs due to Workday's AI-powered hiring tools unintentionally discriminating against older and disabled job seekers by screening out their applications. The lawsuit alleges that disabled and older applicants' materials were scored lower and screened out based on the AI tool's machine learning that an employer prefers certain candidates and decreases the rate at which it recommends other candidates. The plaintiff's claims arise under a disparate impact theory: that an AI algorithm's unintentional bias disproportionately affected older or disabled applicants.

The implications of this one lawsuit alone are huge: it is estimated that over 1.1 billion applications submitted to 11,000 companies were affected using Workday's technology during the relevant time period.

For Human Resources professionals closely watching this case, there are steps you can take to mitigate these new and evolving risks:

- Conduct regular – at least yearly – audits of your AI tools; this is now required in certain states like California and New York
- Vet your vendors: ensure the tool provides insight into why a candidate was selected (or not), and closely review and negotiate contracts to mitigate liability and risk
- Make sure a human reviews and makes the final personnel decisions
- Implement robust AI policies and train Human Resources and IT

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.

Authors

Natalie Cappellazzo

Emily Grannon Fox

Christopher Lindstrom

Liam O'Connell

David Rubin

About Nutter

Nutter is a Boston-based law firm that provides legal counsel to industry-leading companies, early stage entrepreneurs, institutions, foundations, and families, across the country and around the world. The firm's business and finance, intellectual property, litigation, real estate and land use, labor and employment, tax, and trusts and estates practice are national in scope. The firm was co-founded in 1879 by former U.S. Supreme Court Justice Louis D. Brandeis, before his appointment to the Court. For more information, please visit www.nutter.com and follow the firm on LinkedIn.

This advisory was prepared by Natalie Cappellazzo, Emily Grannon Fox, Christopher Lindstrom, Liam O'Connell, and David Rubin in Nutter's Labor, Employment and Benefits practice group. If you would like additional information, please contact any member of our practice group or your Nutter attorney at 617.439.2000.