

Employment Law Alert: Massachusetts Employers Commissions Update

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November 07, 2025



In *Ford v. Vacationeer, LLC*, a Massachusetts Superior Court held commissions must be definitely determined and due and payable to be considered wages under the Massachusetts Wage Act.

Plaintiff, a travel planner, worked for Vacationeer, LLC (Vacationeer) as an independent contractor. Her role consisted of selling trip packages and assisting with customer bookings in exchange for commission. Plaintiff received commissions after the agency vendors paid commissions to Vacationeer when the customer completed their trip.

Plaintiff sought \$34,000 in unpaid commissions and \$100,000 in commission wages she would have received but for her termination, under the Wage Act. The court granted summary judgment for Vacationeer, holding that commissions tied to trips that had not yet occurred at the time of Ford's termination were not "due and payable" and therefore, did not qualify as wages under the Wage Act. The Wage Act provides that commissions are due and payable when "any contingencies relating to their entitlement have occurred."

Here, the court explained that Ford's commissions were not "due and payable" because Vacationeer was not unconditionally entitled to commission from *future* trips because they were subject to cancellation. Cancellations would result in no commission to Vacationeer. As such, there was no Wage Act violation when Vacationeer did not pay Plaintiff commissions that Vacationeer had not received as of Plaintiff's termination date.

Employers should review and update commission agreements to verify that the agreements clearly articulate when commissions are earned and to ensure that the agreements accurately reflect current business practices.

The Morse **Employment Group** is well versed in Wage & Hour issues and are available to answer any questions related to employment agreements.