

EMPLOYMENT LAW ALERT JUNE 2019

RECENT MASSACHUSETTS SUPREME JUDICIAL COURT CASE RULES THAT EMPLOYERS MUST PAY OVERTIME TO COMMISSION-ONLY RETAIL EMPLOYEES

On May 8, 2019, the Massachusetts Supreme Judicial Court (SJC) ruled in *Sullivan v. Sleepy's LLC* that commission-only retail salespeople are entitled to additional compensation for overtime and Sunday work. Retail sales employees of Sleepy's were compensated solely by commissions and paid recoverable draws against those commissions of \$125 per day. Although the employees' commissions, recoverable draw and earned commissions over the draw exceeded the minimum wage and one and one-half times the minimum wage when the employees worked overtime or Sunday, the SJC held that the employees were entitled to additional amounts for overtime and Sunday premium pay. In reaching its conclusion, the Court reasoned that Massachusetts law prohibits the retroactive crediting of payments made for one purpose (i.e., commission compensation for hours worked) towards the entirely separate purpose of time and one-half for overtime hours and Sunday pay. In the *Sleepy's* case, the draw plus commission compensation system did not provide the necessary extra compensation.

The employer pointed out that the Department of Labor Standards (DLS), the state agency responsible for interpreting Massachusetts overtime law, suggested in two opinion letters that an employer can meet its overtime obligations to commission-only sales employees if the employees' commissions exceed one and one-half times the minimum wage. The Court acknowledged that the employer might have been "misled" by the opinion letters but ruled that the amount of compensation paid to the retail sales employees violated the state overtime and Sunday premium pay laws.

The SJC's decision that commission-only retail salespersons were owed separate and additional compensation of at least one and one-half times the minimum wage for overtime or Sunday work will affect retailers relying on the DLS opinions about the compensation of commission-only salespersons. Retailers should review and adjust their pay practices immediately to comply with overtime and Sunday work laws. It is clear from the SJC's decision that an employer's good-faith belief it complies with Massachusetts overtime and Sunday work laws is not a defense to imposing mandatory treble damages.

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