

**COMMONWEALTH OF MASSACHUSETTS
APPELLATE DIVISION OF THE DISTRICT COURT DEPARTMENT**

CARLOS NUNEZ

APPELLATE DIVISION Northern District

NO. 23-ADCV-63NO

vs.

SYNCSORT INCORPORATED AND JOSEPH ROGERS

TRIAL COURT Concord Division

DOCKET NO. 2147CV0062

DECISION AND ORDER

This cause was before the Appellate Division for the Northern District. It is hereby ordered that the Clerk of the Trial Court make the following entry on the docket of this case:

Judgment affirmed.

Opinion filed herewith.

Date: Sep 6, 2024

A true copy. Attest

/s/ Brien M. Cooper

Appellate Division Clerk

HON. JENNIFER A. STARK

Justice

HON. MATTHEW L. MCGRATH

Justice

HON. MICHAEL L. FABBRI

Justice

COMMONWEALTH OF MASSACHUSETTS
APPELLATE DIVISION OF THE DISTRICT COURT DEPARTMENT
NORTHERN DISTRICT

CARLOS NUNEZ

V.

SYNCSORT INCORPORATED and another¹

NO. 23-ADCV-63NO

In the CONCORD DIVISION:

Justice: Byrne, J.
Docket No. 2147CV0062
Date of Decision Appealed: March 27, 2023
Date of Entry in the Appellate Division: June 21, 2023

In the APPELLATE DIVISION:

Justices: Stark, McGrath & Fabbri, JJ.
Sitting in: Concord, Massachusetts
Date of Hearing: February 9, 2024
Date Opinion Certified: September 6, 2024

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OPINION

STARK, J. The plaintiff, Carlos Nunez (“Nunez”), filed suit in the trial court seeking damages for compensation that he contended the defendants, Syncsort Incorporated (formerly doing business as “Precisely”) and Joseph Rogers, unlawfully failed to pay him in a timely manner in violation of the

¹ Joseph Rogers.

Massachusetts Wage Act, G.L. c. 149, § 148 (“Wage Act”). The trial court denied Nunez’s cross-motion for summary judgment and allowed Precisely’s cross-motion for summary judgment, holding that the compensation at issue, a retention bonus, did not constitute “wages” under the Wage Act. For the reasons set forth below, we affirm the court’s judgment.

The parties agree on the following: In May of 2020, Nunez was hired by Precisely as the Senior Director of Finance. In September of 2020, Precisely and Nunez executed a retention bonus agreement whereby Nunez would be eligible to receive a \$15,000 bonus to be paid in two separate installments. The agreement rendered Nunez eligible to receive the first installment of \$7,500 on November 18, 2020 and the second installment of \$7,500 on February 18, 2021. Nunez must have fulfilled the following requirements to receive the retention bonus: (1) remain employed at the company at his regular work schedule; and (2) remain in good standing through and by the designated retention dates. The agreement also provided that Nunez would not be required to return the retention bonus if Precisely terminated his employment without cause.

The first installment was paid on or around November 30, 2020 without incident. In January of 2021, Precisely informed Nunez that it was terminating his employment due to a reduction in workforce. Nunez remained employed at Precisely until he was terminated on February 18, 2021. Up and until his termination, Nunez remained in good standing with his employer, and his work schedule was not reduced. Nunez did not voluntarily terminate his employment with Precisely, and he was not terminated for cause. Precisely did not pay the second installment of the retention bonus on the date of Nunez’s termination, February 18, 2021.

On February 25, 2021, Nunez filed a complaint alleging, among other causes of action, that the failure to pay him the second retention bonus installment violated the Wage Act. The next day, on February 26, Precisely paid Nunez the second installment of the retention bonus. Based on these agreed-upon facts, the parties submitted cross-motions for summary judgment based on a single legal issue -- whether the retention bonus constituted a “wage” under the Wage Act. After both motions were denied by

the trial court, the parties filed a joint motion for reconsideration. After reconsidering the cross-motions, the court denied the plaintiff's cross-motion for summary judgment and allowed the defendants' cross-motion for summary judgment, ruling that the retention bonus was not a "wage" for purposes of the Wage Act. As such, judgment entered for the defendants, and this appeal ensued.

We review the decision on a summary judgment motion de novo. See *Metcalf v. BSC Group, Inc.*, 492 Mass. 676, 680 (2023). "Viewing the evidence in the light most favorable to the party against whom summary judgment entered, summary judgment is appropriate where there is no material issue of fact in dispute and the moving party is entitled to judgment as a matter of law" (internal citations omitted). *Id.* at 681.

The sole question before this Appellate Division is whether the retention bonus constitutes a "wage" under the Wage Act. This is a matter of statutory interpretation, the review of which is also conducted de novo. See *Mui v. Massachusetts Port Auth.*, 478 Mass. 710, 712 (2018); *Commonwealth v. Martin*, 476 Mass. 72, 75 (2016). Courts must adhere to the plain language of a statute when it is unambiguous and when its application "would not lead to an absurd result or contravene the Legislature's clear intent." *Casseus v. Eastern Bus Co.*, 478 Mass. 786, 787 (2018), citing *Commonwealth v. Kelly*, 470 Mass. 682, 689 (2015). In so adhering to the statutory language, all the words, clauses, and phrases must be construed contextually by their usual and ordinary meanings, consistently and harmoniously with each other to reach an efficacious end that reasonably comports with the legislative intent. See *Selectmen of Topsfield v. State Racing Comm'n*, 324 Mass. 309, 312-313 (1949), and cases cited ("All the words of a statute are to be given their ordinary and usual meaning, and each clause or phrase is to be construed with reference to every other clause or phrase without giving undue emphasis to any one group of words, so that, if reasonably possible, all parts shall be construed as consistent with each other so as to form a harmonious enactment effectual to accomplish its manifest purpose.").

"Originally enacted in 1879, the purpose of the Wage Act is 'to protect employees and their right to wages' [in a timely manner] Among other things, the Wage Act requires the payment of wages on

a weekly or biweekly basis. The act provides that ‘any employee leaving his [or her] employment shall be paid in full on the following regular pay day,’ and that ‘any employee discharged from . . . employment shall be paid in full on the day of his discharge . . . the wages or salary earned by him.’ G.L. c. 149, § 148. Violations of the act result in strict liability and treble damages in the civil context, as well as potential criminal liability. G.L. c. 149, §§ 27C, 148, 150” (internal citations omitted). *Mui, supra* at 711-712.

While there is no explicit definition of the term “wages” in the Act, “[it] expressly states that holiday and vacation pay due under an agreement, as well as commissions that are definitely determined and due and payable to the employee, are wages within the meaning of the act” *Weems v. Citigroup*, 453 Mass. 147, 151 (2009), citing § 148 of the Act. The Supreme Judicial Court in *Weems* further stated:

“Our appellate courts have held that the act does not cover contributions to deferred compensation plans or severance pay. See respectively *Boston Police [Patrolmen’s Ass’n v. Boston]*, 435 Mass. 718,] 719-721 [(2002)]; *Prozinski v. Northeast Real Estate Servs., LLC*, 59 Mass. App. Ct. 599, 605 (2003). With respect to the payment of commissions, this court held in *Wiedmann v. Bradford Group, Inc.*, 444 Mass. 698, 708 (2005), that the statutory requirement that commissions be paid when they are ‘definitely determined’ means when they become ‘arithmetically determinable.’ In *Okerman v. VA Software Corp.*, 69 Mass. App. Ct. 771, 776-779 (2007), the Appeals Court held that commissions earned over and above a base salary were covered by the act; the court declined to limit the reach of the act, where the only limitation contained in the act’s language was that commissions be ‘definitely determined’ and ‘due and payable.’ Contrast *Commonwealth v. Savage*, 31 Mass. App. Ct. 714, 716-718 (1991) (certain real estate commissions were not covered by act, where commissions were episodic and broker functioned as independent contractor).”

Id. at 151.

There are no Massachusetts cases that have held that a retention bonus is a “wage” per the Wage Act. Our Supreme Judicial Court in *Weems* and *Mui*, however, addressed categories of compensation that are most akin to a retention bonus, which are instructive here. The Court in *Weems*, faced with whether a “bonus program” constituted wages pursuant to the statute, did not fixate on the term “bonus” but instead looked at the monetary award at issue and found that it was discretionary per the terms of the program at issue. As such, the Court held that the bonus program did not constitute wages. *Id.* at 153-154.

In *Mui*, the Court was faced with whether unused sick time fell within the Wage Act. As an initial

matter, the Court found that sick time policies, where accrued sick time is used or “lost” if not used (commonly referred to as “use it or lose it” policies), “is clearly not a wage under the act.” *Id.* at 713. However, the sick time policy at issue in *Mui* was not as clear, as it paid departing employees a certain percentage of their accrued sick time if two conditions were met: the employee must have been employed for at least two years, and not have been terminated for cause. Because this policy was different from the “use it or lose it” policy, the court ruled that it was essentially a contingent bonus, and therefore analyzed whether it was a “wage” through that lens. *Id.* at 712-714.

The Court in *Mui* went on to say that “[t]he only contingent compensation recognized expressly in the act is commissions, which are considered wages when they ‘ha[ve] been definitely determined and due and ha[ve] become payable to [the] employee.’ G.L. c. 149, § 148. We have not broadly construed the term ‘wages’ for the purposes of the act to encompass any other type of contingent compensation.” *Id.* at 713. Ultimately, the Court held that the contingent bonus was not “wages” under the Wage Act because there was a dispute about the employee’s good standing that could not have been resolved within the required time frames set forth in the Wage Act. *Id.* at 714.

The retention bonus here is quite like the contingent compensation in *Mui*, as it was to be paid by precisely if certain conditions were met. The difference between the facts here and those in *Mui* is that, here, there is no dispute about whether Nunez was in good standing -- the parties agree that he was. By focusing on the fact that there was a dispute about the employee’s good standing, the Court in *Mui* may have opened the door a crack to the possibility that this type of contingent compensation could be construed as a “wage” under the Wage Act if the employee was indeed in good standing. That said, we cannot ignore the long line of case law where our appellate courts -- including the Court in *Mui* -- have narrowly construed the term “wages” under the act. Nor can we disregard the Court’s acknowledgment in *Mui* that it has never broadly construed the Wage Act to include any types of contingent compensation other than “commissions that are definitely determined and due and payable to the employee.” G.L. c. 149, § 148. As such, we find that the contingent compensation at issue here, the retention bonus, does

not fall within the plain language of the statute.

Judgment affirmed.

HON. JENNIFER A. STARK, Justice
HON. MATTHEW L. MCGRATH, Justice
HON. MICHAEL L. FABBRI, Justice

**This certifies that this is the Opinion
of the Appellate Division in this case.
A True Copy, Attest:**

/s/ Brien M. Cooper

Brien M. Cooper, Clerk