

New Jersey Supreme Court Rules That “Commissions” Are “Wages” Under The New Jersey Wage Payment Law

March 19, 2025

Source: Saiber Employment Law Alert

What should employers do when there is a dispute about the amount of commissions owed to an employee? Should the employer pay the undisputed amount, withhold the disputed amount, and then wait for a determination from the court as to the commissions owed? In light of the New Jersey Supreme Court’s decision in Rosalyn Musker v. Suuchi, Inc., et al., (No. 089665), employers proceeding in this fashion do so at their own peril, running the risk of being obligated to pay 200% of the disputed amount.

Under the New Jersey Wage Payment Law (“WPL”) employers who fail to pay agreed upon “wages” to an employee can be obligated to pay 200% of the unpaid amount, plus employee’s attorney’s fees. By statute, “commissions” are generally considered “wages,” while “supplementary incentives” are not. While we often think of “commissions as wages” in the limited context of a salesperson with a nominal salary being paid commissions as the crux of his or her compensation, the New Jersey Supreme Court’s decision in Rosalyn Musker v. Suuchi, Inc., et al., (No. 089665), clarifies that *all* commissions paid directly for an employee’s labor or services are “wages,” not supplementary incentives, that are subject to the WPL.

Suuchi, Inc. sells software to apparel manufacturers. Like many businesses during the COVID-19 pandemic, Suuchi temporarily pivoted by selling personal protective equipment (“PPE”). Rosalyn Musker worked in a sales role at Suuchi. In addition to receiving a base salary of \$80,000, Suuchi also paid Musker commissions for PPE sales. After Musker generated approximately \$34,448,900 in gross revenue in PPE sales, Musker and Suuchi disputed the amount of commissions owed, and Musker filed suit seeking to recover the commissions that were withheld.

At issue was whether the withheld commissions constitute “wages” subject to the WPL or “supplementary incentives,” which are not subject to the WPL. On March 17, 2025, the New Jersey Supreme Court unanimously held that Musker’s commissions were “wages” under the WPL.

The Supreme Court explained that the definition of “wages” in the WPL is “clear and unambiguous” because the term is defined as “the direct monetary compensation for labor or services rendered by an employee, where the amount is determined on a time, task, piece, or commission basis excluding any form of supplementary incentives and bonuses which are calculated independently of regular wages and paid in addition thereto.” N.J.S.A. 34:11-4.1(c) (emphasis added). The Court explained that “because a commission directly compensates an employee for performing a service, it always meets the definition of ‘wages’ under N.J.S.A.

34:11-4.1(c) as ‘direct monetary compensation’ for ‘labor or services’ rendered by an employee.”

Although “supplementary incentives” are excluded from the definition of “wages” under the WPL, the Court explained that a “supplementary incentive” is compensation that motivates an employee to do something “above and beyond their ‘labor or services.’” Commissions earned for “labor or services rendered by an employee,” therefore, “can never be a ‘supplementary incentive’” according to the Court. The Court identified some examples of “supplementary incentives,” such as paying an employee for sharing office space with another employee, working out of a particular office location, achieving perfect attendance, referring a friend to apply for an open position, or participating in an office costume contest.

The Court rejected Suuchi’s argument that, because the company was not in the primary business of selling PPE, the commissions were supplementary incentives. The Court explained that just because a product is new and sold temporarily does not mean that the sales of that product fall outside “labor or services” provided by an employee. The Court also rejected Suuchi’s argument that Musker’s base salary turned her commissions into supplementary incentives because there is nothing in the WPL precluding an employee who has a base salary from also earning wages separately on a commission basis.

The Court’s ruling is significant because, under the WPL, plaintiffs whose commissions are not paid can recover 200% of those unpaid “wages,” plus attorneys’ fees and costs. Thus, employers should be aware that commissions paid for a “labor or service” are considered “wages” under the WPL, and violations of the WPL can result in significant liability. When drafting compensation plans that include commissions, bonuses, profit-sharing, supplementary incentives, or other forms of non-salary compensation, it is critical to use terms precisely and carefully to avoid inadvertent exposure to the WPL and its penalty provisions.

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If you have any questions concerning the New Jersey Wage Payment Law, please feel free to contact [DanaLynn T. Colao](#), [John M. Losinger](#), and [Vincent C. Cirilli](#) of Saiber LLC’s Employment & Labor Law practice.