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Illinois resident can't sue Massachusetts employer under Wage Act



The plaintiff surgical account manager, who lived in Illinois, sued Abiomed, a medical device company based in Danvers, after he was terminated in 2022. (KRIS OLSON)

Illinois resident can't sue Massachusetts employer under Wage Act

'Choice-of-law' in offer letter enforced

Eric T. Berkman

(https://masslawyersweekly.com/author/ericberkman/)

2023, 12/20/23, 10:20 AM Under the Wage Act

(mailto:?subject=Illinois resident can't sue Massachusetts employer under Wage Act&body=A Superior Court judge has ruled that an Illinois resident could not sue his Massachusetts-based employer under the state Wage Act, G.L.c. 149, §148, for allegedly failing to pay him... You can read the content in details following link https://masslawyersweekly.com/2023/12/20/illinois-resident-cant-sue-massachusetts-employer-under-wage-act/)

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A Superior Court judge has ruled that an Illinois resident could not sue his Massachusetts-based employer under the state Wage Act, G.L.c. 149, §148, for allegedly failing to pay him commissions on time following his termination.

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Plaintiff John Musachia, who briefly worked as an account manager for defendant Abiomed, Inc., argued that a choice-of-law provision in his offer letter that Abiomed sought to enforce was contrary to public policy. The provision stated that his employment would be governed by the laws of the state where he resides.

But Judge James F. Lang, applying the multi-prong analysis from the Supreme Judicial Court's 2018 *Oxford Global Resources, LLC v. Hernandez* (<https://masslawyersweekly.com/2018/09/07/dismissal-of-non-compete-case-upheld/>) decision, disagreed.



"With respect to the first prong, ... Illinois has a substantial relationship to the parties and the transaction," Lang wrote. "As for the second prong, as the court has also already made clear, it does not consider Massachusetts to have a materially greater interest than Illinois in the matter, and Massachusetts is not the state whose law would apply in the absence of the choice-of-law provision."

 also ruled that the merits of Musachia's claim — that Abiomed violated the Wage Act by failing to pay him commissions he earned on the date of his termination — failed as a matter of law, since the amount of commissions owed could not be determined at that time.

The 12-page decision is *Musachia v. Abiomed, Inc.*, [Lawyers Weekly No. 12-040-23](https://masslawyersweekly.com/2023/12/18/employment-choice-of-law-provision-offer-letter/) (<https://masslawyersweekly.com/2023/12/18/employment-choice-of-law-provision-offer-letter/>).



'Instructive going forward'

Abiomed's attorney, Kenneth M. Bello of Boston, said the Wage Act applies to Massachusetts-based employees, as it should, not to people working in other states, each of which have their own wage laws.

"Massachusetts employers also should have a clear understanding as to when commissions need to be paid to terminating employees. This decision provides directional guidance that commissions are not due until they actually are determined —when the amount of commission has been calculated with certainty," Bello said.

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Plaintiff's counsel, Amy B. Yarbro of Boston, said the case shows that there is no bright line rule regarding when the Wage Act applies to remote employees.

Instead, she said, it is a choice-of-law analysis involving a variety of factors to determine whether Massachusetts has a significant interest in the employment relationship.

"Although this case presented many facts to support the application of the Massachusetts law, the court gave considerable weight to the choice-of-law provision in the offer letter," Yarbro said.


"This case may offer employers hope that, with the right facts, they can still prevail in a Wage Act dispute."

– Tracey E. Spruce, Andover

Elise Busny of Woburn represented the plaintiff in *Dow v. Casale* (<https://masslawyersweekly.com/2013/06/20/employment-wage-act-extraterritoriality-2/>), a 2013 Appeals Court case that Musachia unsuccessfully tried to apply, holding that Busny's Florida-based employee could, in fact, bring a Wage Act claim against his Massachusetts employer.

"The judge in this case did a nice job going through the details of Mr. Musachia's contacts with Massachusetts and compared them to the contacts we had in *Dow*, which were significant," Busny said. "Abiomed is a Massachusetts entity with a large Massachusetts presence, and what the judge seemed to be saying is that it's not enough just to work for a Massachusetts company – which will be instructive going forward."

Busny, who represents both employees and employers, also suspected that Musachia may have been trying to reap the benefits of *Reuter v. City of Methuen*

 [s://masslawyersweekly.com/2022/04/15/sjcs-wage-act-ruling-draws-strong-reaction-from-employment-bar/](https://masslawyersweekly.com/2022/04/15/sjcs-wage-act-ruling-draws-strong-reaction-from-employment-bar/)).

In that 2022 case, the SJC ruled that employers who fail to pay employees in full the day of their termination as required by the Wage Act, but still pay them before a complaint is filed, are liable for treble the amount of the late wages themselves, not just the interest.

"Out-of-state employees working for Massachusetts companies or organizations are going to use whatever connections they have to Massachusetts to reap the benefits," she said.

Boston attorney Brian J. MacDonough said the case is indicative of the post-COVID reality of an increasingly mobile workforce.

"These fact patterns will be increasing more and more as to where the person is working and which law applies," MacDonough said. "You combine those two things and we'll continue to see an increasing amount of litigation in the area."

Tracey E. Spruce of Andover said the Wage Act has become a "gotcha" for law-abiding employers in that its employee-friendly construction can cause employers who lack the resources or desire to battle for a potentially favorable interpretation in court to pay outsized settlements.

"This case may offer employers hope that, with the right facts, they can still prevail in a Wage Act dispute," Spruce said.

She added that the ruling offers useful guidance for employers in drafting choice-of-law clauses in offer letters, which have gained importance as employers hire more fully-remote workers and states enact laws prohibiting employers from choosing a governing law other than the state where the employee lives.

"It would be interesting to see whether the court's public policy analysis holds up in a case where the employee lives in a state with less protective wage payment laws [than Illinois]," Spruce said.

Newton practitioner Chuck F. Rodman said the case reinforces that plaintiffs' attorneys should be very careful before quickly accepting a contingency fee case in which the alleged wages were earned outside Massachusetts.

"For defense attorneys, [the decision] means that to reduce Wage Act risk, they should encourage clients having one or more workers outside of the commonwealth to document the employee's agreement to the application of foreign law," he said, adding that they should also encourage clients with multiple workers outside Massachusetts to reduce the degree and frequency of work-related connections to Massachusetts.

Alleged late payment

In a letter dated April 7, 2022, Abiomed, a medical device company based in Danvers, offered Musachia a job as a surgical account manager with Chicago, Milwaukee and the "Quad Cities" of southeastern Iowa and northeastern Illinois as his territory.


The letter offered Musachia a \$100,000 salary and an annual target payout of \$250,000 should his territory reach 100 percent of his "operating plan."

Musachia v. Abiomed, Inc. (<https://masslawyersweekly.com/2023/12/18/employment-choice-of-law-provision-offer-letter/>)

THE ISSUE: Could an Illinois resident sue his Massachusetts-based employer under the state Wage Act, G.L.c. 149, §148, for allegedly failing to pay him commissions on time following his termination?

DECISION: No (Essex Superior Court)

LAWYERS: Amy B. Yarbro of Morrison Mahoney, Boston (plaintiff)

 Kenneth M. Bello and Nicholas J. Pompeo, of Barclay Damon, Boston (defense)

Additionally, the letter provided that he receive a commission payment of \$15,000 a month for each of his first three months of his employment, and, if his actual commissions exceeded that base amount, he would receive the actual commission earned.

The letter also stated that his employment would be governed by the laws of the state where he resided.

Musachia began work in early June 2022. After an initial training period in Massachusetts, he worked from his home in Oak Park, Illinois, traveling to a number of other states for work but never back to Massachusetts.

His two direct supervisors lived and worked in Utah and Tennessee, respectively, and Illinois taxes were withheld from his pay.

Musachia was terminated on July 27, 2022, after only 51 days. The next day, he received payment for his regular earnings.

On July 29, Musachia received a \$15,000 payment for his June 2022 commission, and, on Aug. 30, 2022, he received a prorated \$13,000 payment for his July 2022 commission.

He subsequently sued Abiomed under the Wage Act, asserting that the company failed to timely pay him for accrued commissions.

Abiomed moved for judgment on the pleadings and for summary judgment, contending that the Wage Act was inapplicable to Musachia as an Illinois resident working in Illinois.

Minimal contacts

Lang noted that both parties cited *Dow* in support of their position, with Abiomed arguing that there was a “more robust” connection between the *Dow* plaintiff’s work and Massachusetts than Musachia’s, while the plaintiff contended that the *Dow* facts were materially identical.

“[T]he court is of the view that the factual differences between the two cases are consequential,” the judge said, noting that, in *Dow*, unlike in *Musachia*, the plaintiff had a national territory, no special work connection with his state of domicile, managers in Massachusetts, serviced customers in Massachusetts, and visited frequently throughout the year.

Accordingly, Lang said, if the choice-of-law provision in Musachia’s offer letter was valid, his Wage Act claim would fail, since Illinois “unquestionably” had the more significant relationship to the employment agreement and the parties.

To that end, the judge found that the provision was indeed valid, ruling that it comported with public policy because Illinois had a substantial relationship to the case; because Illinois had at least as great an interest as Massachusetts in the matter; and because Illinois law would apply in the absence of the choice-of-law provision.

Finally, Lang found that the Wage Act claim failed as a matter of law anyway, as Musachia was eligible for commissions beyond his base amount and those could not be determined by the date of his termination given Abiomed’s three-week process for reviewing and reconciling account managers’ submissions.

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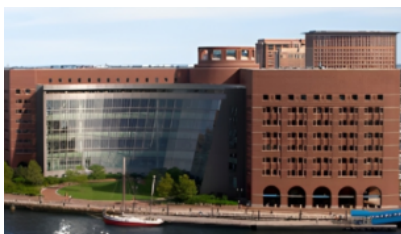


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