



NJ Supreme Court Holds That Sales Commissions Are “Wages” Under the Wage Payment Law

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Introduction

In [Musker v. Suuchi, Inc.](#) (decided March 19, 2025), the New Jersey Supreme Court held that compensation earned by employees via sales commissions constitute “wages” for purposes of New Jersey’s Wage Payment Law (“the WPL”). The court rejected the contention that sales commissions may qualify as “supplementary incentives” rather than “wages.” The distinction between the two concepts is critical because an employer’s failure to timely pay “wages” exposes the employer to administrative fines and penalties ([N.J.S.A. § 34:11-4.10a-b](#)) and, under the Wage Theft Act, entitles employees to assert claims not only for the withheld compensation but also for liquidated damages of up to 200 percent and for counsel fees ([N.J.S.A. § 34:11-4.10c](#)).

Background

Rosalyn Musker was employed as a salesperson for Suuchi, Inc., which sold software subscriptions to apparel manufacturers. In addition to an annual salary, Musker earned commissions based on the volume of her sales. At the onset of the COVID-19 pandemic, Suuchi began to sell Personal Protective Equipment (PPE) under a commission plan that differed from its usual commission structure. Subsequently, a dispute arose between Musker and Suuchi over her PPE commissions, with Musker maintaining that those commissions should have been calculated based on a gross sales basis and constituted “wages” under the WPL, and Suuchi maintaining that it properly calculated her commissions on a net sales basis and that the commissions constituted “supplementary incentives” for purposes of the WPL.

On the issue of the nature of Musker’s PPE commissions for purposes of the WPL, both the trial court and the Appellate Division determined that the commissions constituted “supplementary incentives” rather than “wages.” The Supreme Court granted

Musker's application for leave to appeal.

The Supreme Court's Opinion

The court first focused on the WPL's definition of "wages":

"Wages" means 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. § 32:11-4.1(c)) The court ruled that, as the WPL defines "direct monetary compensation" to include compensation on a commission basis and as a commission "directly compensates an employee for performing a service," a commission constitutes "wages." Although the WPL does not define "supplementary incentive," the court defined the term as "compensation that motivates employees to do something above and beyond their 'labor or services.'" By way of examples, the court stated that "supplementary incentives" might include "payment 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 Musker was paid an annual salary her commission payments constituted "supplementary incentives," reasoning that the WPL does not expressly preclude an employee who has a base salary from also earning wages separately on a commission basis. The court likewise found unavailing Suuchi's argument that Musker's commissions should be considered "supplementary incentives" because PPE was a new product, not Suuchi's primary business, and was sold on a temporary basis. The court also explained that it need not resolve the dispute over whether the parties had agreed to calculate Musker's commissions on a gross sales basis or on a net sales basis. In either case, Musker was earning commissions for services rendered and thus the dispute was not relevant to the definition of "wages" under the WPL.

Takeaways

The Musker decision has put employers on notice that commissions paid for services rendered are subject to the WPL's wage payment requirements and can never constitute "supplementary incentives" under the WPL. It should also be noted that the court in Musker expressly declined to consider the WPL's exclusion from "wages" of "bonuses which are calculated independently of regular wages," as neither the parties nor the courts below had addressed this exclusion. Counsel should be consulted about the availability of this exclusion in any given circumstance.

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