

Massachusetts Supreme Judicial Court Concludes that Restricted Stock Under Employee Stock Purchase Plan is Not Covered by the Payment of Wages Statute

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Last week, the Massachusetts Supreme Judicial Court held that restricted stock made available to employees through an employee stock plan is not “wages” within the meaning of the Massachusetts Payment of Wages statute. In *Weems v. Citigroup, Inc.*, Citigroup maintained an employee stock plan called the Capital Accumulation Plan (CAP), which consisted of three different programs. Under two of the programs, called the “bonus” and “branch manager” programs, employees were eligible for an award of restricted stock as a discretionary bonus. Under the third, the “payroll” program, employees could elect to use a portion of their salaries to purchase restricted stock at a discount. Stock acquired under each program was subject to a defined vesting period, meaning that employees forfeited unvested stock if they voluntarily left Citigroup’s employ or were terminated for cause prior to the end of the vesting period.

The plaintiffs, a group of former employees, left Citigroup voluntarily before the end of the applicable vesting periods under the plan. Citigroup thus determined that they had forfeited unvested stock under all three programs. The plaintiffs sued in federal court, alleging that the forfeiture violated the Payment of Wages Statute. The federal district court asked the Supreme Judicial Court to clarify whether the restricted stock awarded or purchased under the CAP constituted “wages” within the meaning of the statute.

The Supreme Judicial Court concluded that it did not. In the case of the bonus and branch manager programs, the Court explained that an award of restricted stock was discretionary. Citigroup was not obligated under the plan to award any stock, and employees were on notice that the awards were subject to the vesting period. Thus, the Court concluded that the restricted stock under these programs was outside of the scope of the Payment of Wages Statute.

As to the payroll program, the Supreme Judicial Court held that it was a bona fide employee stock purchase plan and thus, by statute, expressly excluded from the Payment of Wages Statute. In reaching this conclusion, the Court assumed that participation in the program was truly voluntary and that benefits under the plan were not illusory. In making these assumptions, the Court suggested that it might have reached a different conclusion on different facts.

Given the risk of treble damages under the Payment of Wages statute, the decision in *Weems* provides some comfort to employers which offer employee stock plans, including those with forfeiture provisions. More generally, the decision clarifies that truly discretionary payments are not within the scope of the Payments of Wages statute. The same applies to bona fide

employee stock purchase plans, provided that participation in those programs is truly voluntary and that it confers a real benefit to participants. We recommend that employers review their plans in light of the Court's analysis in *Weems*.