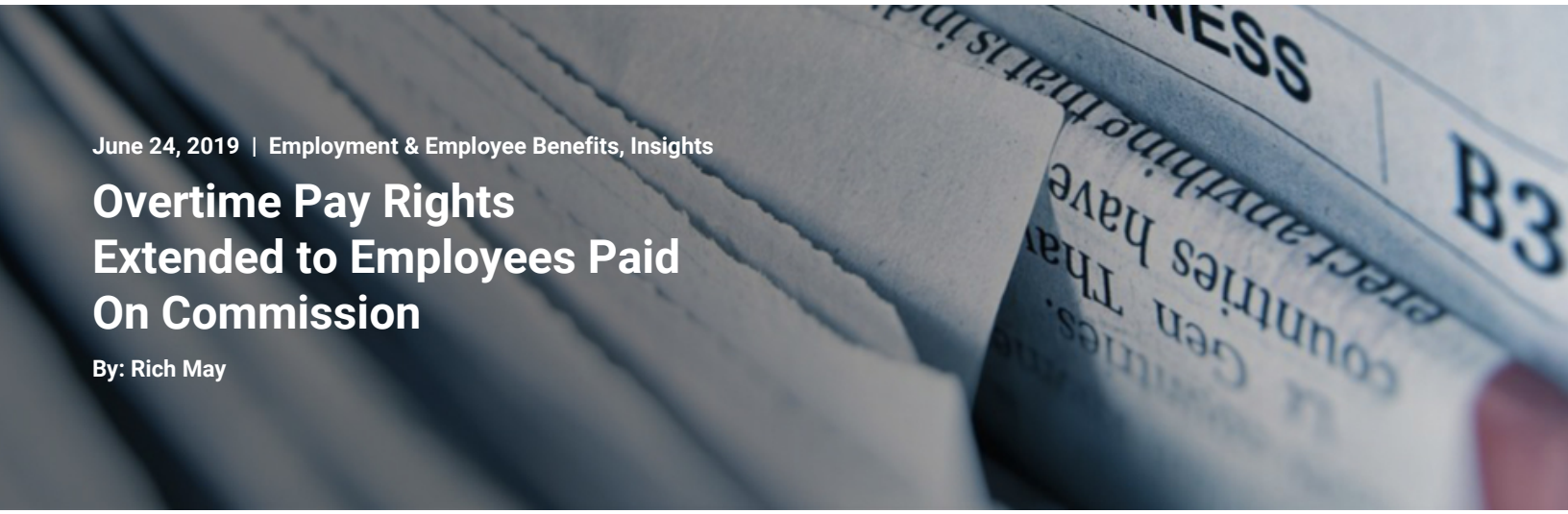


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Overtime Pay Rights Extended to Employees Paid On Commission

By: Rich May

Massachusetts retail employers of commission-only salespersons need to review and adjust their pay practices in light of the Massachusetts SJC's decision in Sullivan v. Sleepy's. Specifically, employers must ensure that their wage statements reflect an employee's "time and a half" compensation for each hour worked over 40 hours in a week (or on Sunday) regardless of the amount of commission earned.

In a decision that overturned prior regulatory rulings issued by the Department of Labor Standards, the court ruled that commission-only salespersons are entitled to one and a half times the minimum wage required under the Massachusetts Wage Act in addition to commission earned. Sullivan v. Sleepy's involved an employer which paid its salespeople a lump sum based entirely upon draws and commission, the total of which exceeded what each employee would have otherwise earned for overtime under the wage laws. The court nevertheless distinguished the two forms of payment and reasoned that the use of the draw payment structure to cover overtime hours directly contradicted the legislative purpose of the overtime premium which is "to reduce the number of hours of work, encourage the employment of more persons, and compensate employees for the burden of a long workweek." According to the court, allowing employers to retroactively credit payments due for overtime work would not fulfill this purpose, and therefore, separate and additional compensation would be necessary even if it necessarily resulted in a reduction of commissions.

Disclaimer: This summary is provided for educational and informational purposes only and is not legal advice. Any specific questions about these topics should be directed to attorneys J. Allen Holland and Frank Gaeta.



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