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SEVERANCE PAY AS WAGES? MAYBE, COURT FINDS.

In *Whiting-Turner v. Fitzpatrick* (2001) and *Medex v. McCabe* (2002), the Maryland Court of Appeals found that profit sharing and incentive payments may qualify as wages that are subject to Maryland's Wage Payment and Collection Act if those payments are "promised for service" as opposed to gratuitous bonuses. The Maryland Court of Special Appeals recently expanded, and to some degree clarified, the reasoning of those cases in *Stevenson v. Branch Banking and Trust Corp.* (November 2004). In that case the Court held that severance pay that rewarded employees for past service, as opposed to other post termination considerations, could constitute wages. If so, employers who fail to pay such benefits to employees can be sued under the wage payment law for unpaid benefits as well as treble damages and attorney's fees.

The Case

Diane Stevenson, a former Vice President of Branch Banking and Trust Company (BB&T), was fired from her position because her leadership of the bank's Maryland region did not satisfy its expectations. After her termination, she sued the bank for breach of her employment contract, alleging that the wage payment law had been violated because BB&T failed to pay her contractually promised "Termination Compensation." A jury found for Stevenson and awarded her nearly $250,000, which the trial court judge reduced to just over $60,000. Both Stevenson and BB&T appealed.

Relying on *Whiting-Turner* and *Medex*, the Court of Special Appeals found that the term "wage" in the wage payment law is construed liberally and that it is the exchange of remuneration for the employee's work rather than the label applied to the benefit that is crucial in determining whether a particular form of compensation or benefit constitutes a wage. Applying this thinking, the failure of the law to explicitly define severance or termination pay as wages, the Court found, did not necessarily mean that such pay cannot constitute wages. Rather, considering the broad language of the statute and its purpose, the Court concluded that the term "wages" includes severance pay that represents deferred compensation for work performed during the employment. Thus, a severance benefit that is based on the length and/or the nature of the employee's service, and promised on termination, may be recoverable under the wage payment law.

Ultimately, the Court's decision that some forms of termination pay may be wages did not benefit Stevenson because the Court found that Stevenson's severance benefit was payment for her agreement not to compete with BB&T following her termination and not compensation for the time she actually worked for the bank. Because the termination compensation was not payment for work that Stevenson performed before her termination, it was not recoverable wages.

The Lesson

Although perhaps initially frightening in its implications, the lessons of *Stevenson* may actually be helpful to employers. The case attempts to reconcile the inconsistent holdings of *Whiting Turner* and *Medex* in a way that should assist employers in developing compensation packages. Moreover, the clear importance of *Stevenson* is that employers should exercise caution when structuring severance pay or other benefits into their employee compensation packages and that they must review their compensation and severance packages to ensure that they serve the purpose actually intended and do not create unintended wages. The failure to do so could result in claims for amounts improperly withheld including treble damages and attorney's fees.

For more information about the matters discussed in this alert, please contact Ron Taylor (rwtaylor@venable.com; 410-244-7654), Patrick Clancy (plclancy@venable.com; 301-217-5612) or Monica Brown (msbrown@venable.com, 410-244-7569).