

Spa Workers Entitled to Sunday Premium Pay Where Employer Also Sold Beauty Products

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In *Chapoteau, et al. v. Bella Sante, Inc., et al.*, the Massachusetts Appeals Court held that operators of beauty and massage spas that primarily render beauty and massage services were required to pay employees Sunday premium pay where the spas also sold retail products on Sundays.

Prior to January 1, 2023, Massachusetts law generally prohibited commercial activities on Sunday, but provided numerous exemptions, including for the operation of businesses that provided beauty and massage therapy services. Another exemption allowed businesses to sell retail goods on Sundays provided that the employers paid employees Sunday premium pay. For years, the Sunday premium pay rate was one and a half times the employee's hourly rate; beginning in 2019, the Sunday premium pay rate was periodically reduced, until it was phased out on January 1, 2023. In *Chapoteau*, the spa employees asserted they were entitled to Sunday premium pay because the spas also sold beauty products in-store on Sundays. The employer responded that, because they primarily provided beauty and massage services, they were not required to pay the employees Sunday premium pay.

The Appeals Court held that the exemption that allowed the spas to conduct beauty and massage therapy services on Sundays did not permit the sale of goods on Sundays without paying employees Sunday premium pay. The Court further held that the fact that the spas were not "primarily" engaged in the sale of retail goods did not excuse their failure to pay employees Sunday premium pay when such retail sales took place on Sundays.

Although the Commonwealth eliminated the Sunday premium pay requirement for the sale of retail goods effective January 1, 2023, employers that offered services and sold retail good on Sundays but did not pay Sunday premium pay up through December 31, 2022 may soon face Wage Act claims in the wake of *Chapoteau*. Such claims can carry significant liability for Massachusetts employers. As a result, employers who sold retail goods prior to January 1, 2023 on Sundays, but did not pay Sunday premium pay to employees, should promptly consult with counsel.

For more information about this or any other Massachusetts Wage and Hour issues, please contact R. Victoria Fuller (fullerv@whiteandwilliams.com; 617.748.5223) or Tom Rueter (ruetert@whiteandwilliams.com; 617.748.5210).

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