

Massachusetts Compensation Issues

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Outside Influences on Compensation

- Wage and Hours Regulation
 - Employee vs. Contractor
 - Exempt/Non-Exempt
 - Wage Act
- Tax
 - 409A
 - 280G
 - ISO treatment etc

Classification of Employees or Contractor

- Employee vs. Contractor in Massachusetts
- Massachusetts is MUCH more strict than other states
 - See:
http://www.mass.gov/Cago/docs/Workplace/independent_contractor_advisory.rtf

Classification as Exempt or Non-Exempt

- Classification of Employees as Exempt or Non-Exempt important compliance requirement; relates to requirement for overtime
- Certain exemptions for professionals based on pay, position
- General source of regulations: Federal Fair Labor Standards Act (see <http://www.dol.gov/esa/whd/regs/compliance/fairpay/presentation.ppt>)
 - More specific rules in California

The Wage Act

- In Massachusetts, the Wage Act (MGL ch. 149, Section 148) requires:
 - Payment of wages in cash
 - Payment every two weeks (with limited exceptions)
 - Payment upon termination of employment, including accrued vacation
 - Officers and Directors of Company responsible
 - Violation is a misdemeanor

Wage Act recent decisions/changes:

- Violation of Wage Act subject to 3x penalties + attorneys fees
- Wage Act cannot be waived (*Stanton v. Lighthouse* D Mass March 29, 2009)
- Incorrect classification as contractor can lead to Wage Act violation (*Somers v. Converged Access* Mass SJC August 31, 2009)
- Wage Act may apply to employees outside Massachusetts (*Dow v. Casale*, Superior Court Civil Action No. 10-1343-BLS1 2011)

Tax Issues (complex, see your tax advisor)

- 409A (relevant in comp plans including equity-based compensation, severance agreements, M&A)
- ISO rules (relevant in equity-based compensation)
- 280G (relevant in M&A)

Note: Substitution of Equity for Cash

- Wages must be paid in cash so all equity not appropriate
- Wages must still be above minimum wage even if other compensation
- Receipt of income issues if directly comparable
- 409A or ISO qualification issues