



# Massachusetts Court Rules that Day Spa Workers Are Not Entitled to Sunday Premium Pay

Insights

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A recent decision from the Massachusetts Superior Court held that workers at a day spa were not entitled to Sunday “premium pay” under the Commonwealth’s Blue Laws. This decision departs from the Massachusetts courts’ typical approach to Sunday premium pay and provides some helpful guidance for employers across the state. In arriving at its decision in *Chapoteau v. Bella Sante, Inc.*, the trial court focused on the distinction between retail and service employees, particularly in a workplace such as a day spa which typically employs both types of workers. What should Massachusetts employers know about this decision and best practices in light of the court’s ruling?

## Recapping the Commonwealth’s Blue Laws and Sunday Premium Pay Requirements

The Massachusetts Blue Laws control which businesses may legally operate on Sundays and some holidays. Various retail and non-retail businesses are allowed to operate on those days, but some “retail establishments” that do must pay premium pay to workers. What is and is not a retail establishment is not always clear, but the list includes a store or shop that sells retail goods, potentially covering a wide variety of establishments.

For 2022, Sunday pay is 1.1 times an employee’s regular rate. While Sunday pay will be eliminated on January 1, 2023, this issue will remain a thorn in employers’ sides for the next year.

## Court Finds Service-Oriented Day Spa Employees Fall into Premium Pay Exception

In this case, two employees of the Bella Sante day spa argued their former employer should be considered a “store or shop” engaged in “retail sale of personal health and sanitary supplies” that is only permitted to remain open on Sundays under the Blue Laws if it pays its employees premium pay.

One of the named plaintiffs was a licensed massage therapist paid on commission for his massage services and for any sales made of the day spa’s retail products. The other named plaintiff was a spa concierge who received an hourly wage but was not eligible for commissions on in-store product sales.

In determining whether the day spa was a retail establishment, the court examined several factors:

- whether the day spa had sales targets for its retail products;
- whether it disciplined any employees who did not meet these targets; and
- the proportion of product sales as part of the day spa's overall sales.

While the plaintiffs asserted the day spa fit the description of a retail establishment, the court disagreed. It ultimately determined that Bella Sante was a business engaged in "cosmetological and beauty services" and "the performance of massage therapy services" – making it exempt from Sunday premium pay requirements. Some court findings:

- Although the day spa had a sales goal for its retail products, it had never previously disciplined or terminated employees who fell short of this goal.
- And at all three of its locations, service sales comprised approximately 80% of the day spa's overall sales between 2017 and 2019.
- The court also noted it was apparently rare for a customer to enter a location simply to purchase products. Instead, most product sales were ancillary to spa services.

Therefore, regardless of its sale of ancillary goods, the day spa was not a retail establishment. Instead, the court held it fell "unambiguously" into two exemptions to the premium pay requirement, neither of which require premium pay. These exemptions apply to establishments engaged in (1) the cutting and styling of hair and the furnishing of related cosmetological and beauty services, and (2) the performance of massage therapy services by a licensed massage therapist.

### **Employers Tread Carefully: What This Latest Decision Means for Your Business**

Alleged violations of the Blue Laws have been fertile ground for the plaintiffs' bar in recent years. The *Chapoteau* decision departs from the courts' usual practice of finding violations of the Blue Laws even when a business engages in a minor amount of unauthorized activity on Sundays. And while the decision's impact may be minimized by Sunday premium pay being phased out next year, it is possible that the court's analysis could apply to other aspects of the wage-and-hour laws.

Therefore, and even after this recent decision, employers in Massachusetts should continue to exercise caution and remain aware that even ancillary or relatively minor retail responsibilities for employees can be accompanied by premium pay requirements.

It is also prudent to conduct an audit of the types of duties being performed by your employees. If you are evaluating whether an employee's duties entitle them to premium pay under the Blue Laws, you are encouraged to confer with employment counsel in order to do so.

### **Conclusion**

We will continue to monitor further developments and provide updates on this and other labor and employment issues affecting Massachusetts employers, so make sure you are subscribed to [Fisher](#)

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