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New York's Highest Court Addresses Liability for Bonuses

An unsettled fertile area of litigation in New York has been the circumstances under which various types of incentive compensation—such as bonuses—become "earned" as wages and thus entitled to the protections of the New York Labor Law, which provide greater remedies than common law claims for breach of contract. In a recent decision, New York's Court of Appeals upheld a lower court's finding that an employer's failure to pay one such bonus was a failure to pay earned wages subject to a recovery under the Labor Law, along with the statutory attorney's fees and interest. *Ryan v Kellogg Partners Institutional Servs.*, 2012 N.Y. LEXIS 545 (N.Y. Mar. 27, 2012).

Ryan concerned an oral promise to pay a bonus to a broker-dealer employee, which a jury found to have been made despite the employer's statements to the contrary. The Court then reasoned that because the bonus was earned, the failure to pay it violated New York Labor Law.

In finding the bonus claim actionable under the Labor Law, however, the court did not address the Labor Law's exclusion of exempt executive, administrative or professional employees who earn over $900 per week from bringing Labor Law claims for unpaid wages. *See e.g.*, *Malinowski v. Wall St. Source, Inc., 2012 U.S. Dist. LEXIS 11575 (S.D.N.Y. Jan. 31, 2012)*. Nor did the Court address the potential application of Section 198-c of the Labor Law, which by its terms provides that an exempt executive, administrative or professional employee who earns over $900 per week may not assert a claim for a "wage supplement," such as a bonus, under the Labor Law.

Entitlement to incentive compensation such as bonuses under New York law continues to be examined largely by reference to contract principals. However, while a claim for such a bonus will stand and fall based on whether a finding of contract is made, the remedies available for a breach are greatly expanded where Labor Law coverage is implicated, as the revised statute now provides for 100% of the amount of liquidated damages, along with attorneys' fees and interest.

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