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Recent Developments: Medex v. McCabe: Incentive Payments Are Wages Earned by an Employee and an Employee Is Entitled to Recover Incentive Fees as Wages

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Medex v. McCabe:
**Incentive Payments are Wages Earned by an Employee and
an Employee is Entitled to Recover Incentive Fees as Wages**

By: Supriya McMillan

The Court of Appeals of Maryland held incentive payments are wages earned by an employee, and an employee is entitled to recover incentive fees as wages. *Medex v. McCabe*, 372 Md. 28, 811 A.2d 297 (2002). In addition, the court held an employee is entitled to a jury trial to determine whether a bona fide wage dispute existed and to determine if treble damages should be awarded if there was no bona fide dispute. *Id.*

Timothy McCabe (“McCabe”) was employed by Medex as a sales representative until February 4, 2000. He earned a salary plus incentive fees. The incentive fees were paid in a series of incentive compensation plans. McCabe’s incentive compensation was subject to the provision that the payment was conditional upon meeting targets and that he had to be an employee at the end of the incentive plan and time of actual payment.

For the year 2000, Medex adopted an Account Manager Sales Incentive Plan. As stated in the employee handbook, the payment of the incentive fees was contingent on continued employment at the time of payment. McCabe resigned from Medex after the fiscal year but prior to the incentive plan payment. Because McCabe resigned before the date of the incentive fee payment,

Medex refused to pay the fees to him.

McCabe filed suit in the District Court of Maryland for Baltimore County but the case was transferred to the Circuit Court for Baltimore County because Medex requested a jury trial. Then parties filed a Joint Motion to Bifurcate. In the joint motion, the parties requested that an initial ruling be made on the applicability of Md. Code Ann., Lab. & Empl. § 3-501 (2002). Based on the motion, the case would go to trial only if the court found Medex was in violation of Section 3-501 and if the case went to trial McCabe could seek additional recovery for attorneys’ fees and treble damages. The trial court found Section 3-501 was inapplicable to Medex and entered judgment in favor of Medex.

The Court of Special Appeals of Maryland reversed the circuit court. The court of special appeals held McCabe had earned the incentive fees as wages under Section 3-501 (c) and the additional conditions placed by Medex were invalid under both Maryland statutory and common law. The court of special appeals further held that there was a bona fide dispute that would preclude an award of treble damages. Therefore, McCabe’s recovery was limited to

actual wages withheld.

The Court of Appeals of Maryland granted certiorari to determine whether incentive fees included in an employee’s compensation, but not yet due for payment when the employee resigns, must be paid even though there is an express term in the employment contract stating the contrary. The court also granted McCabe’s cross-petition to determine whether a bona fide dispute existed.

The Court of Appeals of Maryland held incentive payments were wages earned by an employee and therefore an employee can recover the fees under the Act. The court further held an employee is entitled to a jury determination on whether a bona fide dispute would prevent an employee to recover treble damages.

The court stated to be covered under the Act the incentive fees must constitute wages under Section 3-501(c). *Id.* at 35, 811 A.2d at 301. According to the statute, wage means “all compensation that is due to an employee for employment.” *Id.* at 35, 811 A.2d at 302. Wages include “bonuses, commissions, fringe benefits, or any other remuneration promised for service.” *Id.* The court concluded

the commissions are within the scope of the Act and an employee may bring a cause of action for an employer's failure to pay the earned commission even though it was not yet payable upon resignation. *Id.*

Next, the court declared the incentive fees could be considered wages if they are considered a bonus for continued employment. *Id.* at 36, 811 A.2d at 302. While Section 3-501(c)(2) includes bonuses as wages, the court cautioned that not all bonuses are considered wages in Maryland. *Id.* Bonus payments were considered wages when they are paid in exchange for the employee's work. *Id.* The court held that even if the incentive fees were bonuses, they fell within Section 3-501 as wages because McCabe earned them by meeting target goals and selling certain goods. *Medex*, 372 Md. at 37, 811 A.2d at 302-303 (2002).

The court determined the incentive fees were owed to McCabe as wages due under Md. Code Ann., Lab. & Empl. § 3-505 (2002). *Id.* at 37, 811 A.2d at 303. Even though the language of the employment contract stated very clearly that the fees were payable only if the employee remained employed at the time of payment, the court held the court of special appeals was correct in refusing to enforce the provision based on the intent of the General Assembly in enacting the statute. *Id.*

Section 3-505 states an employer must pay earned wages to an employee, regardless of the termination of the employee.

Medex, 372 Md. at 39, 811 A.2d at 304. The court stated Section 3-505 was clear in its purpose and complied with the public policy reasons for its enactment. *Id.* The public policy reasons behind Section 3-505 were to allow employees to collect earned wages and to give employers an incentive to pay them. *Id.*

The court further stated language in contracts cannot be used to eliminate an employee's right to be compensated for his or her efforts. *Id.* If a contract provision conflicts with public policy, the provision is invalid to the extent that it violates public policy. *Id.* In the case at hand, the court held the provision was a violation of public policy and therefore not enforceable against McCabe. *Id.*

Finally, the court held a jury must decide whether there is a bona fide dispute between McCabe and *Medex*. *Id.* at 42-43, 811 A.2d at 306. Md. Code Ann., Lab. & Empl. § 3-507.1 (2002) states if an employer withholds wages in violation of Section 3-105 and there is no bona fide dispute as to the wages, then the employee is entitled to sue for treble damages. *Id.* The court stated a bona fide dispute is determined on a case-by-case basis by looking at the circumstances surrounding the dispute. *Id.* at 43, 811 A.2d at 306. Further, the court held the jury must be allowed to decide whether a bona fide dispute existed and consequently whether treble damages should be awarded. *Id.* The judge determined whether

attorneys' fees and costs should be awarded. *Id.*

The decision by the Court of Appeals of Maryland in *Medex v. McCabe* allows employees to have more leverage against their employers if a dispute arises regarding wages after termination of employment. By allowing a broad definition of wages, former employees will be able to successfully argue that they are entitled to more than the basic compensation. However, the court does limit an employee's right to treble damages only if he or she can prove to a jury that there was violation of Section 3-105 and there was no bona fide dispute. The decision, in effect, allows employees to overturn express compensation terms in employment contracts based on the premise that they go against public policy.