

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CRAIG WILSON, JR.,

Plaintiff,

v.

RECORDED FUTURE, INC.,
CHRISTOPHER AHLBERG, and SCOTT
ALMEIDA,

Defendants.

*
*
*
*
*
*
*
*
*

Civil Action No. 1:22-cv-11105-IT

MEMORANDUM & ORDER

April 19, 2023

TALWANI, D.J.

Plaintiff Craig Wilson, Jr., a former employee of Recorded Future, Inc. (“Recorded Future”), brings this action against Defendants Recorded Future, Christopher Ahlberg, and Scott Almeida. In his Amended Complaint [Doc. No. 12], Wilson alleges eight causes of action—seven against Recorded Future and one against all three Defendants. Am. Compl. ¶¶ 100-139 [Doc. No. 12]. Relevant here, Wilson brings a claim against Recorded Future for violations of the Massachusetts Fair Employment Practices Law, G.L. c. 151B, § 4(1B) (“Chapter 151B”) (Count II) and against all Defendants for violations of the Massachusetts Wage Act, G.L. c. 149, § 148 (“Massachusetts Wage Act”) (Count III). Id. Now pending before the court is Defendants’ Partial Motion to Dismiss [Doc. No. 14] these two claims.

For the following reasons, Defendants’ Partial Motion to Dismiss [Doc. No. 14] is DENIED.

I. Facts as Alleged in the Amended Complaint

Recorded Future is a privately held company, organized under the laws of Delaware with offices in Massachusetts, Virginia, and abroad, that assists with mitigation of cybersecurity risks. Am. Compl. ¶¶ 3, 10–17 [Doc. No. 12]. Recorded Future’s headquarters are in Somerville, Massachusetts, and the company’s leadership—including Ahlberg, the President and Chief Executive Officer, and Almeida, the Treasurer and Chief Financial Officer—and decision-making personnel who made major hiring and firing decisions are based out of the Massachusetts location. Id. at ¶¶ 3–5, 10, 18, 19.

In May 2019, Recorded Future offered Wilson, who resides in Virginia, employment as an Account Executive Civilian. Id. at ¶¶ 2, 26. Wilson accepted the offer and initially reported to then-Vice President of Public Sector Sales Roger Coehle. Id. at ¶ 33. After Coehle left Recorded Future in November 2020, Wilson reported to Julie Starnes, Vice President of Government Sales. Id. at ¶¶ 34–35.

In his role as an Account Executive Civilian, Wilson served as a sales representative who managed designated customer accounts and received commissions for the work he performed on those accounts. Id. at ¶¶ 1, 48–49. Wilson’s accounts consisted of federal civil accounts nationwide and abroad. Id. at ¶ 49–50. Recorded Future’s Vice President of Sales Operations Yin Cheng, who worked out of the Massachusetts office, drafted and distributed the compensation plan under which Wilson operated. Id. at ¶ 39, 44, 46.

In the course of his employment Wilson often interacted with leadership and employees at Recorded Future’s Massachusetts headquarters. Id. at ¶¶ 23, 41. Wilson worked several times per week with Lisa Cefalo, Recorded Future’s Vice President and Controller, and with Almeida, as their approval was required before quotes could be provided to customers. Id. at ¶ 42. Almeida

also participated in Slack channels that related to Wilson’s work for Recorded Future. Id. at ¶¶ 20-21. Wilson regularly received support for the company’s sales tools from employees at Recorded Future’s headquarters. Id. at ¶ 23. “From time to time,” Wilson traveled to Massachusetts to attend required trainings for Recorded Future and to meet with current and potential clients. Id. at ¶¶ 32, 43.

Over the course of Wilson’s employment at Recorded Future, his commissions were occasionally late and/or underpaid. Id. at ¶¶ 44–45. Several times Cheng revised the terms of Wilson’s compensation plan in ways that significantly disadvantaged him. Id. at ¶ 46. Although Wilson exceeded his revenue quota in 2020, id. at ¶¶ 51-52, under the 2021 compensation plan drafted by Cheng many of Wilson’s accounts were reassigned to younger sales representatives with less experience while Wilson’s quotas increased. Id. at ¶¶ 53–56, 63, 67–69. Wilson “voiced his concerns” regarding Recorded Future’s actions, id. at ¶ 57, but Cheng and others in Recorded Future’s management denied Wilson’s requests to adjust his quotas to account for his reduced territory, id. at ¶ 71.

On October 1, 2021, Recorded Future notified Wilson that the company was terminating his employment. Id. at ¶ 82. Wilson received “conflicting and perplexing” reports about the reasons for his termination. Id. at ¶ 85. According to Wilson, the reasons given by Recorded Future for his termination were pretextual: (i) the company attributed Wilson’s firing to a “restructuring” of the Public Sector team despite fact that the sales team was projected to grow in size in 2022, id. at ¶¶ 82–83; and (ii) Starnes reported that Wilson had been terminated due to the non-renewal of an account, even though Wilson had fewer non-renewals than many of his peers and the non-renewal in question was not attributable to Wilson, id. at ¶¶ 86–93.

Wilson alleges that Recorded Future’s leadership in Massachusetts—including Ahlberg, Almeida, Cefalo, Cheng, and Senior Director of Human Resources Treassa Law—made and/or participated in the decision to terminate his employment and to deny him earned commission and other compensation. Id. at ¶¶ 19, 98–99. With respect to Ahlberg, on information and belief Wilson specifically alleges that Ahlberg was the source of the “non-renewal” rationale for Wilson’s termination. Id. at ¶ 92.

II. Standard of Review

In evaluating a motion to dismiss for failure to state a claim, the court assumes “the truth of all well-pleaded facts” and draws “all reasonable inferences in the plaintiff’s favor.” Nisselson v. Lernout, 469 F.3d 143, 150 (1st Cir. 2006). To survive dismissal, a complaint must contain sufficient factual material to “state a claim to relief that is plausible on its face.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). “While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations . . . [f]actual allegations must be enough to raise a right to relief above the speculative level” Id. at 555 (internal citations omitted). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

III. Discussion

Defendants’ argument for dismissal of Wilson’s claims under Chapter 151B and the Massachusetts Wage Act is twofold. First, Defendants contend that whether an out-of-state employee can invoke the protections of either statute turns on Massachusetts’s functional choice-of-law principles, under which an employee’s rights are generally determined by the law of the state that has the “most significant relationship” to his employment. Partial Mot. to Dismiss 4

[Doc. No. 15]. Second, Defendants argue that Virginia, not Massachusetts, was the “locus of [Wilson’s] relationship” with Recorded Future and that Wilson’s alleged contacts with Massachusetts are insufficient to establish that Chapter 151B and the Massachusetts Wage Act apply. *Id.* at 3–7.

Wilson contends that his Chapter 151B claim survives the motion-to-dismiss stage where Wilson has alleged that Defendants’ violations giving rise to the claim took place at least in part in Massachusetts. Opp’n 8–12 [Doc. No. 18]. Wilson further contends that his Wage Act Claim survives where the allegations in his Amended Complaint [Doc. No. 12] demonstrate a substantial relationship between his employment and Massachusetts. *Id.* at 10–11.

A. *Chapter 151B*

Chapter 151B provides in relevant part that “an employer in the private sector” cannot “bar or [] discharge from employment [any] individual, or [] discriminate against such individual in compensation or in terms, conditions or privileges of employment, unless based upon a bona fide occupational qualification.” M.G.L. c. 151B, § 4(1B). Courts are required to “liberally construe [the provisions of 151B] for the purposes thereof.” *Id.* at § 9.

In the context of determining proper venue, the Supreme Judicial Court of Massachusetts “do[es] not read G.L. c. 151B so narrowly as to mean that conduct constituting an unlawful termination can occur in only one place.” Cormier v. Pezrow New England, Inc., 437 Mass. 302, 306, 771 N.E.2d 158, 162 (2002). “Such a confining interpretation would be inconsistent with the realities of today’s employment world.” *Id.* “An unlawful employment practice may consist of many actions and decisions made far from where the employee is physically located, between company officials who themselves are separated by great distances, and may be implemented in one of many jurisdictions.” *Id.*

“As such, courts have applied 151B in situations where the employment decisions at issue were made in Massachusetts, though their effects were felt in another state.” Turnley v. Banc of Am. Inv. Servs., Inc., 576 F. Supp. 2d 204, 219 (D. Mass. 2008) (citing Cormier, 437 Mass. at 306, 771 N.E.2d 158 (2002)); Gigi Kai Zi Chan v. Wellington Mgmt. Co. LLP, 424 F. Supp. 3d 148, 150 (D. Mass. 2019) (finding Chapter 151B applies to an employee of a company headquartered in Boston working outside the forum “because the complaint alleges unlawful conduct within the Commonwealth’s territorial bounds” (emphasis in original)); Moreira v. Grand Circle, LLC, 478 F. Supp. 3d 99, 101–102 (D. Mass. 2020) (same). The Massachusetts Commission Against Discrimination (“MCAD”) “has itself followed this interpretation, finding that it ‘has a significant interest in encouraging in-state [r]espondents to promote work environments free of discrimination.’” Id. (quoting Everett v. InterQual, Inc., Docket No. 98–132813 (MCAD 1999) (Chapter 151B applied to decision made by Massachusetts employer where employee worked in New Hampshire)).

Similarly, here, the court finds that Wilson has sufficiently pleaded that unlawful conduct took place, at least in part, in Massachusetts where he alleges that (i) Recorded Future was headquartered in Massachusetts; (ii) he communicated regularly with Recorded Future’s executives and employees located at the Massachusetts office; (iii) Wilson’s employment duties required travel to Boston; and (iv) that decisions related to Wilson’s compensation plans, commission payments, and ultimate termination were made in Recorded Future’s Massachusetts headquarters, where Ahlberg and Almeida (as well as other decision-making executives of Recorded Future) were based.¹

¹ Where at least some of the alleged acts violating Chapter 151B occurred in Massachusetts, the extraterritorial application of the Massachusetts anti-discrimination statute is not implicated.

Accordingly, the court finds that Wilson has properly brought a claim under Chapter 151B.

B. *The Wage Act*

“The purpose of the Wage Act is ‘to prevent the unreasonable detention of wages.’” Dow v. Casale, 83 Mass. App. Ct. 751, 754, 989 N.E.2d 909, 912 (2013) (quoting Melia v. Zenhire, Inc., 462 Mass. 164, 170, 967 N.E.2d 580 (2012)). “Section 148 of the Wage Act provides, in pertinent part: ‘Every person having employees in his service shall pay weekly or bi-weekly each such employee the wages earned by him . . . and any employee discharged from such employment shall be paid in full on the day of his discharge . . .’ Such ‘wages’ include, among other things, holiday or vacation pay due under an oral or written agreement, and commissions that are ‘definitely determined’ and ‘due and payable’ to the employee.” Id. (quoting M.G.L. c. 149, § 148).

“It is well-established . . . that ‘state courts are the ultimate expositors of state law’ and the federal courts are bound by the constructions placed upon state statutes by state courts absent extreme circumstances.” Rundlett v. Oliver, 607 F.2d 495, 500 (1st Cir. 1979) (quoting Mullaney v. Wilbur, 421 U.S. 684, 691 (1975)). “‘Construction’ in this sense refers to the structure of a statute, what its words mean, and how it operates.” Id. at 500. Under Massachusetts law, “[w]here no explicit limitation is placed on a [Massachusetts] statute’s geographic reach, there is no presumption against its extraterritorial application in appropriate circumstances.” Taylor v. E. Connection Operating, Inc., 465 Mass. 191, 198 (2013). Rather, where a Massachusetts statute “is silent as to its extraterritorial effect,” Massachusetts courts “rely on [the state’s] ‘functional’ choice-of-law principles in assessing the applicability of the statute to the plaintiffs’ claims.” Id. Under Massachusetts’s functional choice-of-law doctrines, “in the absence of a choice of law by

the parties, their rights ‘are determined by the local law of the state which, with respect to that issue, has the most significant relationship to the transaction and the parties.’” Bushkin Assocs., Inc. v. Raytheon Co., 393 Mass. 622, 632 (1985) (adopting the approach of the Restatement (Second) of Conflict of Laws (1971), at §§ 6, 188(1)).

The Massachusetts Wage Act does not contain a provision expressly foreclosing the statute’s potential extraterritorial application. Dow v. Casale, 83 Mass.App.Ct. 751, 752, 989 N.E.2d 909, 913 (2013) (noting that the Wage Act “does not, in terms, restrict its remedies to employees who live or work in Massachusetts”). As a result, the statute applies extraterritorially—and affords protections to out-of-state employees—so long as Massachusetts has the most significant relationship to the plaintiff’s employment. See Viscito v. Nat’l Plan. Corp., 34 F.4th 78, 83 (1st Cir. 2022) (“[W]hether [an out-of-state employee] can properly invoke Massachusetts statutory law to govern his employment claims . . . turns on the application of Massachusetts’s choice-of-law principles”—in particular, which state has “the more significant relationship” to the plaintiff’s employment.); Dow, 83 Mass.App.Ct. at 754–58 (holding that an employee could bring a claim under the Wage Act so long as Massachusetts had “the most significant relationship” to the parties and to their employment situation).

Relying on factors set forth by the Massachusetts Appeals Court, the First Circuit has explained that whether Massachusetts has the most significant relationship to a worker’s employment depends on a variety of considerations, including “the state where the employer’s headquarters is located, the place(s) the worker performed the work, the frequency of interactions between the worker and the employer in Massachusetts, whether another state has a significant connection to the worker and work performance, and whether the contract between the worker and employer has a choice-of-law provision.” Viscito, 34 F.4th at 84–85 (citing Dow,

83 Mass.App.Ct. at 757–58). The First Circuit further noted favorably that the district court considered in which state (i) the employer received benefit from plaintiff-employee generated income, (ii) the employer provided all of its services to the plaintiff-employee, and (iii) the employer required the plaintiff-employee to train or work. *Id.* at 86. As such, the First Circuit found that “clearly the district court considered the specific characteristics and the nature of the industry, the revenue and income [plaintiff-employee] generated, and the significance of these facts within the mix of factors for the choice-of-law analysis.” *Id.*

Defendants dispute that Massachusetts has the most significant relationship to Wilson’s employment where (i) Wilson is not a resident of Massachusetts; (ii) Wilson did not work primarily out of Recorded Future’s Massachusetts office; (iii) neither Wilson’s offer of employment nor his compensation plan provided for the application of Massachusetts law; (iv) neither of Wilson’s supervisors (Coehle or Starnes) worked out of the company’s Massachusetts headquarters; (v) Wilson did not actually service customers in Massachusetts; and (vi) Wilson did not hold himself out to customers as being based in Massachusetts. Mem. in Supp. 4–5 [Doc. No. 15].²

However, as discussed above, there is no requirement that Wilson reside or work in Massachusetts to be afforded the Wage Act’s protections—only that Massachusetts has the most significant relationship with his employment. Wilson does not identify which Recorded Future’s office he primarily worked out of, if any.³ Although Wilson does not dispute Defendants’

² Defendants further represent that Recorded Future “does not contest the applicability of . . . Virginia law to Mr. Wilson’s employment,” Mem. in Supp. 9 [Doc. No. 15], where Wilson has brought a claim against Recorded Future under the Virginia Wage Payment Act, Va. Code 40.1-29 (Count IV), Am. Compl. ¶¶ 117–122 [Doc. No. 12].

³ Wilson alleges that his accounts included the following clients with operations in Massachusetts: (i) the U.S. court system, (ii) Transportation Security Administration, (iii) the

assertion that Wilson's direct supervisors, Coehle and Starnes, did not work out of the Massachusetts office, it is not clear where they were located or if they worked out of Virginia. Moreover, Wilson alleges that he often interacted with leadership and employees, regularly received support for the company's sales tools from employees, and from "time to time" attended required trainings located in Massachusetts.

Accordingly, the court finds, taking all inferences in favor of Wilson at this stage, that as pled and absent further facts, Massachusetts may have the most significant connection to the employment relationship between Wilson and Recorded Future and the Massachusetts Wage Act may apply.

IV. Conclusion

For the foregoing reasons, Defendants' Partial Motion to Dismiss [Doc. No. 14] seeking to dismiss Wilson's claim against Recorded Future for violations of Chapter 151B (Count II) and Wilson's claim against all Defendants for violations of the Massachusetts Wage Act (Count III) is DENIED.

IT IS SO ORDERED.

April 19, 2023

/s/ Indira Talwani
United States District Judge

Federal Reserve Banks, (iv) the Department of Justice, and (iv) U.S. Immigration and Customs Enforcement. Am. Compl. ¶ 50 [Doc. No. 12]. Defendants ask the court to take judicial notice that these clients are headquartered in either Washington D.C. or Virginia. The client list and the locations of the clients' operations or headquarters is unhelpful to either Wilson or the Defendants where the complaint is silent as to whether Wilson performed work for the Massachusetts operations or reported to the Washington D.C. or Virginia client headquarters.