

# Vacation Pay on Termination: Employers Win One, Lose One

**Case #1 — Six-month wait for vacation OK.** Under California law, employees must receive their accrued vacation pay on termination. An employer's vacation year ran from May 1 through April 30. Its policy required new hires to work for six months before any vacation vested. After that, employees received half of their vacation days on May 1 and the second half on August 1. *Bottom line:* Employees' vacation vested before it was earned.

A long-term employee was terminated in April 2006, after having taken all of her vacation for the 2005-2006 vacation year. She sued the company anyway, alleging that she was entitled to a vacation allotment for the vacation year beginning May 1, 2006. *Employee:* The six-month rule is invalid; employers that offer vacation must offer it from the first day of employment. *Neat trick:* Had her rule been in place, she would have qualified for another allotment, even though she had already been let go.

An appellate court ruled for the employer. *Court:* A company policy specifying that no vacation is earned during the first six months is permissible, and new employees reading the employee handbook would understand that. By making it clear in advance that vacation isn't part of new employees' pay, the employer didn't violate the rule that prohibits an employer from reducing employees' wages after services have been performed.

**Case #2 — Accrued vacation must be paid on termination.** Massachusetts law requires that if an employee is fired, final wages include vacation pay due under an employer's oral or written agreement. The state Attorney General previously interpreted the law to require that accrued vacation pay be included with final pay. An employer's policy stated that employees' vacation allotment depended on their years of service and that vacation unused at the end of a year was forfeited. As a result of prior litigation, the policy also stated that vacation pay wasn't earned, didn't accrue, and wasn't payable on termination.

An employee who was fired and who didn't receive his accrued vacation pay with his final pay sued. *Employer:* Under company policy nothing was due. The state's highest court ruled for the employee. *Court:* The employer's policy is contradictory. First, it says that vacation is based on years of service, then it says that vacation isn't earned. The clear import is that vacation is earned. The phrase "under an oral or written agreement" is ambiguous, the court said. The phrase might clarify that employers have no duty to provide vacation, or that an employer could provide for paid vacation in oral, as well as written, agreements. Given that, the Attorney General's interpretation is reasonable, the court concluded.

**The right policy can save \$\$\$.** Unlike California and Massachusetts, the majority of states allow employers to

determine whether the value of accrued vacation will be included in final pay. A well-crafted policy, therefore, can save you a bundle. Key: If employees reasonably expect to receive accrued vacation pay based on your policy, a court could likely rule in their favor. Here are some questions to consider as you review your vacation pay policy.

- Does the policy clearly articulate how vacation time accrues?
- Policy notwithstanding, does the company have a past practice of paying out accrued vacation pay to terminating employees?
- Does the policy explicitly or implicitly promise employees that they will receive their accrued vacation pay on termination?
- If your policy is to pay accrued vacation on termination, are all terminating employees entitled to a payout, or just employees who aren't terminated for cause?
- If your policy contains a forfeiture clause, does the clause clearly explain to employees the circumstances under which they will forfeit their accrued vacation pay?