

# Cliff vesting vacation policy pays off for one employer

Employees usually accrue vacation hours every pay period or every month, that is, ratably. But there's another option—providing all of employees' vacation hours at once after they qualify for it, or cliff vesting it. A California employer that had a cliff vesting vacation policy didn't have to pay a terminating employee anything, since he wasn't vested in anything when he terminated. (*Minnick v. Automotive Creations, Inc.*, No. D070555, Cal. Ct. App. 4th, 2017)

**Policy required employees to work one year.** Under California law, terminating employees must be paid for the value of their unused, accrued vacation time. California law, however, doesn't require employers to provide vacation at all or even to provide it under any particular formula.

An employer's vacation policy stated that all employees would receive one week of vacation after being on the job for one year and two weeks of vacation after working for two years. The policy explicitly informed employees that vacation pay didn't accrue 1/12th of one week's vacation accrual each month during their first year.

An employee terminated after about six months and sued after he wasn't paid for any of his vacation time. *Employer:* The vacation policy unambiguously states that no vacation time is earned during the first year of employment. A state trial court ruled for the employer and the employee appealed.

**No forfeiture here.** On appeal, the employee argued that the employer's vacation policy was illegal because it allowed for forfeitures if employees didn't work for at least one year. The appellate court agreed that vacation policies that skirt the law wouldn't pass muster, but it said that's not what this employer did. *Appeals court:* An employer may lawfully decide that it won't provide any vacation at all. By logical extension, an employer can properly decide that it will provide paid vacation after a specified waiting period. The employer, therefore, was off the hook for the vacation pay.

**SEE YA:** Some states require you to cash out the value of a terminating employee's unused, accrued vacation days. The chart below summarizes those state laws. Other states have no laws, which means that company policy should apply. *Caution:* To get the full story on state final pay laws, contact your state labor department.

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## Payroll Legal Alert

## 2018 state laws: Vacation pay on termination

AK	Payments agreed to, including unused vacation, must be paid.	SD	No law.
AL	No law.	MT	Accrued vacation pay must be paid.
AR	Payment depends on employer contract or policy.	NC	Unused vacation must be paid if employer policy is to pay.
AZ	Unused vacation must be paid if employer policy is to pay.	ND	Accrued vacation must be paid; employees who voluntarily resign need not be paid if they worked the less than one year or they gave notice less than five days of resignation and the employer provided written notice of these policies when they were hired.
CA	Accrued vacation pay must be paid.	NE	Accrued vacation pay must be paid.
CO	In accordance with any agreement, accrued vacation pay must be paid, even if on leave if policy can't operate to deprive employee of earned vacation time and/or the wages associated with that time.	NH	Unused vacation must be paid if employer policy is to pay; vacation pay accrued before employer changes policy can't be forfeited.
CT	Unused vacation must be paid if employer policy is to pay.	NJ	Unused vacation must be paid if employer policy is to pay.
DC	Unused vacation must be paid if employer policy is to pay.	NM	No law.
DE	Benefits or wage supplements include vacation pay if agreed upon by employer.	NY	No law.
FL	No law.	NT	Unused vacation must be paid if employer policy is to pay.
GA	No law.	OH	Unused vacation must be paid if employer policy is to pay.
HI	Unused vacation must be paid if employer policy is to pay.	OK	Unused vacation must be paid if employer policy is to pay.
IA	Unused vacation must be paid if employer policy is to pay.	OR	Unused vacation must be paid if employer policy is to pay.
ID	Unused vacation must be paid if employer policy is to pay.	PA	Unused vacation must be paid if employer policy is to pay.
IL	Accrued vacation pay must be paid.	RI	Vacation pay accrued under employer policy must be paid if employee worked for at least one year.
IN	Unused vacation must be paid if employer policy is to pay.	SC	Unused vacation must be paid if employer policy is to pay.
KS	Unused vacation must be paid if employer policy is to pay.	SD	Unused vacation must be paid if employer policy is to pay.
KY	Unused vacation must be paid if employer policy is to pay.	TN	Unused vacation must be paid if employer policy is to pay.
LA	Unused vacation must be paid if employer policy is to pay.	TX	Unused vacation must be paid if employer policy is to pay.
MA	Unused vacation must be paid if promised under oral or written agreement.	UT	Unused vacation must be paid if employer policy is to pay.
MD	Accrued vacation need not be paid if employer has written policy limiting accrued leave, employees are notified of the policy and employees aren't entitled to payment under the terms of the policy.	VA	No law.
ME	If paid vacations are provided, accrued vacation pay must be paid.	VT	Unused vacation must be paid if employer policy is to pay.
MI	Unused vacation must be paid according to written contract or policy.	WA	No law.
MIN	Unused vacation must be paid according to written contract or policy.	WI	Unused vacation must be paid if employer policy is to pay.
MO	Unused vacation must be paid according to written contract or policy.	WV	Unused vacation must be paid if employer policy is to pay.
		WY	Unused vacation must be paid if employer policy is to pay.

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