

Vacation Pay

Wages Earned Unless Policy Dictates Otherwise

By George Raymond and Tara Avery

In the previous edition of *BizVoice*, we looked at some of the record keeping requirements when an employee leaves a company. The issue of whether vacation pay is owed upon termination of the employment relationship is another frequent topic on the Chamber's HRhelpline.

As a starting point in our discussion, it should be noted that there is no statutory requirement, either at the federal or state level, that an employer provide paid vacation. However, we don't know of very many (actually we don't know of any) employers that do not provide paid vacation. Under various decisions made by the Indiana courts, a basic premise has evolved that if there is no provision or understanding to the contrary, wages and all earned and unused vacation pay is due and payable on the employer's next regularly scheduled payday following the termination.

A second premise, which has evolved from these same cases (again absent a provision or understanding stating otherwise), is that vacation pay is presumed to be earned pro ratably as the employee works; e.g. if an employee receives 10 days a year of vacation, then that employee would accrue vacation at the rate of 5/6 day per month.

Company-specific policies

As noted above, an employer can have a vacation policy that provides that vacation pay is not earned unless the employee works through a given date, usually the employee's anniversary date or December 31. Under this provision, vacation pay does not accrue incrementally. What is the difference?

Take two employees. One works for Employer A, which has a policy that vacation pay is only earned for a year if the employee works through December 31 (new employees get 10 days per year). The other works for Employer B, which has a policy simply stating that an employee gets 10 days of vacation

per year. Both employees start work on January 1, 2003, and both terminate

their employment on June 30, 2004. Neither uses any of her vacation time prior to the termination.

Upon termination, Employer A would owe its employee for 10 days of vacation and Employer B would owe its employee for 15 days. Employer A would only owe for 10 days because, under its policy, in order to earn vacation for 2004, its employees have to work through December 31, 2004.

Additional provisions

Either or both of our employers could also implement a policy that simply states that upon termination of employment, an employee will not be paid for any earned but unused vacation. An employer is also permitted to put conditions on receiving vacation pay upon termination of the employment relationship; e.g. if an employee fails to give a two-week notice, then he will not be entitled to vacation pay.

The important thing to keep in mind is that, as an employer, if you want to have a policy that restricts or limits how employees earn vacation and how vacation pay will be handled upon termination, you must have a written policy that has been communicated to your employees.



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