

Employment Law Alert

SJC Orders Employer to Pay Terminated Employee Earned Vacation Time

A June 2009 Supreme Judicial Court decision clarifying application of the Massachusetts Wage Act to vacation policies should cause employers to pay close attention to their vacation policies. The court in *Electronic Data Systems Corp. v. Attorney General* protected a terminated employee's right to be paid for his or her unused earned vacation time under a "use it or lose it" policy.

The Background

The Massachusetts Wage Act requires employers to pay their employees wages in a timely manner. The law states that "any employee discharged from such employment shall be paid in full on the day of his discharge" and that "[t]he word 'wages' shall include any holiday or vacation payments due an employee under an oral or written agreement." This means that when employees leave their employment involuntarily, they must be paid the "wages" they have earned, including unused vacation time.

The Case

Francis Tessicini worked for Electronic Data Systems (EDS) for twenty one years. EDS had a vacation policy that included the following two provisions: (1) "vacation time is not earned and does not accrue. If you leave EDS, whether voluntarily or involuntarily, you will not be paid for unused vacation time" and (2) a person who had been employed for twenty years or more is eligible for five weeks of paid vacation time.

When Tessicini's position was eliminated in 2005, EDS did not pay him for his unused vacation time. He filed a complaint with the Massachusetts Attorney General's office, which found that EDS must pay him for his unused vacation time – almost \$2,000 – and additionally fined EDS over \$3,000 for its intentional failure to pay him wages owed. EDS appealed that decision, which was upheld (except that the amount that EDS had to pay to Tessicini increased). EDS again appealed, and the Superior Court again upheld the decision.

Recently, the Supreme Judicial Court (SJC) weighed in and affirmed the Attorney General's decision. The SJC found that the Wage Act requires an employee who is involuntarily discharged to be paid for his earned unused vacation time, and that because the EDS policy did not provide for that payment, it violated the Wage Act.

More specifically, the court decided that according to the EDS policy, Tessicini had accumulated his vacation time by virtue of his twenty year employment. Therefore, he was owed the time as wages. The court rejected EDS's argument that because its policy states that vacation time does not accrue, that time was not "due" to Tessicini when he left his employment. Interestingly, the court did not decide whether the same rule applies to employees who leave their employment voluntarily.

The Lessons

- Employers may not exempt themselves from the Wage Act by drafting policies that run contrary to the Wage Act's provisions;
- If your company provides employees with paid vacation time, an employee may be entitled to his earned and unused vacation time when he is involuntarily separated from his employment, regardless of whether the termination is with or without cause;
- The Attorney General will not hesitate to assess fines for the non-payment of wages, so non-compliance with the Wage Act can mean penalties beyond the amount owed to the employee;
- Review your company's vacation policy to ensure that it complies with the Wage Act, and seek timely advice when responding to an employee's complaint regarding his or her treatment under that policy.

The attorneys at Dwyer & Collora LLP have broad experience advising and representing companies in all aspects of employment law.

For more information, please contact:

David A. Bunis

dbunis@dwyercollora.com
617-371-1021

Jody L. Newman

jnewman@dwyercollora.com
617-371-1006

Michael L. Galvin

mgalvin@dwyercollora.com
617-371-1075

Victoria L. Steinberg

vsteinberg@dwyercollora.com
617-371-1023