

MARYLAND EMPLOYERS NEED TO REVIEW THEIR LEAVE POLICIES

By Thomas L. McCally and Tracy Stuger

A recent change in the "Maryland Guide to Wage Payment and Employment Standards" ("Maryland Guide") of the Department of Labor, Licensing and Regulation (DLLR) has a major impact on how all Maryland employers can handle unused vacation pay at an employee's termination. Regardless of information included in employers' handbooks or provided to employees at the time of their hiring, employers are now required to pay out all of an employee's accrued vacation time at the time of the employee's termination.

Previously employers were allowed to include language in their policy manuals to establish whether a departing employee would be paid unused vacation pay. The main crux of DLLR's previous position was that a denial of accrued vacation time could be permitted if the employer's policy regarding forfeiture of vacation leave was communicated to the employee in advance. Therefore, by including provisions of forfeiture within their employee handbooks many employers were protected from subsequent claims of unpaid wages by former employees.

DLLR's new ruling, however, is directly contrary to its previous position on this issue. The department's recent change now provides that "when an employee has earned or accrued his or her leave in exchange for work, an employee has a right to be compensated for unused leave upon the termination of his or her employment regardless of the employer's policy or language in the employee handbook."

The DLLR is the primary regulatory authority for businesses in the state. Its modification undoubtedly comes as a result of the decision made by the Maryland Court of Special Appeals in *Catapult Technology Ltd. v. Wolfe*, No. 997 (August 20, 2007). In *Catapult*, the employer, Catapult Technology, Ltd., maintained a policy that required its employees to provide two weeks notice of resignation. Accordingly, Catapult's employee handbook noted that failure of an employee to provide the required notice resulted in the forfeiture of accrued vacation leave. Although Catapult's policy regarding leave was contained within its employee handbook, the Court of Special Appeals ruled that accrued, unused paid time off is a "wage" and must be paid to employees upon termination.

Although the *Catapult* decision drew concern, the Court's decision in the case was not published and therefore was not binding upon other courts. However, the Court's decision, combined with the recent change in DLLR's guide, represent significant changes to longstanding policies that employers cannot ignore. Both the ruling in *Catapult* and the recent change to the "Maryland Guide" weigh heavily in favor of employees and provide tremendous support to employees who may challenge an employer's decision to withhold payment of accrued vacation leave at termination. Maryland employers must take a proactive approach to ensure that they are adequately protected.

Advice to Employers

Employers must now consider revising their policy manuals to reflect the recent changes. Many employers currently have policies in place that are similar to the policy of Catapult. Common policies that many employers have established in their handbooks, for example, provide that if an employee were to quit his job without providing notice, or

if an employee is terminated for cause, then that employee would be prohibited from being able to collect accrued vacation leave. Based on recent developments, policies such as these may be considered unlawful. Likewise, “use it or lose it policies” in which an employee’s leave is forfeited if not used by a specific date, may also be at risk.

From a fiscal standpoint, employers must also, at all times, be mindful about how accrued leave may be impacting their bottom line. For instance, if any accrued vacation time leave is carried over to a new fiscal period, the accrued leave might have to be treated as a liability on an employer’s balance sheet as it may potentially have to be paid out to an employee at termination.

Employers must also be aware of any universal leave policies that they may have in effect. Universal leave policies generally combine both sick time and vacation. In light of the recent change in the law, companies may want to revisit their use of universal leave policies. Grouping vacation leave that is payable to an employee upon separation, with sick leave, a benefit that is not payable upon termination, could result in the chaos for an employer in determining the apportionment of actual accrued vacation leave at an employee’s departure. Such a policy would expose an employer to unneeded risk and liability.

Please contact Thomas McCally or Tina Maiolo if you have any questions concerning the change in Maryland law.