

NOTE: Changes Made to the Maryland Guide to Wage Payment and Employment Standards of the Department of Labor, Licensing and Regulation.

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At the close of this year's legislative session, the Maryland General Assembly passed emergency legislation, and Governor Martin O'Malley signed into law, a bill that amends the Maryland Wage Payment and Collection Law, Md. Code Labor and Employment §§3-504, 3-505 to provide that an employer's written policy will determine whether an employee **must be** paid unused accrued leave upon his **or her** termination.

This law addresses the concern shared by many employers about a change made to the Maryland Guide to Wage Payment and Employment Standards ("Maryland Guide") of the Department of Labor, Licensing and Regulation ("DLLR"). The change in the Maryland Guide stated that, regardless of the information an employer includes in its handbook or at the time of the employee's hiring, an employer is required to pay out all of an employee's accrued vacation time at the time of the employee's termination.

The newly signed law is directly contrary to the change that was made to the Maryland Guide. In fact, the DLLR has now updated its website regarding the Maryland Guide to state that whether unused vacation time is payable to an employee at termination "depends on the employer's written policy, and whether this policy was communicated to the employee at the time of hiring."

Many suggest that the decision in *Catapult Technology Ltd. v. Wolfe*, No. 997 (August 20, 2007) had much to do with the initial change in the Maryland Guide. In *Catapult*, the employer maintained a policy that required its employees to provide two weeks 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, **a result that was determined to be against public policy**. Although the employer's policy regarding leave was **expressly and clearly** contained within its employee handbook, the Court of Special Appeals ruled that accrued unused paid time off is a wage that must be paid to an employee at his termination.

The recently amended law runs counter to the *Catapult* ruling and specifically provides that an employer is not required to pay accrued leave to a terminated employee in the following circumstances:

- (1) The employer has a written policy that limits the compensation of accrued leave to employees;
- (2) The employer notified the employee of the employer's leave benefits in accordance with §3-504(a)(1);
- (3) and the employee is not entitled to payment for accrued leave at termination under the terms of the employer's written policy.

In light of the recent amendments to the Code, it is now more important than ever for employers to examine their written policies and guidelines regarding vacation pay and accrued leave. Please contact Thomas McCally if you are interested in having us review and update your existing policies for compliance **with these new requirements**.