

Subject: Hitesman & Associates, P.A. Client Alert - Minnesota Supreme Court Decides Unused Vacation Pay Case
From: "Kimberly Gust" <kim@hitesmanlaw.com>
Date: Wed, 21 Nov 2007 15:33:27 -0600
To: undisclosed-recipients;



REGISTER to receive these emails ■ UNSUBSCRIBE from this email service ■ CONTACT us via email

Minnesota Supreme Court Decides Unused Vacation Pay Case

Last fall, we alerted you to a Minnesota case in which the Court of Appeals invalidated an employee handbook provision allowing for the forfeiture of accrued but unused vacation time if an employee was terminated for misconduct. Last week, the Minnesota Supreme Court reversed that decision. The Supreme Court held Minnesota law **does not provide a right to be paid** for earned but unused vacation time or paid-time-off. Specifically, the court found that the terminated employee was not entitled to payment of the earned but unused paid time off **because** the employer's employee handbook allowed for forfeiture of the payment in the employee's circumstances.

Based on the Supreme Court's decision, the rule in Minnesota is that payment for accrued leave upon termination of employment is a matter of contract between the employer and employee. An employment contract may govern the eligibility for paid leave, including conditions applicable to the cash payment of accrued leave in lieu of using the leave. An "employment contract" may include an individual employment contract or collective bargaining agreement. In addition, an employee handbook or personnel policy can be an enforceable contract if its terms are definite and it is disseminated to the employees.

Caution: Many employee handbooks and personnel policies expressly state that the handbook or policy is not a contract. The Supreme Court did not address the impact of such a disclaimer. As a result, it is unclear whether such a disclaimer would in turn preclude a forfeiture provision from being enforceable.

In response to the recent ruling, we recommend the following actions:

- 1) Review employment contracts, collective bargaining agreements, personnel policies, and/or employee handbooks to ensure they address the issue of payment of leave upon termination of employment and specify the circumstances in which such payment is forfeited (if any). If they do not, amend the documents to address the issue. **If the documents are silent on the issue, you may be obligated to pay the leave unconditionally.**
- 2) If your handbook and/or personnel policies contain a disclaimer that the document is not a contract, determine (with the advice of counsel) the impact of the disclaimer on the ability to enforce a provision providing for the forfeiture of accrued leave. Consider breaking the handbook and/or personnel policies into two groups; those that have a disclaimer (i.e., are not contracts) and those without a disclaimer (i.e., are contracts).
- 3) To the extent you want to rely on the handbook and/or personnel policies regarding payment of leave upon termination of employment, you need to ensure distribution to all employees.

If you have questions, please contact [us](#).

The information contained in this ALERT is intended for general information purposes only and does not constitute legal advice relative to a specific situation.