

The "Affirmative Negative" Obligation ***Are Employers Obligated to Pay Unused Vacation Time?***

By Jay S. Becker, Esq.

An employer must affirmatively state that it is not going to pay out the value of any accrued, yet unused vacation time at the time of employment termination--otherwise, the value of such time will be owed.

Although there is no law in the State of New Jersey that requires an employer to provide paid vacation time, most employers do as a means of attracting and retaining talent. However, an employer can create the terms and conditions for receiving such vacation time.

Term and Conditions Employers Should Address

- What happens to any accrued, yet unused vacation time in the event of employment termination?
- What happens to any accrued time that was rolled over from the previous year(s)?
- Can an employer require an employee that voluntarily resigns to provide notice of his intent to resign, before being able to recover the value of any accrued time?
- What happens to any accrued yet unused vacation time in the event of a termination for cause?

The aforementioned are just a few examples of the types of terms and conditions an employer can set with respect to the payment of any accrued yet unused vacation time. However, it is critical to the validity of such terms and conditions, that the employer provide clear and concise written notice to the employee, whether that notice is contained in an employee handbook, personnel manual, offer letter, employment contract, etc.

The objective is for the employee to have actual notice of the employer's policy on the subject, thereby effectively reducing or altogether eliminating an employee's expectation with respect to receiving the value of any accrued, yet unused vacation time at the time of employment termination.

If an employer does provide paid vacation, yet does not affirmatively state what happens to the accrued yet unused time upon employment termination, there is ample legal authority requiring the payment of such accrued, yet unused vacation time.

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