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USED OR NOT - BUSINESSES MUST COMPENSATE EMPLOYEES FOR VACATION PAY

Case Updates

8.11.21

Colorado's Supreme Court shined a bright light on the importance of risk management in the employment world this week. Examining the hot issue of vacation pay, this particular case offers excellent guidance to employers not only in Colorado, but nationally on the import of managing and dispersing employee unused vacation pay. Employers in Colorado will need to revisit their paid time off and vacation policies after the Colorado Supreme Court's recent decision in *Nieto v. Clark's Market, Inc.*, wherein the court ruled that a former employee of Clark's Market was entitled to compensation for earned and determinable vacation pay, despite the presence of an agreement purporting to forfeit earned vacation pay, after separation from the company.

FACTS

Carmen Nieto was employed as a grocery store worker for over eight years with Clark's Market. Upon separation, she claimed that she was owed compensation for vacation time she never utilized during her employment. Clark's Market disputed her claim, relying on a provision in their employee handbook which read, "If you are discharged for any reason, or do not give proper notice, you will forfeit all earned vacation pay benefits." The lower courts granted Clark's Market's motion to dismiss based on Colorado Wage Claim Act (CWCA) provisions allowing employers to enter into agreements with employees regarding vacation pay. The appellate court went even further. It affirmed the dismissal and found that given the nature of Nieto's separation from the business, her vacation time had not "vested" under the terms of the employee handbook that both parties had previously agreed upon. Despite this, the Supreme Court of Colorado overturned the dismissal and held that Nieto was entitled to receive payment for her unused, earned vacation time. The Supreme Court also ruled that any term of an agreement that purports to forfeit earned vacation pay is void. As such, Nieto was entitled to collect for 136 hours of vacation time totaling \$2,244.

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"EARNED" VACATION PAY

The Supreme Court focused on the term "earned" in its decision. It reasoned that although businesses do have the right to decide whether employees are given vacation pay, it may not be denied to that employee once it is earned. It also determined that the terms "earned" and "vested" are one and the same. Citing the intended purpose and public policy underpinnings of the CWCA, the court found that using a separate vesting requirement for earned vacation pay would be contrary to the intent of the law, which is to provide protection to employees in instances of this nature. The bottom line is that when an employer in Colorado chooses to provide vacation pay to its employees, an employee is entitled to receive all vacation pay that is "earned and determinable" but has not been paid upon separation from employment. Further, any agreement purporting to forfeit earned vacation pay is void.

The CWCA does not create an employee right to vacation pay, but if an employer decides to offer this benefit to employees, it cannot be forfeited once earned. Any employee handbook provision, or other document that removes this right from an employee is void and unenforceable. Going forward this may impact when, how and if employers continue to provide vacation pay for their employees.

WSHB employment law professionals follow cutting edge developments throughout the nation. We keep our pulse on emerging issues and provide sage guidance on how to navigate difficult situations. At the same time, we take great pride in risk management. Understanding and anticipating potential claims as well as avoiding litigation is our goal for every client. Should you need clarification on whether your current employment practices comply with this ruling, or have further questions, please do not hesitate to reach out to the author of this article or any member of WSHB employment law team.