

Seventh Circuit Makes Several Points Very Clear Regarding Illinois Vacation Pay

Labor & Employment Law Update

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The U.S. Court of Appeals for the Seventh Circuit issued a recent decision that made several pronouncements regarding Illinois vacation pay—many of which seem straightforward—but they were pursued to a final decision by a federal appellate court, so a brief refresher course appears to be in order.

First, as the decision makes clear, the law does not require employers in Illinois to provide paid vacation benefits to employees. However, when an employer in Illinois provides paid vacation benefits to employees, Illinois law requires the employer to pay an employee the value of earned-but-unused vacation time when the employee's employment ends. And that payment is generally required to be made on the next regular pay date following the employee's termination.

Second, if an Illinois employer provides vacation benefits to full-time employees, Illinois does not require the employer to give vacation benefits to part-time employees, too. Instead, Illinois law gives employers substantial freedom to determine the eligibility requirements for any vacation benefits an employer may decide to provide.

Lastly, the seventh circuit addressed the issue of vacation benefit forfeiture, and stated that if a vacation policy exists under which employees earn vacation based upon length of service, employees must be paid, pro rata, for the amount of vacation earned as of the employee's termination date. The court gave the following example: "if a full-time employee ceases work in the middle of the year, he receives vacation pay in proportion to how long he was worked that year." In other words, if an employee works for half of a year, she must be paid half the value of vacation pay she would have earned working a full year. If the employee works 20% of the year, she must be paid 20% of the value of vacation pay she would have earned working a full year.

The bottom line is that Illinois is quite permissive with respect to employers establishing the terms and eligibility requirements of a vacation policy, so long as that policy provides for the payment of earned-but-unused vacation to employees at the time of termination. That said, in order to avoid potential legal

pitfalls, we recommend that all employers, no matter where their workforce is located, consult with experienced labor and employment attorneys prior to instituting or altering any vacation policy.

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