

**PAYOUT OF ACCRUED BUT UNUSED LEAVE  
AT TERMINATION: THE RULES CHANGE--YET AGAIN!**

Last Fall, the Maryland Department of Labor, Licensing and Regulation (DLLR) changed its long-standing policy with regard to the payout of accrued but unused leave when an employee is terminated.

Under the former policy, which had been in effect for a number of years, an employee's accrued but unused leave was considered a wage and thus was payable as a terminal benefit when the employment ended. The DLLR, however, recognized that when an employer had a written policy known to the employee that provided for the forfeiture of any accrued leave upon termination, the policy would apply and the employer would not be required to make a payout of the accrued but unused leave.

In the fall of 2007, the DLLR announced that it was changing its long-standing position in cases in which the employer has a clear written policy that provides for the forfeiture of accrued but unused vacation benefits. According to the DLLR, an employer could no longer restrict the payout of accrued but unused vacation leave, but, rather, had to pay it out on termination, regardless of any written policy the employer may have. Based on this change in enforcement policy, many Maryland employers have modified their prior policies regarding the payout of accrued vacation leave.

Apparently concerned with the DLLR's abrupt change in policy, the Maryland Legislature passed emergency legislation, Senate Bill 797, which reverses the DLLR policy change and allows an employer to refrain from paying any accrued but unused leave to a terminated employee provided the employer has a written policy that limits the payout of accrued leave to employees, the employer has notified the employees of this policy and the employee is not entitled to payment for the accrued leave at termination under the terms of the employer's written policy.

This legislation was enacted as an emergency measure and has been approved by the Maryland Legislature. The Governor signed the legislation yesterday, April 24, 2008, and, by its terms, it immediately becomes effective on that date.

**Bottom Line**

Now that the Governor has signed this new legislation into law, Maryland employers can resume their prior practice of limiting the payout of accrued but unused vacation benefits upon termination. Of course, in order to have such a policy, it must be clearly stated in

writing and provided to your employees in advance. Keep in mind, however, that even when an employer has a clear policy that provides for the forfeiture of accrued vacation and other leave benefits upon termination, many savvy employees, aware of that policy, will make sure that they use every last minute of their accrued leave before they announce their termination.

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