

## **Are Nebraska Employers Required to Pay Unused Vacation When an Employee Quits?**

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Most Nebraska employers are familiar with the Nebraska Wage Payment and Collection Act (“Act”). The Act has three primary provisions: (1) an employer must provide thirty (30) days advance written notice before altering its regular pay day; (2) no deductions may be made from an employee’s wages unless required by law, required by court order, or authorized by the employee in writing; and (3) unpaid “wages” owed by a private-sector employer to an employee upon separation must be paid on the next regular pay day or within two (2) weeks of the date of termination, whichever comes first.

One nagging question that many Nebraska employers have struggled to answer is: Do I have to pay accrued unused vacation to employees upon their resignation or termination if my policies provide otherwise. Nebraska courts had danced around this issue for years without answering it head on. Now one has, although it may not be the final answer.

In *Roseland v. Strategic Staff Management, Inc.*, 14 Neb.App. 434 (Jan. 24, 2006) the plaintiffs were four management-level employees who previously worked for Strategic, a Nebraska employee leasing company. In 1998 all four plaintiffs voluntarily resigned from their employment with Strategic and each had accrued unused vacation ranging from one (1) to three (3) weeks. Despite demands from the plaintiffs for payment for their accrued unused vacation, Strategic refused to pay them. In denying their claim, Strategic relied upon the written policy in its employee handbook that provided as follows:

In the event that available vacation is not used by the end of the benefit year, it will not be carried over. Upon termination, employees will not be paid for unused vacation time.

(emphasis in original handbook). A revision made around the time of the plaintiffs’ resignations strengthened the policy to read:

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Accrued but unused vacation will not be carried over from year to year. **Upon resignation or termination, employees will not be paid for vacation time available.**

(emphasis in original handbook).

In April 2000 the plaintiffs filed a lawsuit seeking judgment against Strategic in the amount of \$8,788.29 under the Act. In addition, they sought attorneys' fees (which are recoverable under the Act) and statutory punitive damages to be placed in the state's common schools fund.

The trial court concluded that Strategic's "policy of refusing to pay an employee for unused vacation time directly conflicts with state law and is, therefore, void." Thus, the district court awarded the Plaintiffs \$8,788.29 in unused accrued vacation, as well as attorneys' fees.

On appeal, the Nebraska Court of Appeals reversed the trial court's decision in a split two-to-one decision. The majority opinion relied heavily on the Act's definition of "wages" as "compensation for labor or services rendered by an employee, including fringe benefits, when previously agreed to and conditions stipulated have been met by the employee . . ." NEB.REV.STAT. §48-1229(4). Although "wages" clearly include fringe benefits such as vacation, an employee's entitlement to such requires that such vacation was "previously agreed to and conditions stipulated have been met by the employee." The majority opinion inferred from a previous Nebraska Supreme Court decision that the issue of entitlement to payment for unused vacation can be decided based upon the language of the employee handbook. In *Roseland*, Strategic's employee handbook specifically provided that employees would not be paid for vacation time upon the employee's resignation or termination of employment. As a result, the Nebraska Court of Appeals held that "[b]ased upon the clear language of Strategic's employee handbook, the [plaintiffs] are not entitled to payment for unused vacation time upon resignation or termination of employment."

**Lesson:** Whether the Nebraska Court of Appeals' decision in *Roseland* represents the last word on this issue is unknown as the plaintiffs have asked the Nebraska Supreme Court to review the decision. Regardless, all Nebraska employers would be well advised to review their written policies and actual practices with respect to payment for unused accrued vacation to ensure they accurately reflect the employer's intentions.

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