

NEBRASKA DISTRICT COURT PROVIDES OPINION ON PAYMENT OF PTO UPON SEPARATION OF EMPLOYMENT

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In 2006, the Nebraska Supreme Court decided *Roseland v. Strategic Staff Mgmt.*, 272 Neb. 434, 722 N.W.2d 499 (2006), wherein the Court determined that full-time employees were entitled to payment of accrued paid vacation time upon their voluntary resignation. The court determined that accrued vacation time that is part of an employment agreement is due and payable as wages upon termination of employment because the payment of vacation pay is an "agreed to" benefit between the employer and the employee. The opinion did not address payment of sick leave or paid time-off upon termination.

After the *Roseland* opinion, the 2007 Nebraska Legislature passed and the Governor signed legislation (LB255) which stated that "paid leave, other than earned but unused vacation leave, provided as a fringe benefit by the employer shall not be included in the wages due and payable at the time of separation unless the employer and the employee or the employer and the collective bargaining representative have specifically agreed otherwise."

Recently, Lancaster County District Court Judge Paul D. Merritt ruled in *Gallentine v. B&R Stores, Inc.* (June 18, 2008) that an employer can determine by policy whether paid time off ("PTO") benefits must be paid out at separation. The sole issue was whether PTO constitutes earned but unused vacation time that is due and payable to an employee as wages upon termination from employment. In *Gallentine*, the Defendant employer's handbook stated in part,

"[U]pon termination, associates will be paid for up to a maximum of four weeks (160 hours) of accrued and unused paid time off in their last paycheck. However, no accrued and unused paid time off will be paid to any associate who (1) fails to give two weeks notice upon resignation; (2) is involuntarily terminated; or (3) has less than the required amount of continuous service as described in the policy."

The Plaintiff, a Department Manager, voluntarily resigned from employment with Defendant without providing two weeks notice, arguing that he did not have to provide two weeks notice since the manual also provided that employment is terminable at will. At the time of his resignation, the Plaintiff had accrued 45 hours of PTO.

The District Court found that PTO constitutes wages under the Nebraska Wage Payment and Collection Act (the "Act"). However, the Court determined that even though PTO constitutes wages, PTO is not unused vacation leave. As such, the Defendant employer was not obligated to pay out accrued PTO to the Plaintiff. The District Court ruling means that employers are free to determine by policy whether PTO should or should not be paid out at an employee's termination.

This Lancaster County District Court Order is not binding, but it does provide employers with some guidance on how to structure employee policies when addressing PTO.

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