

Labor & Employment Law Alert

May 9, 2013 • Heidi Gutttau-Fox, Editor

BAIRD HOLM ^{LLP}
ATTORNEYS AT LAW

Nebraska Supreme Court Holds PTO Same as Vacation

The Nebraska Supreme Court, in a ruling on Friday, held that a Paid Time Off (PTO) plan which is indistinguishable from vacation leave in its drafting and application requires that PTO hours be paid out upon separation from employment under the Nebraska Wage Payment and Collection Act.

Two former employees of PayFlex Systems USA, Inc. (PayFlex) sued PayFlex separately in Douglas County Court asking for payment of their accrued but unused PTO. The County Court consolidated the two cases. The issue before the County Court was whether

The Court held that, “Regardless of the label that PayFlex attached to its PTO hours, they were indistinguishable from earned vacation time under § 48-1229.

a 2007 amendment to the Nebraska Wage Payment and Collection Act permitted PayFlex to refuse to pay unused PTO benefits to separating employees even though the statute required it to pay unused vacation leave. PayFlex argued that PTO hours were a hybrid benefit which did not constitute vacation leave. The County Court rejected PayFlex’s argument and granted summary judgment to the former employees. The Douglas County District Court affirmed the decision of the County Court. PayFlex appealed to the Nebraska Supreme Court.

The issue presented to the Nebraska Supreme Court was whether Neb. Rev. Stat. § 48-1229 (Reissue 2010) of the Wage Payment and Collection Act (Wage Payment Act) entitles an employee, upon separation of employment, to collect earned but unused PTO hours despite a provision in an employee manual that the employer will not pay them. The Court held that, “Regardless of the

label that PayFlex attached to its PTO hours, they were indistinguishable from earned vacation time under § 48-1229. Like earned vacation time, the appellees had an unconditional right to use their earned PTO hours for any purpose. Because the Wage Payment Act requires an employer to pay earned but unused vacation leave to an employee upon separation of employment, the district court correctly affirmed the county court’s summary judgment that ordered PayFlex to pay the appellees their unused PTO benefits.”

In reaching its conclusion, the Nebraska Supreme Court noted that the PayFlex payroll manager stated that in her eleven years of employment, PayFlex had never provided separate vacation leave and sick leave benefits. The Court also noted that the vice president of human resources testified that employees, if they wished, could use all of their accrued PTO hours for vacation time. Moreover, as employees

used their PTO hours, PayFlex listed their paid-out hours as part of employees' total earnings on their paychecks. PayFlex also provided up to three days of funeral leave for employees, which it did not deduct from their PTO hours.

The Court then analyzed the differences between vacation and sick leave. "[A] 'vacation' from work is ordinarily understood to mean a paid leave of absence granted to an employee for rest and relaxation." Vacation is "not conditioned upon anything other than the employee's rendering services for the employer." On the other hand, "paid sick leave is ordinarily understood to mean an employee's paid absence from work for illness or disability." The Court then concluded that "the distinction between paid vacation leave and paid sick leave is that sick leave is contingent upon an occurrence and vacation leave is not."

Given the facts cited by the Court in the context of its analysis of the law, the Court was unequivocal: PayFlex employees' earned but unused PTO hours were vacation leave under the Wage Payment Act and thus payable upon separation. ■

David J. Kramer

Labor, Employment and Employee Benefits Law or Related Services

Allison D. Balus (6)
Kirk S. Blecha (1)
Jonathan R. Breuning (1)
Jeremy T. Christensen (1)
Gary N. Clatterbuck
Adam L. Cockerill (1)
Amy L. Erlbacher-Anderson
Heidi A. Guttan-Fox (1)
Christopher R. Hedican (5)
Thomas E. Johnson
David J. Kramer
Kelli P. Lieurance (1)
Lindsay K. Lundholm (1)
George E. Martin
Mark McQueen (7)
Scott P. Moore (4)
Scott S. Moore (3)
D. Ashley Robinson (1)
R.J. (Randy) Stevenson (1)
Anthony D. Todero (8)
Todd A. West (9)

All attorneys are admitted to practice in Nebraska unless otherwise noted. (1) Also admitted to practice in Iowa (2) Also admitted to practice in Missouri (3) Also admitted to practice in Iowa and Colorado (4) Also admitted to practice in Iowa and Missouri (5) Also admitted to practice in Iowa, Kansas, Missouri, Wyoming, Montana, and South Dakota (6) Also admitted to practice in Iowa, Virginia, and the District of Columbia (7) Also admitted to practice in Texas and West Virginia. (8) Also admitted to practice in California and Minnesota. (9) Also admitted to practice in Iowa, Montana and North Dakota.

Labor & Employment Law Update is intended for distribution to our clients and to others who have asked to be on our distribution list. If you wish to be removed from the distribution list, please notify laborupdate@bairdholm.com.



Baird Holm LLP

1700 Farnam St
Suite 1500
Omaha, NE 68102

402.344.0500
402.344.0588

www.bairdholm.com