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ATTENTION EMPLOYERS: NEW COURT DECISION  
REGARDING VACATION POLICY MAY COST YOU IF YOU  
DON'T REVIEW YOUR POLICIES

By: **Robin N. Kelleher**

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Earlier this month, the Minnesota Court of Appeals issued an opinion which impacts the payment or non-payment of unused vacation time to terminated employees. In *Lee v. Fresenius Medical Care, Inc.*, the court concluded that, if an employee has "earned" or "accrued" vacation time, those earnings are "vested," and must be paid to an employee who is terminated for misconduct, even if the employer's policy states that such an employee "forfeits" compensation for unused vacation time at termination under specified conditions.

In reaching its decision, the court first cited Minnesota's law governing the payment of wages to a discharged employee. Minnesota Statute § 181.13 provides "[w]hen any employer employing labor within this state discharges an employee, the wages or commissions actually earned and unpaid at the time of the discharge are immediately due and payable upon demand of the employee." An employer who does not pay wages or commissions "earned" within 24 hours of an employee's demand is in default and subject to additional statutory penalties. The statute does not specifically define "wages," but the Court of Appeals (1994) had earlier determined, in *Brown v. Tonka Corp.*, that the term "wages" does include accrued vacation time that the employee had accumulated but not used.

In *Lee*, the employer had a policy which stated, "In addition, if your employment is terminated for misconduct, you will not be eligible for . . . payment of earned but unused [paid time off] unless required by state law." (Emphasis added) Lee was fired for misconduct and the employer paid her for accumulated wages, but did not pay her for earned but unused vacation time and she sued. The court determined that, despite the employer's policy, § 181.13 did not include an exception for employees discharged for misconduct, so Lee was entitled to payment for her "earned" vacation time. While the court noted that an employer's liability for an employee's vacation pay is a matter of contract, it concluded that the policy in *Lee* was in violation of § 181.13, and therefore had no legal effect.

Despite this decision, we believe that it is still possible to draft a policy under which employers can avoid payout of vacation time at separation to em-

employees who engage in misconduct, fail to give adequate notice of resignation, or violate their employment agreement. However, this will require careful drafting to avoid "vesting" of vacation pay as in the *Lee* case, and should be done by legal counsel.

Finally, employers with employees in other states may also be required to pay terminated employees for unused vacation time. Under the law of most states, compensation for unused vacation is a matter of policy and contract, as in Minnesota, but several states, including Iowa, Illinois and California, require that all unused vacation time be paid at termination, no matter what the circumstances. In light of the *Lee* case and the variation in state laws, we suggest you give us a call to review your vacation policy for legal compliance and to ensure that the policy accomplishes your objectives under all circumstances.

For more information regarding this case and its impact on your business, please contact the law firm of Seaton, Beck, & Peters, P.A. at (952) 896-1700 or [www.seatonlaw.com](http://www.seatonlaw.com) and ask for any available attorney. We would be happy to assist you.

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**For HR & Labor Relations Professionals**

**Thursday, October 12, 2006**

**8:30 a.m. to 4:30 p.m.**

**Registration & Continental Breakfast beginning  
at 7:30 a.m.**

**Cost: \$295 per attendee  
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We believe this is the only program in the Midwest created for labor relations experts, and your presence will be a significant contribution to the program. To the greatest extent possible, we will encourage open discussion and the sharing of ideas among panelists and attendees.

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