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## Minnesota Supreme Court Approves “Use it or Lose it” Vacation Policies

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On November 15, 2007, the Minnesota Supreme Court announced that Minnesota employers may lawfully set qualifying conditions on employees’ use or receipt of payment for vacation time. This much-anticipated decision reverses a 2006 appellate court opinion, which found that such conditional policies were unlawful in Minnesota.

In *Lee v. Fresenius Medical Care Inc.*, the employer had a paid-time off (PTO) policy which provided that employees accrued PTO hours at a set rate per pay period based upon their length of service and hours worked. The PTO policy also provided that employees who resigned with proper notice would be paid for earned but unused paid time off. On the other hand, employees who failed to give proper notice of resignation or who were terminated for misconduct forfeited any payment for earned but unused paid time off.

In August 2002, Lee was terminated for misconduct from Fresenius. At the time she was terminated, she had accrued about 181 hours of paid time off. Since she had been terminated for misconduct, Fresenius refused Lee’s demand for earned but unpaid time off based upon the terms of its PTO policy. Two year after her termination, Lee sought payment for the earned, but unused paid time off by initiating a proceeding in conciliation court. Ultimately, the dispute proceeded to the Minnesota Court of Appeals, which found Fresenius’ PTO policy violated Minnesota state law because it led to forfeiture of earned “wages.”

The Supreme Court reversed the Court of Appeals’ decision and upheld Fresenius’ paid time off policy. In particular, the Court found:



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Minnesota law does not provide for employee vacation time or pay as a matter of right; rather, the law permits employers to choose whether to grant vacation benefits. When vacation benefits are granted, employers have considerable discretion in choosing how and whether to compensate employee for vacation time. If an employer does offer an employee paid time off, what is earned . . . is not a right to direct monetary payment; what is earned is instead a right granted by the employer to take time off from work in the future but nevertheless be paid, subject to the terms specified in the employment [policy] that grants paid time off.

The Court also held that when an employer chooses to offer paid time off as a benefit, employers may set conditions on the circumstances under which employees are entitled to paid time off and payment in lieu of paid time off.

### **Practical Implications of the Fresenius Decision**

The *Fresenius* decision makes it clear that employers may generally design their vacation pay policies to describe the conditions as to when employees may take vacation or receive it as a paid benefit. Under the decision, Minnesota employers may generally have “use it or lose it” vacation policies and set other conditions on eligibility. Stated differently, Minnesota employers may have vacation policies which preclude employees from rolling over accrued vacation from one year to next or from taking a cash payout in lieu of taking vacation. The *Fresenius* decision also makes clear that employers may draft their vacation policies to place caps on the maximum amount vacation leave benefits that may be earned. Finally, in the same token, the *Fresenius* decision also makes clear that earned and accrued vacation benefits are considered “wages” under Minnesota law. Thus, if employers fail to describe within their policy when

vacation may be used or forfeited, employers will be required to pay the accrued vacation.

Employers that operate in multiple states should be mindful that each state has its own laws with regard to “use or lose it” or conditional vacation policies. Thus, while the *Fresenius* decision clarifies how vacation pay policies may be drafted and implemented in the State of Minnesota, such a policy may not comply with the laws of other states. For more information concerning how the Supreme Court’s decision in *Lee v. Fresenius Medical Care Inc.*, may impact your vacation pay policy, please feel free to contact Attorneys Thomas R. Revnew, Bryan T. Symes, or any other Seaton, Beck & Peters, P.A. attorney, at (952) 896-1700. We are happy to offer a free initial courtesy telephone discussion on this issue or any other labor and employment law issue. We look forward to hearing from you!

### **Are Your Employee Handbook And Employment Documents Protecting Your Firm Or Putting You At Risk?**

If your Company’s employee policy handbook, hiring and discipline materials, drug and alcohol testing policies, or other critical labor or employment documents or policies are more than 2 years old (or non-existent), your Company is at risk. Call us at 952.896.1700 or fax 952.896.1704 if you are interested in a complimentary review of your materials and information on our cost-effective “fixed fee” program to customize and update these materials for your Company. The cost is \$775.00 for handbook and employment materials (with 2 hours customizing time included) and \$375.00 for drug and alcohol testing policy and materials (with 1 hour customizing time included).