Waiver of Vacation Pay on Termination in Collective Agreements Must be Clear and Unmistakable, California Court Rules

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Practices

Labor Relations

California law prohibits "use it or lose it" vacation policies. Under the California Labor Code (Section 227.3), employers must pay terminated employees all accrued vacation, "unless otherwise provided by a collective bargaining agreement." Examining the meaning of the collective-bargaining-agreement exception for the first time, the California Court of Appeal has ruled that an employer is liable for unpaid pro rata vacation where its agreement with the union did not "clearly and unmistakably waive" the employees' rights under Section 227.3. *Choate v. Celite Corp.*, No. B239160 (Cal. Ct. App. May 2, 2013). However, the Court reversed judgment imposing waiting time penalties against the employer because it found the employer did not act willfully.

Background

Under its collective bargaining agreements ("CBAs") with the International Chemical Workers Union/C-UFCW Local 146-C, Celite Corporation granted employees between one week and five weeks of vacation annually, based on each employee's length of employment and the number of hours worked the prior year (the "vacation allotment"). The CBAs provided that terminated employees would receive "whatever vacation allotment is due them upon separation." Based on this language, for 25 years, without objection from the Union, Celite paid terminated employees for the vacation time already allotted to them for the year of their termination, but did not pay them for the time they had accrued toward the following year's allotment.

In March 2007, Celite laid off several employees and paid them their vacation allotment for 2007, but did not pay them for vacation time they had accrued toward the 2008 allotment accrued between January 1, 2007, and March 1, 2007.

The employees filed a class action against Celite seeking the pro rata portion of the 2008 allotment accrued in 2007, under Section 227.3 of the California Labor Code, and waiting time penalties for an alleged willful failure to pay pro rata vacation time, under Section 203 of the Code.

Celite eventually paid the employees the pro rata vacation, and the employees asked the trial court to enter judgment for the waiting time penalties. The trial court granted the employees' motion, finding the CBAs did not clearly waive the employees' right to pro rata vacation pay and the company acted unreasonably in relying on the CBAs in refusing to pay the pro rata vacation. Celite appealed.

Waiver Unclear

Celite first argued it was not liable for waiting time penalties because it never owed the pro rata vacation time in the first place. It contended the Union waived the employees' rights under Section 227.3, because the CBAs limited vacation pay for terminated employees to the vacation allotment for the year of termination.

Notwithstanding the parties' understanding of their contractual language and decades-long practice, the appellate court found the CBAs did not clearly and unmistakably waive the right to pro rata vacation pay. The CBAs did not discuss pro rata vacation pay or "cite section 227.3," the Court said. In addition, it found the reference to the vacation allotment was insufficient to constitute a waiver.

The Court, however, determined Celite was not liable for waiting time penalties because its failure to pay out the pro rata vacation was not willful. The company, the Court ruled, reasonably believed the CBAs

waived the right to pro rata vacation based on its 25-year practice and the Union's acquiescence.

If you have any questions about this or other workplace developments, please contact the Jackson Lewis attorney with whom you regularly work.