

<http://www.laboremploymentlawblog.com/>

SHEPPARD MULLIN
SHEPPARD MULLIN RICHTER & HAMPTON LLP

Labor & Employment Law BLOG
Up-to-date Information on Labor and Employment

07 | 1 | 2009 Posted By

Carefully Drafted Vacation Plans Will Be Enforced

On June 29, 2009, a California Court of Appeal enforced an employer's vacation plan as it was written rather than as the employee asked the Court to interpret it. Accordingly, the Court dismissed plaintiff's claims.

In Owen v. Macy's, Inc., the Court confirmed that California law permits an employer to offer new employees no vacation time. If a written company policy forewarns new employees that their compensation package does not include paid vacation during their initial employment, then no vacation pay is earned and none is vested. When such a policy is in place, as it was in this case, employees cannot claim any right to vested vacation during their initial employment because they know in advance that they will not earn or vest vacation pay during this period.

The Court reiterated that the California Labor Code does not require that an employer provide its employees with any paid vacation at all, contractually or as matter of policy, as part of the employee compensation package. The Court rejected plaintiff's argument that the department store's initial six-month waiting period – during which an employee earns zero vacation credit – was unlawful.

The Court reasoned that the company's policy was analogous to an employer's written vacation policy that prevents an employee from earning additional vacation compensation when the employee has "maxed out" or reached the "cap" on unused vacation time – which have been held to be enforceable in California. At the same time, the Court reminded California employers that they are not allowed to deprive employees of accrued but unused vacation rights. In other words, California employers may not have "use it or lose it" vacation policies.

The lesson for employers is that they need to have carefully drafted vacation plans. If vacation policies are poorly drafted, employers can end up having to pay vacation pay on termination of employment when the Company never intended to do so. Prudent employers will work with their labor and employment counsel to ensure that their policies produce the desired results.