Employment Law Advisory for 8/10/2011

When Is A Sabbatical Program Really Vacation Pay, Subject To Labor Code Section 227.3?

During the boom years, a significant number of employers in Silicon Valley adopted "sabbatical programs." The programs varied but the general concept was the same. Generally, after a fixed number of years, usually seven or greater, an employee was entitled to take a paid sabbatical of two to three months. Often, the programs were available only to certain select segments of the employee population. Most employers operated on the belief that a sabbatical program was not an accruing vested benefit and therefore employees who left, voluntarily or otherwise, were not paid for an "accrued" sabbatical in the same way employees were paid for accrued vacation under Labor Code Section 227.3 and the California Supreme Court's decision in *Suastez v. Plastic Dress-Up Co*.

A California appellate court's recent opinion in *Paton v. Advanced Micro Devices, Inc.*, suggests that the distinction between a sabbatical program and vacation pay subject to Labor Code Section 227.3 is not as clear as employers might like to believe. In *Advanced Micro Devices*, the appellate court reversed a grant of summary judgment in favor of the employer and concluded that a reasonable jury comparing the employer's sabbatical policy and the employer's vacation policy might conclude that the sabbatical policy was really a program intended to offer an increased vacation benefit for longer term employees. From the appellate court's perspective, the critical question for a jury to resolve is whether the sabbatical program was intended as an incentive to induce experienced employees to continue working for the employer and increase their productivity and creativity upon return to work or, whether the sabbatical program was actually intended as a longer vacation benefit for long term employees. Although the facts surrounding the sabbatical program were undisputed, the appellate court concluded that a jury was required to decide the ultimate fact of the employer's purpose in establishing the sabbatical policy. As a result, the appellate court reversed the grant of summary judgment for the employer and sent the case back to the trial court.

Most employers fully understand that they must pay an employee all accrued and unused vacation at the employee's final rate of pay when the employee terminates. However, the court's opinion in *Advanced Micro Devices* serves as a reminder that the label placed on paid time off is not necessarily decisive. Employers should carefully examine any paid time off benefit or program to make sure they do not run afoul of Labor Code Section 227.3 and the California Supreme Court's opinion in *Suastez v. Plastic Dress-Up Co.* If you have any questions regarding how the *Advanced Micro Devices* opinion may apply to your policies and paid leave programs, or any other issue relating to employment law, please contact one of our attorneys:

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