



**December 16, 2016**

## **For Now, Dollar Value of Accrued Vacation Isn't Required on Paystubs**

By James M. Nelson and Michelle L. DuCharme

California employers don't have to include the monetary value of accrued but unused vacation time on wage statements until the payment is due, according to a recent California Court of Appeal decision. But that could change if the state legislature decides to react to the decision.

In *Soto v. Motel 6 Operating LP*, a former motel employee sued her employer under the state Private Attorneys General Act (PAGA), asserting a labor code violation for failing to include such information on wage statements.

Under PAGA, [employees can bring lawsuits](#) on behalf of themselves and other workers, seeking penalties for alleged labor violations—including wage statement errors.

As employers in the state are likely aware, California Labor Code Section 226 lists nine items that must be identified on each wage statement issued to employees with their paychecks on payday.

Other statutes require additional items to be reported on payday statements. For example, another section of the labor code requires employers to provide the statements semimonthly or each time employees are paid.

California law also provides that vacation time must accrue and vest like wages, and any accrued but unused vacation time must be paid as part of final wages when the employment relationship ends. Accrued vacation time cannot be forfeited because it is considered wages earned as "time worked."

However, the monetary value of accrued vacation time isn't included in the labor code's list of items that must be identified on wage statements.

In *Soto*, the state appellate court sided with the employer, finding that under existing California law, vacation pay cannot be fairly defined as "gross wages earned" or "net wages earned" until the termination of the employment relationship.

The "courts have recognized that although vacation time vests as labor is provided, unused vacation time does not become a quantifiable vacation wage until the employee separates from the employment," the court of appeals ruled.

This means that, for now, periodic vacation time reporting is not required. However, that may not be the end of the story. The California legislature could decide to change the law in its next session.

### **Considerations**

Even though the law has not changed, California employers should consider vacation reporting as a planning and management issue for several reasons.

First, this is but one court of appeal decision, which may be appealed to the California Supreme Court. Second, although the law will not change for the remainder of this year, the state legislature may revisit the issue in the future. This is certainly possible as the court of appeal explicitly stated that requiring employers to regularly account for unused paid vacation is a policy matter that should be decided by the legislature and/or the regulatory agencies, not the courts.

Another reason consideration may be prudent is that if an employer chooses to add vacation accruals to wage statements, implementation may prove complex.

Some of the complications are addressed below to aid California employers as they begin to consider the mechanics of the issue.

An employer must pay out all accrued but unused vacation when the employment relationship ends. The "time of termination" payment event is a static calculation, and most of the time it is an employee's current effective hourly rate multiplied by the number of hours accrued.

Calculating vacation accruals during employment is a dynamic exercise since both the value and accrual balance will change over time as new vacation time is earned and the existing balance reduces due to vacation time taken.

The accrual rate may be different for different workers and may change for a particular employee during that employee's relationship with a California employer.

For example, employees who have been employed longer may accrue vacation time more quickly than newer employees in the same position.

As a result, California employers would need to regularly reconcile each employee's vacation accruals with the vacation time taken and provide a statement for each employee with the amount and value of accrued time remaining for vacation.

Furthermore, the value of an employee's vacation time fluctuates with the value of the employee's compensation. California employers should therefore pay particular attention to any changes in an employee's pay rate if providing the value of an employee's accrued vacation.

Other issues arise from reducing balances to account for time used. Employees who schedule vacation time but do not end up taking the scheduled days off may require a payroll adjustment.

If reported on a payday statement, the change in the vacation usage will need to be accounted for.

Judgment call decisions as to whether particular hours or days are properly attributed to sick or vacation time are another area of potential peril.

Regularly monitoring vacation time accruals will help avoid incorrect reporting. How frequently this monitoring should occur can vary depending on an employer's vacation and wage payment policies.

## **Planning**

Although no change is likely to happen this year, California employers may want to begin thinking about these practical considerations for 2017 and 2018.

It isn't clear whether the California Supreme Court will get involved or whether the legislature will intervene. If the state high court or legislature does act, however, the window to implement any new reporting requirement could be quite narrow.

As demonstrated by the [recent court decision enjoining the Fair Labor Standards Act regulations purporting to modify the salary level for exempt status](#), significant changes in payroll and compensation practices present their own unique challenges.

Therefore, it may be worth considering what changes would need to be made and what the process would look like if an employer either voluntarily chose to commence reporting vacation accrual on the payday statement or was compelled to do so by a future court decision or statute.

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