

## EMPLOYMENT LAW CLIENT E-ALERT

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### MASSACHUSETTS SUPREME JUDICIAL COURT RULES VACATION PAY IS A MUST FOR TERMINATED EMPLOYEES

The Massachusetts Supreme Judicial Court (SJC) issued a decision last week confirming the requirement that employers pay involuntarily terminated employees their accrued and unused vacation. The decision, *Electronic Data Systems Corporation v. Attorney General*, is significant because it reveals that the courts will give great deference to the Attorney General's interpretation of the Massachusetts Wage Act with regard to vacations. The decision also makes clear that the courts will carefully scrutinize an employer's vacation policy to ensure they comply with the Attorney General's position.

Electronic Data Systems Corporation (EDS) had a written vacation policy that provided that after the first year of employment, the amount of an employee's paid vacation time was based on the number of calendar years the employee worked for EDS. Under the policy, a person who had been employed for twenty years or more was eligible for five weeks of paid vacation per calendar year, to be used by December 31 or it was lost. The policy further provided that "vacation time is not earned and does not accrue. If you leave EDS, whether voluntarily or involuntarily, you will not be paid for unused vacation time (unless otherwise required by state law)." EDS eliminated the position of an employee who had worked there for twenty-one years. At the time of his termination, the employee had only used one day of vacation in the prior calendar year. Pursuant to its vacation policy, EDS did not pay the terminated employee for any part of his unused vacation time.

The employee filed a complaint with the Attorney General's Office seeking unpaid vacation payments. The Attorney General issued a citation that ultimately required a payment of the accrued unpaid vacation and a civil penalty. The Superior Court affirmed the decision and the SJC granted EDS's application for direct appellate review.

The question before the court was whether EDS's vacation policy violated the Massachusetts Wage Act. The Wage Act provides that "vacation payments due to an employee under an oral or written agreement" are "wages" that must be paid upon termination. Further, the Wage Act expressly prohibits "special contracts" that would exempt the employer from the requirements of the Act. EDS argued that because its vacation policy expressly stated that vacation payments were not earned or accrued then they were not "due" under the Wage

Act, therefore it did not need to pay the vacation payment to the terminated employee.

In rejecting EDS's position and concluding that EDS was required to pay the unused vacation, the SJC examined EDS's policy and, notwithstanding the express language, concluded that "the clear import of [the policy] is that paid vacation is earned." Thus, it was "due" under the Wage Act. Specifically, the SJC was influenced by the fact that the policy tied the number of paid vacation weeks to the amount of time an employee worked. Relying heavily on the Attorney General's Advisory 99/1 (Advisory), the SJC concluded that when an employer provides paid vacation it "becomes 'due' day by day as the employee performs his or her duties." The SJC relied specifically on the Advisory's statement that, "vacation time promised to an employee is compensation for services which vests as the employee's services are rendered." Thus, the employee in the EDS case was deemed to have earned vacation from his date of termination regardless of the language of the policy. Notably, the SJC explicitly refrained from deciding whether an employer could require an employee who quits voluntarily to forfeit accrued, unused vacation time.

The decision is significant for employers for several reasons. First, it reiterates the view that accrued and unused vacation constitutes "wages" and must be paid to an employee who is discharged. Second, employers must carefully draft their vacation policies consistent with the Attorney General's Advisory because the SJC clearly showed a willingness to carefully scrutinize the vacation policy at issue and construe it in light of the Advisory. Finally, although the decision did not address the situation where employees voluntarily quit, employers should be very careful about withholding unused and accrued vacation from such employees because the EDS decision reflects a strong policy towards treating any unused and accrued vacation as "wages" regardless of the terms of the vacation policy. As a result of this decision, employers should review and revise their vacation policies to ensure they are in compliance with both this decision and the Advisory. For more information on this topic, please read an article by Davis Malm attorney George L. Chimento: [Massachusetts Supreme Judicial Court Takes Tough Stance on Vacation Pay](#).

## CONTACT

If you have any questions about this alert, please contact the author, David Cogliano, at (617) 589-3812 or [dcogliano@davismalm.com](mailto:dcogliano@davismalm.com) or a [Davis Malm employment attorney](#).

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