

## RESOLUTION 12-08-2017

### DIGEST

#### Accrued Vacations: Employers Cannot Force Employees to Use

Amends Labor Code section 227.3 to prohibit employers from forcing an employee to use accrued vacation time.

### RESOLUTIONS COMMITTEE RECOMMENDATION

#### APPROVE IN PRINCIPLE

#### History:

No similar resolutions found.

#### Reasons:

This resolution amends Labor Code section 227.3 to prohibit employers from forcing an employee to use accrued vacation time. This resolution should be approved in principle because it prevents employers from circumventing prohibitions on “use it or lose it” vacation policies by forcing employees to use paid vacation time that they have earned.

California Labor Code section 227.3 was written broadly to ensure that all vested vacation time counts as “wages” earned by an employee, and all vacation time must be paid to an employee upon termination. (*People v. Bishop* (1976) 56 Cal.App.3d Supp. 8, 11-12.) Because accrued vacation time counts as wages earned, policies where an employee must use their vacation time by a certain date or forfeit vacation days, sometimes known as “use it or lose it” policies, are illegal in California as wage theft under Labor Code section 227.3.

This resolution closes a gap where employers can skirt Labor Code section 227.3 by forcing employees to use their vacation days against their will or by pre-scheduling an employee’s vacation time. While there is a real benefit to an employer controlling the number of accrued vacation days amongst employees in order to prevent ballooning, and unexpected costs should layoffs be required, this practice prevents employees from saving vacation days for use when they see fit. In effect, this amounts to an employer having broad control over the wages of their employees, particularly managing when an employee may use them.

This resolution also creates balance for employers by specifically allowing all employers to “adopt policies that require an employee to use vested vacation during an unpaid leave of absence,” and it specifically allows an employer to deny requests for vacation due to business necessity. Because this resolution protects the accrued vacation time, and therefore the wages, of employees while giving reasonable protections to employers, this resolution should be approved in principle.

## TEXT OF RESOLUTION

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Labor Code section 227.3 to read as follows:

1 § 227.3  
2 Unless otherwise provided by a collective-bargaining agreement, whenever a contract of  
3 employment or employer policy provides for paid vacations, and an employee is terminated  
4 without having taken off his vested vacation time, all vested vacation shall be paid to him as  
5 wages at his final rate in accordance with such contract of employment or employer policy  
6 respecting eligibility or time served; provided, however, that an employment contract or  
7 employer policy shall not provide for forfeiture of vested vacation time upon termination. Unless  
8 otherwise provided by a collective-bargaining agreement, whenever a contract of employment or  
9 employer policy provides for paid vacations, an employer may not compel an employee to use  
10 vested vacation days, except that an employer may adopt policies that require an employee to use  
11 vested vacation during an unpaid leave of absence. Nothing herein prohibits the employer from  
12 denying requests for vacation on a specific date due to business necessity and offering alternative  
13 dates for the vacation request or limiting the amount of vacation that may be taken at any  
14 particular time. The Labor Commissioner or a designated representative, in the resolution of any  
15 dispute with regard to vested vacation time, shall apply the principles of equity and fairness.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** Bar Association of Northern San Diego County

## STATEMENT OF REASONS

The Problem: “Use it or lose it” vacation policies, where an employer offers paid vacation and then forfeits that vacation time if it is not used by a specific date, are illegal. Employers are trying to get around this prohibition created by case law and the Department of Labor Standards Enforcement, by forcing employees to take vacation time and “pre-scheduling” employee vacation time against the employees will so that all vacation is used before the anniversary date, regardless of whether the employee wants to take vacation or not.

The Solution: This resolution prohibits employers from forcing employees to take their accrued vacation against their will. Employers will still retain the right to deny vacation requests due to business necessity and offer alternative dates, as long as the employer does not compel the employee to take vacation time. In addition, employers may still provide, via policy, that employees have to use vested vacation time during an unpaid leave of absence (such as a medical leave), which is a common practice.

## IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

## CURRENT OR PRIOR RELATED LEGISLATION

None known.

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