

IN THE COUNTY COURT OF DOUGLAS COUNTY, NEBRASKA

COPY

JASON R. NORTON)	CASE NO. CI 10-22919
Plaintiff,)	
vs.)	ORDER
)	
PAYFLEX SYSTEMS USA, INC.)	
Defendant.)	
)	
DUANE FISHER)	CASE NO. CI 10-22920
Plaintiff,)	
vs.)	ORDER
)	
PAYFLEX SYSTEMS USA, INC.)	
Defendant.)	

This Matter came on for hearing on May 12, 2011 on reciprocal Motions for Summary Judgment in consolidated cases. The Plaintiffs were represented by Richard Drews and the Defendant by A. Stevenson Bogue. Evidence was adduced. The Court took Judicial Notice of the pleadings. Exhibits #1, 2, 3,4,5,6,7,8,9 and 10 were received. Counsel made argument and submitted written briefs. The Matter was taken under advisement.

Plaintiffs were employees of Pay flex, the Defendant. Each earned what the company termed paid time off or PTO. By its employee manual, Defendant allowed employees to accrue and use PTO for vacation, sick and personal time. There was no further rule limiting or restricting the purpose of PTO nor did the company apportion the accrual of each. Defendant defined the term by manual 10-12 years previous. The company's human resources vice president testified in a deposition (Exhibit #3) that nothing prevented an employee from using all accrued PTO for vacation.

When Plaintiffs left their employment, each requested payment of accumulated PTO which was denied. Plaintiffs commenced this action. Both Plaintiffs and Defendant have filed Motions for Summary Judgment. The parties rely on differing interpretations of Neb. Rev. Stat. Sec.48-1229, the Nebraska Wage Payment and Collection Act and Roseland v. Strategic Staff Management, Inc. 272 Neb. 434, 722 NW2d 499 (Neb. 2006) and LB 255 as amended and passed by the Nebraska Unicameral in 2007. They agree that this matter is one of first impression and statutory interpretation.

Motion for Summary Judgment

Summary judgment is proper when the pleadings, depositions, admissions, stipulations and affidavits in the record show that there is no genuine issue as to any material fact or as to the ultimate inferences that may be drawn from those facts, and that the moving party is entitled to judgment as a matter of law. Parnell v. Madonna Rehab. Hosp., 258 Neb. 125, 602 NW2d 461. (1999).

Applicable Law

Under the Nebraska Wage Payment and collection Act, payment of unpaid wages is mandatory within two weeks of the termination of employment. Neb Rev. Stat. Sec. 48-1230.

In 2006 the Nebraska Supreme issued the Roseland (supra) decision ordering the employer to compensate employees for earned but unused vacation time upon termination where the company's written policy expressly provided otherwise. The Court held:

The district court correctly determined that Strategic's policy of not paying accrued vacation pay upon termination of employment directly conflicted with the provisions of the Wage Act. The payment of vacation pay was an "agreed to" benefit between Strategic and its employees, see Sec.48-1229(4), and Strategic could not circumvent the payment of wages that had accrued by refusing to disburse accrued vacation pay because employment had been terminated.

Roseland at 440.

Subsequently, the Nebraska Legislature considered the adoption of LB 255 in 2007. The body enacted LB 255 as amended by the Business and Labor Committee to include the following language:

Paid leave, other than earned but unused vacation leave, provided as a fringe benefit by the employer shall not be included in the wages due and payable at the time of separation, unless the employer and employee have specifically agreed otherwise.

Neb Rev. Stat. Sec. 48-1229(4) (Emphasis supplied).

During floor debate Senator Cornett, Business and Labor Chair explained: "By using the generic term "paid leave," it is our intention that any type of paid leave other than vacation leave does not have to be paid out at the time of separation unless otherwise bargained." She explained by example, "Clearly, sick leave was created to be used as a conditional benefit; that is, an employee must be sick to use it." Exhibit #9)

Arguments

The parties do not dispute the facts. Plaintiff argues that because Defendant's PTO plan includes vacation time, the Court should grant summary judgment. Defendant argues that PTO is a hybrid type of leave time which is not vacation time and summary judgment is appropriate.

Analysis

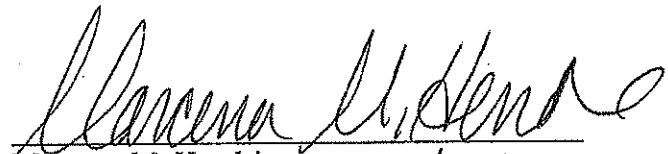
Nebraska law creates a distinction for vacation leave. It is an earned benefit likened to wages. The Legislature enacted a statute protecting it and the law requires that an employee be compensated upon termination. Defendant has chosen to provide a

fringe benefit which is not called vacation time but PTO. It is not further defined nor are its uses apportioned. Defendant concedes that an employee could use all earned PTO for vacation but argues that it is not required to compensate the employee upon termination. This position allows the Defendant to deprive the Plaintiff of an earned benefit contrary to the legislative intent of LB 255 and the Nebraska Wage Payment and collection Act.

Conclusion

The Court grants Summary Judgment in favor of the Plaintiff Fisher and against the Defendant in the amount of \$6,408.45. The Court grants Summary Judgment in favor of the Plaintiff Norton and against the Defendant in the amount of \$3,864.64. Plaintiffs may file separate Motions for attorney's fees. The Court denies Defendant's Motion for Summary Judgment.

BY THE COURT:




Marcena M. Hendrix
County Court Judge

9/7/11

Copies of the foregoing were mailed on the 7th day of September, 2011, to the following persons, by depositing same in the United States mail, postage prepaid:
Richard A. Drews
2120 S 72nd Street, Suite 640
Omaha, NE 68124

A. Stevenson Bogue
First National Tower
Suite 3700
Omaha, NE 68102



MMH/kw: CI10-22919 CI10-22920