

Employee Collects Comp Time Wages and Unemployment Insurance During A Layoff

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The Nebraska Court of Appeals recently held that a laid off employee who was being paid weekly wages for "comp time" nevertheless was "unemployed" for the purpose of receiving unemployment insurance.

In the October 19, 2007 opinion, *Wadkins v. Lecuona*, (No. S-06-1008), the Court of Appeals addressed the question of whether payments the laid off employee received from his employer disqualified him from receiving unemployment insurance benefits under Nebraska's Employment Security Law. The employee earned a salary based on a 260 day work-year, and "comp time" was awarded on a one-to-one basis for each day the employee worked over 260 days. The employee was temporarily laid off and filed a claim for unemployment insurance benefits. While receiving the unemployment insurance benefits, the employee was also being paid weekly by his employer for his accrued comp time.

Following a wage audit, the Nebraska Department of Labor and the Nebraska Appeal Tribunal determined that the employee had been overpaid unemployment insurance benefits. The district court affirmed, concluding that the comp time payments were "earnings" and that they had become "payable" daily during his layoff. Thus, he was not unemployed during that time within the meaning of the Act.

The Nebraska Court of Appeals reversed, holding that while the "comp time" payments were considered "wages" under the meaning of the act, they were not "payable" with respect to the weeks during which the employee was laid off; rather, the payments he received were for services rendered before he was laid off, and were therefore earned and "payable" when he was working. This was true despite the fact that the "comp time" wages were reportable to the Social Security Administration when paid, during the laid off period.

Employers should recognize that an employee is not necessarily considered "employed" for the purposes of unemployment insurance, even though the employee is actually being paid weekly wages that are reported to the Social Security Administration as wages paid during those weekly periods. If the wages being paid during a layoff are for "comp time" that accrued earlier, those wages are deemed "payable" during that earlier period, despite the actual payment dates.

