

EMPLOYMENT UPDATE

California Law

Retail Sales Employee Could Not Claim Vested Vacation Pay During Initial Employment Where That Claim Was Contrary to Employer's Written Policy

Owen v. Macy's, Inc., California Court of Appeals, 2nd App. District (June 29, 2009).

By Douglas J. Melton

In a victory for common sense, the California Court of Appeal, Second Appellate District, held that a retail sales employee could not claim any right to vested vacation pay during her initial employment where her employer's written policy forewarned her that her compensation did not include paid vacation during that time period.

In 1990, Lisa Owen began working as a sales associate at a Robbins-May store that was acquired by Macy's, Inc. in 2005. Macy's announced that Owen's store would be closed and its employees' jobs eliminated in 2006. Owen received severance and other pay based on her length of service, but no unused vacation pay. She sued, alleging failure to pay accrued, vested vacation compensation in violation of statute. Robbins' employee handbook imposed a six-month waiting period before the new employees began to earn paid vacation, which then accrued and vested in the year in which it was earned.

Robbins moved for summary judgment arguing that Owen's claim failed as a matter of law because she was not denied any accrued vacation benefits. The trial court granted the motion, finding that the waiting period for vacation benefits to accrue and vest was permissible. Owen appealed.

The Court of Appeal affirmed, holding that Owen was not unlawfully denied vacation pay. The Court found that an employer could refuse to offer paid vacation to new employees. It was clear from the Robbins' employee handbook that vacation time earned during Owen's first six months was zero, after which she earned, accrued, and vested in vacation time. Thus, Robbins did not violate the rule that prohibited it from reducing Owen's wages for severance after the service was performed. The Court found that Robbins could legitimately prevent Owen from earning any vacation time at all as a new employee by means of its written policy, which effectively forewarned her that she would not earn vacation time during her first six months and would vest in or forfeit no vacation if she left during that time, but would earn and vest in vacation time after six months.

Further, Owen did not earn vacation time in advance of the defined vacation year, just before the commencement of which she was terminated.