

## Massachusetts Supreme Judicial Court Holds That Discharged Employees Must Be Paid Unused Vacation Time, Regardless of Employer's Written Vacation Policy

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Yesterday, the Supreme Judicial Court held in *Electronic Data Systems Corporation v. Attorney General*, that the failure to pay unused vacation time to involuntarily terminated employees is a violation of the Massachusetts Wage Act (M.G.L. ch. 149 § 148). The Wage Act provides that “wages” include “vacation payments due an employee under an oral or written agreement.” Although the employer Electronic Data Systems (EDS) had argued that this language meant that the terms of its written vacation policy should control whether or not an employee is entitled to a payout of vacation time, the Court disagreed.

EDS maintained a written vacation policy which expressly 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.” Francis Tessicini, an employee of EDS, had used only one day out of his allotted five weeks of vacation when EDS terminated his employment. Pursuant to its written policy, the company refused to pay him for the unused vacation time. Tessicini filed a written complaint with the Office of the Attorney General, and the Attorney General issued a citation to EDS for violating the Wage Act. EDS challenged the citation in court, and the issue ultimately was appealed to the Supreme Judicial Court.

On appeal, EDS argued that because the Wage Act's definition of wages includes only those vacation payments due under an employment agreement, that agreement may restrict or limit the right to payment upon termination. Relying on an advisory issued by the Attorney General, the Court held that if an employee is discharged by the employer, the Wage Act requires payment of the vacation benefit earned through that date, regardless of the terms of the employer's written vacation policy. In reaching that conclusion, the Court noted that vacation time may be lost by disuse and expressly stated that it was not addressing whether vacation pay must be paid out to an employee who voluntarily quits employment.

The bottom line is that the Wage Act requires employers to pay involuntarily terminated employees for all unused, accrued vacation time on the date of discharge. A violation of the Wage Act carries significant penalties, including mandatory treble damages and attorneys' fees. Employers should review their vacation policies to ensure that they are in compliance with this decision.

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