

## EMPLOYER NOT REQUIRED TO PAY UNUSED PTO TO TERMINATED EMPLOYEE

The Minnesota Supreme Court recently handed down a decision in favor of employers concluding that a terminated employee could be denied earned but unused paid time off (PTO) if she failed to meet the contractual conditions entitling her to such payment from the employer.<sup>1</sup> The high court's ruling reversed the Court of Appeals' previous decision that had concluded accrued PTO constituted wages "actually earned" by the employee under Minn. Stat. § 181.13(a) and had to be paid by the employer upon the employee's termination of employment.<sup>2</sup>

The employee in the case had been denied accrued PTO pursuant to the terms of the employee handbook after being terminated from her employment for misconduct. The Supreme Court restated well established law that the payment of vacation pay and PTO is governed wholly by contract. In interpreting the applicability of Section 181.13(a), however, the Court held that the statute does not create a substantive right to vacation pay or PTO, but rather, is merely a timing statute that mandates *when* an employer must pay a discharged employee wages but not *what* the employer must pay. Therefore, although the employee may have earned the right to use paid time off while she was employed, she was not entitled to payment of the accrued PTO at the time of her termination under the terms of the employee handbook. Since the employer was not contractually obligated to pay the former employee's unused PTO, the majority of the Court found no violation of or conflict with the legislative intent of Minn. Stat. § 181.13(a). Justice Alan Page sided with the Court of Appeals and concluded that the employer's policy violated the provisions of Minn. Stat. § 181.13(a).

This recent decision clarifies a number of issues relating to the applicability of § 181.13 and the payment of PTO benefits. In addition to allowing contract provisions that preclude the payment of unused PTO to employees terminated for misconduct, the Court also noted its application to contract provisions that cap the accrual of PTO or commonly used "use-it-or-lose-it" policies. Cities may want to reexamine their policies in light of the Supreme Court's recent interpretation of Minn. Stat. § 181.13.

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<sup>1</sup> Lee v. Fresenius Medical Care, Inc., 2007 WL 3378653 (Minn.,2007).

<sup>2</sup> Lee v. Fresenius Medical Care, Inc., 719 N.W.2d 222 (Minn.App.,2006).

*This is not intended to be legal advice and is distributed for informational purposes only. If you have any questions, please contact your city attorney or Robert A. Alsop at 612/337-9224 or [ralsop@kennedy-graven.com](mailto:ralsop@kennedy-graven.com).*