

Is ex-worker entitled to pay for unused vacation?

I resigned and my employer didn't pay me for vacation time I didn't use. The policy I signed stated that employees had to give a two-week notice, which I did, in order to get a paid-time-off check. Now, they say I'm not entitled to it because I was on a 90-day probation before my resignation. But that ended days before I gave notice. They said these situations are handled "case by case," but nowhere in their policy does it state this. Was it legal for them to do this?

Janet B. Hutchison

Davis Miles McGuire Gardner

Issues frequently arise regarding whether employees are to be paid for unused vacation time at the termination of their employment. Arizona law does not require that employers pay out unused vacation time but allows employers to establish their own policy and practice regarding this issue.

Arizona law does require that when an employee quits, employment the employer must pay all wages due to the em-

ployee within a certain time period. Whether wages include vacation pay depends on the employer's policies and practices. Thus, employers must be careful to clearly articulate their policy and any exceptions to the policy and practice. Employers should also be consistent in the application of the policies. Lack of clarity or inconsistencies in employer practices may expose the employer to liability for failure to timely pay wages.

In your situation, it is unclear whether there are other factors that affect the issue. While you make reference to the notice provision, there may be other policies that relate to your situation.

You also indicate that you had been on a 90-day probation prior to your resignation. Depending on the timing and type of probation, whether vacation time accrues and the amount might be impacted. You may want to review the policies



Janet B. Hutchison



Don Johnsen

and discuss the matter with the employer to seek clarification. If questions continue, you may want to seek legal counsel.

Don Johnsen

Gallagher & Kennedy

Arizona law requires that employers pay all wages promptly, and employers who fail to pay can be subject to a penalty of three times' the unpaid amount. The question here is whether the unused vacation time is "wages" under that law.

Unused vacation time can indeed constitute wages if the employee has a reasonable expectation of payment. An employee has a reasonable expectation if the employer has promised to pay, or if it has a past practice of paying.

If the employer has a written policy on vacation, then that policy basically is the employer's "promise." The policy determines the employees' reasonable expectations, for better or worse.

If the employer does not have a written policy, then a court or the labor board would look at the employer's past practices. If the employer has a past practice of paying, then current employees have a "reasonable expectation" of payment under those same circumstances.

On the other hand, if the employer's practice has been not to pay, then current employees in the same situation do not have a reasonable expectation of payment.

In this instance, if the written policy says that employees who submit notice while on probation are not paid for unused vacation, then that rule controls. But if the policy simply says that any employee who gives two weeks' notice is paid, then any worker who gives such notice would likely have a reasonable expectation to be paid. In that case the worker may have a valid claim to the unused vacation time.

— Compiled by Georgann Yara.

Send questions to asktheexperts1@gmail.com.

MANAGEMENT STRATEGIES

Selling business? Be strategic

A time always comes when business owners ask themselves, "Should I begin thinking about selling my business?"

Your success depends on your strategic exit plan, deal team selection and timing. And, business owners face four major threats now through 2029 that no other generation has had to face.

First, a demographic tsunami of Baby Boomer businesses will come on the market from now through 2029. There are approximately 78 million Boomers, and about 10,000 are retiring every day.

Small businesses, (500 employees or less) number 28.2 million as of 2013. Baby Boomers own about 43 percent of those businesses (12.1 million). Approximately 60 percent of the 12.1 million businesses will be put up for sale through 2029 (7.26 million). This averages 403,333 businesses on the market each year. Businesses put up for sale between 2008 and 2013, averaged 123,000 per year. One can readily see the tsunami impact going forward — 403,333 vs. 123,000.

Second, it is a buyer's market over the next 16 years. Transaction volume is steadily increasing (five quarters in a row since 2013) and transaction prices are increasing over past years (2010-2013). However, sales price multiples reveal that it remains a buyer's market.



Management strategies
GARY MILLER

Third, 80 percent of the businesses put up for sale will not close. Two reasons explain this high number: poor strategic exit planning and overestimating the value of the business.

Fourth, owners do not know where to turn. Owners' trusted advisers have limited understanding of exit planning. When owners do turn to these advisers they aren't prepared or equipped to properly counsel their clients.

Lessons learned from these threats are: Begin planning early; prepare your company to go to market; select an interdisciplinary team of experts who can work together; monitor the team with a lead consultant; and execute the plan when the timing is right.

Gary Miller is founder and CEO of GEM Strategy Management Inc., a management consulting firm advising middle-market companies and their sponsors on strategic business planning, growth and expansion strategies. Contact him at gmiller@gemstratagemanagement.com.

NEWS AND NOTES

Family-law attorney Rahaman joins DeShon Laraye Pullen firm

Ashley B. Rahaman joined DeShon Laraye Pullen in Phoenix as an associate attorney in family law. She began her law practice with a family-law firm in Phoenix in 2008, and in 2011 started her own firm, The **Rahaman Law Firm** in Scottsdale, where she focused on divorce, child custody, child support, parenting time/visitation, grandparent's rights, relocation, temporary orders, post-decree modifications, and in loco parentis custody and parenting time. Rahaman received her law degree from **Arizona State University Sandra Day O'Connor College of Law** in 2008.



Ashley Rahaman

city College of Law in 1990. Lopez has been working in the U.S. Attorney's Office for more than 12 years, most recently as executive assistant U.S. attorney and the chief assistant of the Phoenix office. Before that, he was with **Bryan Cave** as a commercial litigator. He also is a graduate of ASU's College of Law.

James Osborne, general counsel and partner at **Jones, Skelton & Hochuli** in Phoenix, has been appointed to the Tumbleweed Center for Youth and Development board of directors. The center provides emergency shelter and services for runaway and homeless youth. Osborne has been his firm's general counsel since 2006, focusing on professional responsibility, including legal ethics, lawyer discipline and legal malpractice defense. He received his law degree with distinction from the **University of Kentucky College of Law** in 1984.

Promotions and hires

Incoming Arizona Attorney General **Mark Brnovich** added two members to his staff. **Michael Bailey** will serve a dual role as chief of staff and chief deputy while **John Lopez** will serve as the solicitor general. Bailey worked as a deputy Maricopa County attorney prosecuting sex crimes and homicide cases, and most recently worked in private defense practice. He received his law degree from **Arizona State Univer-**

Send legal news to john.mclean@arizonarepublic.com.