



Interpretive Notice & Formal Opinion (“INFO”) #14: Payment of Earned Vacation upon Separation of Employment

Overview

This INFO addresses:

- how employees must be paid all earned “vacation pay” when their job ends (“separation of employment”);
- the rule against employment policies, or agreements, that waive or forfeit any earned vacation; and
- what kinds of paid time off do, and do not, count as protected “vacation pay.”

Requirement to Pay Earned Vacation When Employment Ends

Employers are not required to offer paid vacation, but (as with other wages) may do so in writing, verbally, or based on their custom or practice. Employers who do offer paid vacation may set key terms, including:

- the amount of paid vacation time;
- how vacation pay is earned (accrued) — for example, based on hours, weeks, or years of work;
- whether there is a “cap,” or maximum, on the amount of paid vacation that employees can save up.¹

Vacation pay is a form of wages protected by the [Colorado Wage Act, C.R.S. 8-4-101, et seq.](#) Under the Wage Act, once employees earn wages, their right to payment is guaranteed, regardless of whether the amount was determined by law (e.g., a minimum wage law), by agreement, or by practice — and any agreement that forfeits earned compensation is void and unenforceable.² That means that, like other wages, unused vacation pay must be paid when an employee separates from employment — whether they are fired with or without cause, voluntarily resign with or without notice, or separate for any other reason.³

What Counts as “Vacation Pay” That Must Be Paid When an Employee Separates from Their Job

“Vacation pay” is any paid leave that’s usable for any purpose the employee chooses, at their discretion — unlike paid leave that’s usable only for qualifying events like health needs, caretaking, bereavement, or holidays, as [Wage Protection Rule 2.17.1](#) details.⁴ Because vacation pay is usable without a qualifying event, it is a form of guaranteed pay that an employee can use, or save for eventual payout, at their discretion.

¹ [Wage Protection Rules](#), 7 CCR 1103-7, Rule 2.17 (although employer/employee agreements set whether, how, and how much vacation pay is earned, vacation pay still cannot be forfeit or waived by any such agreement, though it may be capped at a year or more’s worth of vacation pay).

² [Nieto v. Clark’s Market, Inc.](#), 2021 CO 48, ¶¶ 5, 10 (an employer policy/agreement that employees forfeit earned vacation if they are fired, or if they fail to give two weeks’ written notice before resigning, violates the Colorado Wage Act ban on forfeiture of earned vacation pay; employers with such policies/agreements still owe departing employees their earned vacation pay); [Colo. Civil Constr. Inc.](#), DLSS Case #3944-19 (Hearing Officer Decis. #21-069, June 21, 2021) (policy forfeiting employees’ earned vacation if they quit without notice is void; no policy or agreement can waive employees’ rights to earned wages, including unused vacation pay); [In re Ocdeon II, LLC](#), DLSS Case #4109-17, at 7 (Hearing Officer Decis. #18-081, Nov. 16, 2018) (“even if the policy did clearly provide for forfeiture of vacation upon separation, the Colorado Wage Act would prohibit its forfeiture because vacation pay was provided ... pursuant to an agreement between the parties, was determinable at the time of separation, and was earned for service as a shift manager”).

³ C.R.S. 8-4-101(14)(a)(III) (“the employer shall pay upon separation from employment all vacation pay earned”); C.R.S. 8-4-109(1)(a) (right to payment of final wages upon separation from employment); [Nieto v. Clark’s Market, Inc.](#), 2021 CO 48, ¶ 10 (“[W]hen an employer chooses to provide vacation pay to its employees, an employee is entitled to receive all that is earned but still unpaid upon separation from employment.”). For rules regarding making a final payment of wages, including vacation, upon separation, see [INFO #7: Payment of Wages & Required Record-Keeping](#).

⁴ See [Statement of Basis, Purpose, Authority, & Findings](#) (“Statement of Basis”), [Wage Protection Rules](#), 7 CCR 1103-7 (Nov. 10, 2021), at 2-3 n.4 (citing and analyzing cases).

Some paid leave meets this “vacation pay” definition, but has a different name, like “personal days,” “paid time off,” “annual leave,” etc. Labor rights depend on how employment works in reality, not just how it’s labeled.⁵ If paid leave by any name meets the “vacation pay” definition, then it counts as “vacation pay” that the Wage Act requires to be paid when an employee separates from their job.⁶

Example 1: Company A, employees have multiple forms of paid leave: (a) “sick days” usable if they have any one of a broad range of health needs; (b) “bereavement and caretaking leave” usable if any family member has caretaking needs or passes away; and (c) “holiday pay” usable for any holiday the employee celebrates. These forms of paid leave are usable in a wide range of circumstances. But they aren’t paid leave usable for any purpose the employee chooses, at their discretion. Instead, each form of paid leave is usable only for specific qualifying events, and there’s no guarantee that an employee will have one of those events before separating from their jobs. So they don’t meet the “vacation pay” definition, and Company A need not pay employees for these forms of unused paid leave when they separate from their jobs.

Example 2: Company B provides five paid “personal days” that employees can use for any purpose, as long as they give reasonable notice to their supervisor. Because Company B’s personal days lack pre-conditions for their use, the pay is guaranteed rather than conditional, so they meet the definition of “vacation pay” that must be paid at separation. In contrast, Company C provides five paid “personal days” that employees can use for only specified personal needs: holidays when the company is open; health or family needs; or bereavement. Company C’s personal days are usable only upon the occurrence of specified conditions that may or may not occur during the employee’s tenure, so they do not meet the definition of “vacation pay,” and need not be paid upon separation.

Amount of Vacation Pay Due

To be payable to an employee upon separation, the amount of vacation must be “determinable,” or subject to calculation. The calculation may be based on a written document, verbal policy, or informal custom or practice.

If an employer defines vacation pay as a certain number of paid days or weeks, it may be necessary upon separation to determine the value of each accrued “day” or “week.” In this case, the value of each hour used to calculate the value of accrued vacation pay is the employee’s “regular rate” as defined by [COMPS Rule 1.8](#).⁷

Rule Against Forfeiture of Earned Vacation

Employer policies or agreements can set whether, how much, and how to offer vacation pay. But under the Colorado Wage Act, no policy or agreement can say that an employee’s performance, termination, resignation, or other events can forfeit or waive already-earned vacation pay.⁸ A 2021 Colorado Supreme Court ruling explained why, and affirmed Division rules and decisions that had held the same:

Although the [Colorado Wage Act] does not entitle an employee to vacation pay, when an employer chooses to provide it, such pay is no less protected than other wages or compensation and, thus, cannot be forfeited once earned. Accordingly, under the [Act], all vacation pay that is earned and determinable must be paid at the end of the employment relationship, and any term of an agreement that purports to forfeit earned vacation pay is void.⁹

⁵ [Colo. Custom Maid, LLC v. Indus. Claim Appeals Office](#), 2019 CO 43, ¶ 2, 441 P.3d 1005, 1007 (analyzing cleaning workers’ right to unemployment compensation by “the realities of [employer’s] relationship with its cleaners,” not the employer’s labeling of the workers as independent contractors); *Jackson Cartage, Inc. v. Van Noy*, 738 P.2d 47, 48 (Colo. App. 1987) (“we are primarily concerned with what is done under the contract and not with what the contract says”).

⁶ See [Statement of Basis, Purpose, Authority, & Findings](#), p.2 (as to why PTO qualifies as “vacation pay”: “The Division has researched how ‘vacation pay’ is defined in the several other states with a similar vacation pay statute. Every such state that Division research found to have a similar statute, and to have addressed the issue, has applied the same distinction — which the Division finds to be sound, and consistent with *Nieto*.”) (citing and quoting cases from each such state).

⁷ [Colorado Overtime and Minimum Pay Standards Order](#) (“COMPS Order”), 7 CCR 1103-1, Rule 1.8.

⁸ C.R.S. § 8-4-101(14)(a)(III) (“If an employer provides paid vacation for an employee, the employer shall pay upon separation from employment all vacation pay earned and determinable in accordance with the terms of any agreement between the employer and the employee.”); § 8-4-121 (“Any agreement, written or oral, by any employee purporting to waive or to modify such employee’s rights in violation of this article shall be void.”).

⁹ [Nieto](#), 2021 CO 48, ¶ 3 (see also ¶¶ 10, 40, 42). See [Wage Protection Rules](#), 7 CCR 1103-7, Rule 2.17.2 (“paid vacation” statute “does not allow a forfeiture of any earned (accrued) vacation pay”); [Colo. Civil Constr. Inc.](#), DLSS Case #3944-19.

If a policy or agreement just caps how much vacation pay employees can accrue in a year (or in total), that is not an impermissible “forfeiture.” But if it caps how much vacation pay carries over from one year to the next, it is an impermissible forfeiture.

Example 3: Company A’s handbook says that employees fired for misconduct, or who quit with under two weeks’ notice, will not receive vacation pay when they separate from their jobs. That policy violates the Colorado Wage Act, because once vacation pay is earned, it can’t be waived or forfeit due to later events.¹⁰

Example 4: Company B’s policy says: (a) employees accrue one paid vacation day per month; (b) they stop earning more after accruing 20 days; (c) when they drop below 20 by taking vacation, they earn more again, but only until accruing 20. This policy is permissible: it doesn’t take away already-earned vacation pay; it just sets a cap on how much is offered.

Example 5: Company C’s policy says: (a) employees accrue 15 paid vacation days per year; (b) but no more than 12 days may be “carried over” for use in future years. This policy impermissibly takes away already-earned vacation from employees with over 12 unused days by year’s end, *unless* the employer brings them down to 12 days by year’s end, such as by requiring time off or paying for some vacation days.

Example 6: Later, Company C (from Example 5) announces a new policy: (a) employees accrue one paid vacation day per month; (b) they stop earning more after accruing 12 days; (c) when they drop below 12 by taking vacation, they earn more again, but only until accruing 12. The new policy is permissible — it’s the same policy as in Example 4, just with a 12- rather than 20-day cap — with one limit on how it can apply. If, at the time of the new policy, an employee had over 12 accrued vacation days, they can’t be reduced to 12, because no policy can take away already-earned vacation days. But once that employee takes enough vacation to drop to 12 or fewer accrued days, it is permissible for the new policy to cap them at 12 days.

Unlike for some other pay types, the Colorado Wage Act does *not* require vacation to be “vested,” in any way other than being “earned,” for it to be payable at separation.¹¹ Once vacation pay is earned, no extra vesting conditions can be added, and all unused vacation pay must be paid when employees separate from their jobs.

For Additional Information

Visit the Division’s [website](#), call 303-318-8441, or email cdle_labor_standards@state.co.us.

¹⁰ [Colo. Civil Constr. Inc.](#), DLSS Case #3944-19.

¹¹ [Nieto](#), 2021 CO 48, ¶ 24 (“[E]ven if vested means something other than [earned, its exclusion] from the statute requiring payment of earned vacation pay at separation “signals that the legislature did not intend it to apply in this context.”).