



Dan Miller

# Legal Brief

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## What Does an Employer Owe an Employee Upon Termination?

One of the most common questions asked by employers relates to an employee's rights upon separation from employment. The answer often depends upon the employer's written policies and practices.

An employee's rights to pay and fringe benefits upon separation from employment is largely determined under the Pennsylvania Wage Payment and Collection Law (WPCL). The WPCL provides that when an employee quits or resigns, the wages earned are due and payable not later than the next regular payday of the employer. In order to determine whether wages have been earned, an employer must look to its written policies and practices.

The simplest example of what is owed under the WPCL is pay for time worked. Upon separation from employment, an employer must pay an employee for all time worked through the last hour of employment. A more difficult question involves other forms of pay such as vacation pay, sick pay and severance pay. To determine whether vacation pay, sick pay, and severance pay are payable upon separation from employment, an employer must determine whether such benefits have been earned pursuant to a written policy. An employer must also determine its practice with other employees.

### Vacation Pay

The most common dispute that arises is whether an employee is entitled to vacation pay. Most vacation pay policies state that an employee earns vacation each year based on the number of years of service the employee has worked. Typically, once an employee reaches the beginning of the year, they are entitled to receive vacation based on their years of service. In the event of a separation from employment, after the designated date, the employee is usually entitled to receive the vacation pay they were entitled to take unless the policy specifically provides otherwise. For example, assume an employee earns two weeks vacation on January 1. If they quit January 15, they are probably entitled to two weeks vacation pay.

### Loans and Advances

Employers often also question whether they can deduct from monies owed to the employee any money the employee owes the employer for things such as loans and advances. Employers should be cautious in making any deductions from an employee's pay since the WPCL and its regulations prohibit any deductions from the employee's pay unless it is for the convenience of the employee and has been authorized in writing by the employee. Thus, if an employer provides loans, advances, or other benefits to employees for the employee's convenience, the employer must obtain a written authorization before deducting such amounts

from the employee's pay. If the employer has not obtained the written authorization prior to separation from employment, the employee is less likely to authorize the deduction upon separation from employment.

### Health Insurance Benefits

In addition to wages, employers with 20 or more employees are also required to offer employees separated from employment continued group health insurance benefits at the employee's expense under the Consolidated Omnibus Budget Reconciliation Act (COBRA). Employers usually hire a third-party administrator to handle their COBRA obligations. For employers who offer group life insurance benefits, the insurance carrier is required to offer conversion coverage to individuals who lose coverage upon separation from employment. An employer must notify the group life insurance carrier when an employee is separated from employment.

### References

Finally, often employers are requested to provide a reference for ex-employees. Although employers are under no obligation to provide a reference, many employers do so. Pennsylvania recently passed a law providing civil immunity for employers that provide information concerning former or current employees to a prospective employer, provided such information is not false and the employer is not acting out of ill-will. However, many employers still only provide dates of employment and positions held.

An employer must carefully evaluate all of the pay and fringe benefits it owes to its employees upon separation from employment. It is useful for the employer to review its written policies and practices to make sure they are clear and are consistent with the employer's desires. \*

### Checklist for Separated Employees

- Pay all "earned" wages, vacation pay, sick leave and severance pay, pursuant to employer's policy and practice.
- Avoid deductions from an employee's final pay unless the deductions are for the convenience of the employee and are authorized in writing.
- Employers with 20 or more employees must offer continued health insurance benefits at the employee's expense to those employees who participate in a group health insurance plan.
- Notify the group life insurance carrier that the employee has been separated from employment.

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