

OC REGISTER Q&A

VACATION PAY UPON TERMINATION

Q. Last week I was discharged by my employer after nearly 4 years of employment. I was originally hired as a seasonal employee, but eventually hired as a regular employee. Shortly after January 2002 I was informed that I had "lost" a paid week of vacation because I did not use it the year prior. I told HR that I was not aware that I had paid vacation the first calendar year but was told I should have read the employee manual. I DID read it but other than discussing how paid vacation is accrued it was not clear to me that I had time that first year. This also happened to 2 other employees who were hired approximately the same time. Now that I have been terminated, do I have any rights to recover that week of vacation pay?

A. California Labor Code does not allow for a "use it or lose it" vacation plan. Once an employee has earned vacation, it is treated like money in the bank for that employee and can never be taken away. Employers may not require employees to forfeit accrued vacation for any reason. The only exception to this rule is for employees under a collective bargaining agreement.

Since accrued vacation is considered wages, the employer must pay out all accrued but unused vacation at the termination of the employment relationship, including accrued vacation the employee was not yet eligible to take (typically applies to first year employees). Additionally, unused vacation must be paid out upon termination at the employee's final rate of pay, regardless of the rate of pay at which it was earned. If you were not paid for accrued vacation that was earned but not paid upon termination, you are entitled to recover this pay.