

To: Clients and Friends
From: Smith & Downey
Date: March 31, 2008
Re: Maryland Accrued PTO Developments

Historically, Maryland employers believed they had no obligation to pay a terminating employee his or her accrued, but unused, paid time off. (This was in contrast to employers in States like California where the law expressly requires the payment to terminating employees of accrued, but unused, paid time off.)

Two recent developments have caused many Maryland employers to change their policies on this issue. First, in an unreported decision that has come to light, Maryland's second highest court, the Court of Special Appeals, held that accrued, unused paid time off constitutes a "wage" under the Maryland Wage Payment and Collection Law and must be paid to employees upon termination.

Second, the Department of Labor, Licensing and Regulation (the Maryland agency charged with enforcing Maryland's wage payment laws), has changed the position taken on its web site to align with the recent Court of Special Appeals opinion.

Although unreported judicial opinions and informal statements made on regulatory web sites are not the most compelling legal precedents, many Maryland employers are changing their policies to provide for the cash-out to terminating employees of unused paid time off, in order to avoid lawsuits and potential DLLR enforcement actions that could result in significant defense costs and, potentially, the payment of triple damages under Maryland's wage payment law.

We have been consulting with our clients about the best ways to react to these developments, and to limit their exposure to paying out large amounts of accrued, but unused, paid time off. Please feel free to contact Doug Desmarais at 410-321-9348, or d-desmarais@smithdowney.com, if you would like to discuss this issue.