

UPCOMING CHANGES TO COLORADO LAW ON "USE IT OR LOSE IT" VACATION POLICIES

Colorado employers are advised to review their vacation policies in light of a recent announcement by the Colorado Division of Labor (the "Division") regarding its new enforcement position on vacation pay. Although a formal policy has yet to be issued, the Division announced informally that it has directed its compliance officers to find "use it or lose it" vacation policies or agreements in violation of the Colorado Wage Act, Colo. Rev. Stat. § 8-4-101.

Such policies require employees to use their vacation time by a certain date (usually by the end of the calendar year) or lose the time. Until now, the Division had advised informally that such policies or agreements were permissible so long as the consequences for failing to use accrued vacation were clear. The Division's change in policy stems from its implementation of the new Colorado Wage Protection Act, which became effective January 1, 2015. The Division now interprets Colorado law to prohibit forfeiture clauses in vacation agreements because once vacation pay has been earned, it cannot be "unearned."

The Division's new enforcement policy applies only to vacation pay earned on and after January 1, 2015. Sick leave policies are not subject to the proposed limitation because Colorado's statutory definition of wages does not include sick leave, only vacation. Additionally, the new enforcement policy does not apply to paid time off (PTO) because PTO is a combination of sick leave and vacation time, and the Division has advised that it will not attempt to arbitrarily divide PTO between the two.

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