

MARYLAND ENACTS TWO LAWS AFFECTING EMPLOYERS

Forfeiture of Leave on Termination Again Permitted

As noted in our January 31, 2008 *Employment Law Alert*, Maryland's Court of Special Appeals, in *Catapult Technology v. Wolfe*, ruled that accrued but unused vacation or similar leave cannot be withheld or forfeited on termination of employment even if an employer has a written policy that it will be. In response, the Maryland General Assembly passed a bill amending the Maryland Wage Payment and Collection Law ("Wage Payment Law") to permit such a practice. The bill was signed by the Governor, and the law went into effect on April 24, 2008.

The Wage Payment Law now provides that an employer is not required to pay an employee for any type of accrued leave (vacation, sick, or other category, such as paid time off that covers all types of leave) if:

- (a) the employer has a written policy that limits the compensation of accrued leave to employees;
- (b) the employer notified the employee of the employer's leave benefits at the time of hiring; and
- (c) the employee is not entitled to payment for accrued leave at termination under the terms of the written policy.

As a result of this change to the Wage Payment Law, Maryland employers should (i) consider whether they want to restrict or eliminate the payment of unused leave on termination of employment and (ii) carefully review their leave policies to determine whether any modifications may be necessary. In addition, if the employer's policy is to not pay for accrued leave on termination, the employer must make sure that the written policy is given to employees at time of hire.

Maryland Flexible Leave Act

The General Assembly also passed a bill permitting employees of employers with 15 or more employees to use available paid leave for the illness of the employee's immediate family, which includes a child, spouse or parent. The Governor signed the bill, and the law will go into effect on October 1, 2008. The law applies to an employer that provides leave with pay under the terms of a collective bargaining agreement or an employment policy. Employees may only use leave with pay that has been "earned," but employees who earn more than one type of leave with pay (*e.g.*, sick and vacation) may elect the type and amount of leave to be used.

An employer may not discharge, demote, suspend, discipline, or otherwise discriminate against an employee or threaten to take any of these actions against an employee who exercises his or her rights under this law or who files a complaint, testifies against, or assists in an action brought against the employer for a violation of this law.

Maryland employers should carefully review their leave policies to determine whether any modifications may be appropriate. Those with 50 or more employees making them subject to the federal Family and Medical Leave Act ("FMLA") should also review their FMLA policies to determine whether any changes may be appropriate with respect to the use of paid leave under those policies.