

Legally (Relevant



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Separations and Terminations – Responsibilities of the Employer and the Employee

Most employers are aware that there are laws that govern termination of employment. Claims for wrongful termination have increased in recent years, ranging from claims of retaliation for employee's complaints of sexual harassment, to age discrimination, among many others. There are legal implications involved in the decision to terminate, many of them fairly complicated and fact specific. Some of the best money spent on legal advice is a simple call to legal

counsel to go over an employment termination decision before acting on it.

Not as well-known are the responsibilities an employer has to an employee following separation of that employment, whether by termination or voluntary separation. This article is devoted to those responsibilities.

Payment of wages

Whether there is a separation of employment because the employee is fired or quits, the employer is required by State law to pay that employee all undisputed wages earned not later than the next regular pay day when that employee would have been paid if that employee were still employed. This State law, K.S.A. § 44-315, is part of the Kansas Wage Payment Act ("KWPA"). The KWPA is expressly made applicable to "municipalities" and "political subdivisions", and is therefore applicable to cities, RWDs, PWWSDs and sewer districts.

There are a few key terms in the KWPA requiring timely payment of wages. "Wages" means all forms of "compensation for labor or services", minus any authorized deductions and withholdings. "Earned wages" may include, where applicable, fringe benefits such as contributions to retirement plans.

As part of wages, the employer is also required to pay not later than the wage payment date for all accrued vacation as provided by the agreement with the employee or the employer's policy. Whether

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accrued and unused vacation must be paid or is lost at separation from employment is often a subject of dispute. As a general matter, the employer should assume that unless the employer's policy or agreement with the employee expressly prohibits payment for accrued but unused vacation upon separation, the employer will usually be held liable for payment.

When there is a dispute over the amount of wages owed to a separated employee, the employer must pay all amounts it concedes are due by the next regular pay day following the concession. The employee's acceptance of the conceded amount does not constitute a waiver of the employee's claim to the disputed amount. This is true even if the employer notes "paid in full" or similar language with the partial payment.

The Kansas Department of Labor ("KDOL") is charged with enforcement of the KWPA. In the case of a violation, an employee may make a claim for wages either with the KDOL or in court. Appeals from decisions of the KDOL are made in court.

Authorized deductions

The employer may deduct from the final payment of wages to a separated employee all authorized "deductions" and "withholdings". These are listed in K.S.A. § 44-319 and related Kansas Department of Revenue ("KDOR") regulations. These include the obvious ones, such as state and federal taxes. They also include an employee's contributions to retirement or health insurance plans and charitable contributions the employee had authorized in writing.

Return of employer's property

Another area of considerable dispute may involve the return of the employer's property in the possession of the employee. Most water systems' employees will have in their possession a variety of items of personal property belonging to the employer. These items may include cell phones, tools, parts and supplies, safety equipment, keys and passwords. In some cases they may even include a vehicle. The employee has a duty to return the employer's property to the employer at the time of separation from employment. If the employee fails or refuses to return these items, the employer is authorized by State law, K.S.A. § 44-319(c) "upon providing written notice and explanation", to deduct for these items from wages owed. Once the items are returned by the employee, the employer is required to release the withheld wages to the employee.

It is worth noting that according to the KDOR regulations, if an employer requires employees to wear uniforms, the employer cannot make employees pay for them. These uniforms are not "to the benefit of the employee" and thus a deduction for return of uniforms is not authorized.

It is not clear from state statutes or the KDOL regulations how these items of employer property are to be valued for purposes of deducting wages based upon the employee's failure to return them. For example, is the employer entitled to deduct \$400



for the replacement cost of the unreturned cell phone, or only \$50, being the value of the used cell phone? Is the employer entitled to withhold \$5 for non-return of keys to the office or the water treatment plant, or \$250 for the costs of all new locks and keys for these buildings?

A related question is whether withholding of wages for non-return of employer property is worthwhile in any event. In some cases, the separation from employment is unpleasant. Emotions may be high on both sides. But how much is it really worth to start a fight over a \$50 cell phone or \$25 pipe wrench? If withholding pay over these items causes the employee to file a wage claim with the KDOL, or worse, withholding wages over such a minor item will prove to be a poor decision. Under Kansas law an employer who fails to pay timely wages due may be liable for not only the wages owed, but a penalty equal to the amount of the wages due, plus interest, and most importantly – attorneys’ fees.

In a recent Kansas case, a dispute arose over the final paycheck due. The employer’s outside accounting firm misunderstood the biweekly pay date as it related to the period when the wages were earned. The result was that on separation the employer wrongfully refused to pay a final paycheck when due. The employee filed a claim with the KDOL

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for the missed payment, but while he was at it made other claims as well, including the claim that he actually had an employment contract that the employer had breached by terminating him without cause. The KDOL ruled in favor of the employer, but the employee appealed. The Court of Appeals ultimately ruled in the employee’s favor and ordered a new hearing. This case was then settled for \$90,000, most of which was attorneys’ fees. Assuming the

employer had fees roughly equal to the employee’s fees, a claim that began as a dispute over \$3,000 ended up costing him over \$140,000. A “pennywise but pound foolish” decision by the employer is not in the best interest of the water system or its customers.

Conclusion

Most employers are familiar with the need to consider the consequences of a decision to terminate an employee, and most will seek legal advice before acting on that decision. Less well known are the responsibilities that employers have following a separation from employment, whether voluntary or not. These are likewise important and care must be taken to satisfy these legal requirements. Penalties for failure to follow these rules are considerable, and poor decisions over treatment of a separated employee can be very costly.



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