

**Maine's Act Regarding the Treatment of Vacation Time Upon the  
Cessation of Employment  
Q&A**

January 3, 2023

On May 6, 2022, we sent out an alert on bill [L.D. 225](#) which amended Maine Law regarding the payout of wages upon separation of employment. As we enter the New Year we are providing some additional clarification on this new law, which became effective on January 1, 2023.

**1. Who is impacted by this law?**

This law applies only to private employers with 11 or more employees who work in Maine. If you have 8 employees in Maine and 3 in New Hampshire, it does not apply.

**2. Must we allow our employees to accrue vacation?**

No. However, if on or after January 1, 2023 your policy or your established practice allows for accrual of vacation time, upon separation of employment you are required to pay an employee for all unused, accrued vacation. Please note that in enforcing the law the MDOL will look to an employer's established practice only in the absence of a written policy. We always encourage you to have a written vacation and leave policy.

**3. Does this apply to vacation that accrued prior to January 1, 2023?**

No, this law does not apply to vacation accrued prior to January 1, 2023. However, if company policy prior to January 1, 2023 states that the employer will pay out accrued vacation time upon separation, then the employer must honor that policy.

**4. Does the new law apply to other accrued leave, such as EPL?**

No. This law applies only to vacation time. However, if company policy does not differentiate EPL from vacation time, the MDOL will consider your vacation policy to cover EPL payout as well.

**5. Upon separation, how long do we have to pay out the accrued vacation time?**

Accrued but unused vacation must be paid out no later than the next established payday.

**6. Can we cap the amount of accrued payout to employees?**

No, but you can cap the permitted accrual. If the accrual is capped, you are only required to pay out unused accrued vacation up to the capped amount. Any cap on accruals should be addressed in your policy.

**7. What if our employees are covered by a collective bargaining agreement?**

If a collective bargaining agreement includes provisions addressing payment of vacation pay upon cessation of employment, it supersedes this law. The MDOL may review the agreement to determine whether it includes such provisions but will not interpret or apply those provisions. If no such provisions are found, the MDOL will apply the new law.

**8. What are the penalties for noncompliance?**

An employee who does not receive pay for their unused accrued vacation time can sue their employer and seek damages of up to three times the unpaid amount, as well as interest and attorney fees. These unpaid wage claims are very punitive and can get very expensive.

The MDOL Wage and Hour Division (“WHD”) released interpretive [guidance](#) last September, which included some frequently asked questions addressing the definition of accrual, front-loading of vacation and rollover.

Takeaways for Maine Employers

Employers should review their vacation and leave policies to bring them into compliance with this new law. Employers should revise their policies if they do not allow for payout of accrued but unused vacation time upon separation. If an employer allows unlimited rollover of accrued vacation, an employer may want to consider changing this policy or the introduction of a cap. If you have any questions on this law or need advice on revising your current policies, please contact Peter Lowe at Brann & Isaacson, [plowe@brannlaw.com](mailto:plowe@brannlaw.com).