

# Must Terminated Employee Take Vacation During Notice Period?



## **SITUATION**

Upon learning that his position will be eliminated in a year, Alberta school district employee Sean de Doer opts to work through the notice period at his regular pay. His plan is to work through the year and cash out his 35 accrued vacation days at the end of the year. But district policy bans employees from banking more than 30 vacation days. Sean decides not to use his vacation days and demands reimbursement for all 35 days when his employment ends.

**Note:** While BC, MB, NL, NS, NT, NU, ON and SK ban employers from requiring vacation time to be taken during a termination notice period or using vacation time to calculate the notice period, Alberta is one of six jurisdictions that doesn't address this issue in its employment standards laws.

## **QUESTION**

**Is Sean entitled to pay for all 35 of his accrued vacation days?**

- A. Yes because the district's use-it-or-lose it policy violates the ban on requiring vacation time to be taken during the notice period.
- B. Yes because notice in lieu of damages and vacation must be consecutive.
- C. No because Alberta law doesn't require employers to let employees work through the notice period.
- D. No because the school met its legal obligations by notifying the engineer that his job was being eliminated.

[learn\_more caption="ANSWER"]

**C. The policy of the district to enforce the use-it-or-lose it policy is perfectly legal and the engineer can't cash out all 35 days' of his accrued vacation.**

## EXPLANATION

This scenario, which comes from an Alberta case, illustrates the differences in provincial laws regarding the rights of employees who work through the notice period to cash out their accrued vacation. If this case had taken place in one of the 8 jurisdictions where employers can't force employees to take their accrued vacation during the notice period, the engineer would have been able to cash out all 35 days. But Alberta doesn't include such a provision in its law. And the court refused to imply the existence of one. As a result, the district was allowed to enforce its policy and require the engineer to take his vacation days above 30 during the notice period or risk losing them when the notice period ended [*Deputat v. Edmonton School District No. 7*, [2008] A.J. No. 22, January 14, 2008].

## WHY WRONG ANSWERS ARE WRONG

**A is wrong** because not all provinces ban employers from requiring employees to use their vacation during the notice period. Since Alberta doesn't have such a rule, the district was free to enforce its use-it-or-lose-it policy during the engineer's notice period.

**B is wrong** because the absence of a law prohibiting employers from requiring employees to use their vacation days during the notice period in Alberta means that statutory notice and vacation can co-exist at the same time, i.e., a day of notice can also count as a day of vacation, and don't have to run consecutively.

**D is wrong** because the notice obligation essentially means giving the employee ample notification of his termination. Then, once notice is served, the employee can keep working through the notice period or get the equivalent wages in lieu of notice. So the fact that the district told the engineer he was being fired wasn't enough to ensure compliance with the law.

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