Must Terminated Employees Take Vacation During the Notice Period?



Employment standards laws require employers to pay employees their accrued vacation when either side terminates the employment relationship. Employees may also continue to work during the termination notice period. To save money on the settlement, the employer may want the employee to take the vacation they've accrued for the current employment year during the notice period; however, the employee may want to cash out accrued vacation when the notice period ends. The following scenario illustrates the rules that apply in this scenario, at least in most parts of the country.

Situation

A school district in Alberta notifies one of its HVAC engineers that his position will be eliminated in a year. The engineer is given the option and decides to work through the notice period at his regular pay. He has also accrued 35 vacation days. The engineer wants to work through the year and cash out those vacation days at the end of the year when his job is eliminated. But school district policy bans employees from banking more than 30 vacation days. The engineer decides not to use his vacation days and demands reimbursement for all 35 days when his employment ends.

Question

Is the engineer entitled to pay for all 35 of his accrued vacation days?

1. Yes, because the district's use-it-or-lose-it policy violates the *Employment Standards Code* ban on requiring vacation time to be taken during the notice period.
2. Yes, because employees who work during the notice period can't take vacation days during that period.
3. No, because employers don't have to let terminated employees work through the notice period.
4. No, because the school met its legal obligations by notifying the engineer that his job was being eliminated.

Answer

1. **The engineer can cash out all 35 accrued vacation day because the district isn't allowed to enforce its use-it-or-lose-it policy during the notice period.**

Explanation

Employers can’t force terminated employees to use their accrued vacation during the notice period; stated differently, employees who work during the notice period can choose to cash out their accrued vacation for the year if they don’t want to use those vacation days during the notice period. Although this case is set in Alberta, the same rules apply in every other part of the country with 4 exceptions: New Brunswick, Prince Edward Island, Yukon, and the Federal jurisdiction are the lone exceptions. So, A is the correct answer.

Why Wrong Answers Are Wrong

B is wrong because terminated employees are entitled to use their accrued vacation days during the notice period, provided that they do so in accordance with the normal scheduling and notification rules that apply for using vacation time.

C is wrong because the issue of whether an employer has to allow a terminated employee to work during the notice period has no bearing on whether it can compel the employee to use accrued vacation days during that period in cases where employees do work during the notice period.

D is wrong because termination notice involves more than simply notifying employees that they’re being let go. Unless termination is for just cause or other exceptions apply, the employer must also give employees termination notice or wages in lieu of notice based on how many years they’ve worked for the company. So, the fact that the school district told the engineer he was being laid off wasn’t enough to comply with the law.