



November 11, 2020

A member inquired about how to pay out holiday pay and vacation pay after a wage reduction. I am going to provide some information. **PLEASE NOTE:** *This is not legal advice* and, as always, I recommend that you run your policy past a local employment lawyer to make sure it complies with all applicable laws.

- As a general rule, companies that reduce pay cannot retroactively apply that pay reduction to employee wages already earned. In most jurisdictions, accrued vacation leave is considered earned wages.
- As it applies to holiday pay - the employees can receive holiday pay at the pay rate that they have at the time of the holiday.
- As it applies to vacation pay, this issue is more complicated. Each state will have its own law on the books, or case law developed through the courts, that will address the rate that paid leave should be paid out. Again, I recommend that you run your policy past a local employment lawyer to make sure it complies with all applicable laws.
- To avoid allegations of wage theft and to support employee morale, I recommend taking the following approach to the payment of earned paid leave. This may not be required by law, but is my recommendation even if not required.
 - If your company provides leave as a front-loaded deposit at the beginning of the year, that leave should be paid out at the wage rate in effect at the time the leave was placed in the employee's leave balance.
 - If your company uses an accrual system in which employees earn hours of leave with each pay cycle, the leave has been accrued at the wage rate in effect at that time of the accrual and should be paid out at the rate they were earned.
 - So, whatever the leave balance was up to the time of the wage reduction, those leave balances should be paid out at the regular (non-reduced) wage. The leave hours accrued after the wage reduction can be paid out at the reduced rate.
 - It would be wise to have someone take a look at leave balances ahead of time to calculate each employee's leave balance up to the point of the wage reduction.
 - Pay out the higher rate leave first in a "first in, first out" (FIFO) system. Once the pre-reduction balance has been exhausted, the remaining leave balance will be paid at the reduced rate.



- Example, using simple math:
 - Employee has 20 hours of leave balance accrued up until the wage reduction.
 - Employee accrued 20 more hours of leave after the wage reduction.
 - Employee has requested 40 hours of leave over the holidays.
 - The first 20 hours of leave will be paid at the employee's original wage rate (using FIFO).
 - The remaining 20 hours of leave will be paid at the employee's reduced wage rate.

Please let me know if you have any questions or need assistance.

Best,

Adriane

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