

INDIANA LAW UPDATE

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FROM THE LAW OFFICES OF HOEPPNER WAGNER & EVANS LLP

Accumulated and Unused Sick Leave Time May Be a "Wage" Under the Indiana Wage Payment Statute

Indiana has a statute called the Wage Payment Statute. This statute applies to current employees and to those who have voluntarily left employment, either permanently or temporarily. The statute provides in part that if an employer fails to pay wages when the wages are due, an employee may file suit seeking recovery of the unpaid wage, an amount up to twice the unpaid wage as a penalty, and attorney fees.

In a recent case, the Indiana Court of Appeals held that accumulated and unused sick leave time may be a "wage" under this statute. In the reported case, an employee had accumulated 110 days of sick leave. When he resigned, he demanded payment for these days. The employer refused to pay for the unused days, claiming that they could not be a "wage" because they were paid upon termination and not on a regular basis. Unfortunately, the Court of Appeals disagreed.

We would recommend that employers examine current sick leave policy. There are provisions which can be added to a sick leave policy which prevents the unused days from being characterized as a "wage". Naturally, some employers do pay accumulated, but unused, sick days when a person resigns or retires. However, if you do not want this outcome, your sick leave policy must be written accordingly.

If you would like more information or to have your sick leave policy reviewed, please contact James L. Jorgensen in our Porter County office at (219) 464-4961.

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