

## ***Accrual of Vacation Time and the Deadline to File a Lawsuit for Unpaid Vacation Time***

Salinas Californian

October 31, 2006

By: Kelly McCarthy Sutherland

Last week, the Fifth District California Court of Appeal ruled on the statute of limitations for filing a lawsuit for unpaid vacation time. Employers should take note of this case because it expands their liability for unpaid vacation time.

John Church worked for an accounting firm that terminated his employment without paying him for all of his vested vacation time. Mr. Church hired Daniel Jamison as his attorney. Mr. Church's former employer argued that Mr. Church could not sue to collect vacation time that was earned more than two years prior to the termination of his employment. Other cases and even the California Division of Labor Standards Enforcement (DLSE) had agreed with this argument, so the trial court on the employment claims refused to let Mr. Church proceed with his claim for the unpaid vacation time.

Mr. Church then filed *Church v. Jamison*, accusing his lawyer of committing malpractice by not filing his lawsuit for unpaid vacation time sooner. The trial court and the appellate court in the malpractice action agreed that Mr. Jamison had not committed malpractice because he had filed the lawsuit within one year of the termination of Mr. Church's employment.

The appellate court noted that a DLSE interpretive bulletin states that the statute of limitations for unpaid vacation time begins to run when the vacation is earned because it can be taken as soon as it is earned. Other cases have been decided based upon that bulletin because courts used to give great deference to the DLSE interpretive bulletins. However, a California Supreme Court case decided in 1996 called into question the deference to be given to the DLSE interpretive bulletins. The appellate court here declined to give any weight to the DLSE interpretive bulletin, and it set forth its own analysis.

The appellate court reasoned that Labor Code section 227.3 requires an employer to pay all vested vacation time at the time of termination, and therefore, any lawsuit for unpaid vested vacation time cannot be filed prior to the time of termination because there is no requirement for payment until then. It would be illogical to have a statute of limitations expire prior to the time a lawsuit could be filed, so the appellate court concluded that Labor Code section 227.3 requires employers to pay for *all* vested vacation time at the time of termination, not just vested vacation time earned in the two years prior to the lawsuit being filed.

Even though Monterey County is in the Sixth and not Fifth Appellate District, it appears wise for employers to pay employees for all unpaid vested vacation time at the time of termination and not just for vested vacation time earned in the two years prior to the termination.