

July 6, 2016

Labor and Employment Update

Terminated Managers Are Not Entitled to Payout of Sick Leave Accrued under Employer Sick Leave Policy

Non-exempt employees in Puerto Rico are entitled to paid vacation and sick leave by virtue of Law No. 180-1998. Unlike vacation, accrued but unused sick leave, need not be paid out upon termination of a non-exempt employee. If there was any question about this, the Supreme Court dissipated it in Zayas v Puerto Rico Telephone Co., 2016 TSPR 118.

Zayas v Puerto Rico Telephone Co., however, was not filed by non-exempt employees covered by Law 180, but by former managers, who are deemed exempt employees and therefore not covered by Law 180. These managers claimed they were terminated without just cause and because of their age. They demanded payout of the sick leave accrued under their employer's sick leave policy for managers, on the grounds that it constituted "salaries". Therefore, the policy provision that limited sick leave payout to the occasion of retirement, was arguably illegal. The Supreme Court disagreed.

The court ruled that paid sick leave is a **benefit** (the decision uses the term in bold) and does not constitute "salaries" as that term is defined by Law 180. Because it is not salaries, there is no legal obligation to pay it out upon termination, except as may be otherwise provided under the terms of the voluntarily adopted policy. In this case, termination did not trigger payout under the policy, so payout was not otherwise legally required.

Employers can voluntarily create paid sick leave for employees to who Law 180 does not apply. In doing so, they can provide greater benefits. In drafting these policies employers should bear in mind that they will be contractually bound by those benefits, and that in interpreting these policies, the courts may look by analogy to what has been provided by Law 180 for non-exempt employees.

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