



## **COURT RULES THAT CALIFORNIA LAW MAY REQUIRE EMPLOYER TO ACCRUE AND PAY UNUSED “SABBATICAL” TIME LIKE VACATION**

On August 5, 2011, in Paton v. Advanced Micro Devices, Inc., the California Court of Appeal ruled that an employee had the right to proceed to trial with a claim that his employer should have paid him for unused “sabbatical” time upon termination of employment. California law requires that employers accrue vacation time earned by employees, and pay out unused vacation time upon termination of employment. The court ruled that the employee presented enough evidence to move forward with his claim because the “sabbatical” described by the employer’s policy sufficiently resembled vacation based upon a variety of characteristics, including: (a) that the employee could use the sabbatical for any purpose (i.e., the employee was not required to work on any specific project or other endeavor); (b) the sabbatical entitlement was based on length of service; and, (c) the four to eight week duration of the sabbatical was not longer than an employee might be expected to take for vacation (if the maximum accrued vacation could be taken all at once).

This new ruling highlights the risk to California employers of utilizing any policy or practice providing time off with pay that is not accrued. For example, the California Labor Commissioner has previously issued opinion letters stating when an employer provides “floating holidays” that allow employees to take time off with pay on dates of their choosing, the floating holidays must be accrued and paid out on termination the same as vacation. Likewise, employers may face claims for failing to accrue and pay on termination “compensatory time off” promised to employees in exchange for working on weekends or holidays. Employers are strongly encouraged to review with counsel all policies and practices providing time off with pay to ensure compliance with California’s particularly strict requirements.



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