



California Law Update

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February 2008

Stock Purchase Plans That Forfeit An Employee's Non-Vested Stock Upon Termination Or Resignation Do Not Violate Labor Code Provisions Requiring Payment Of All Earned Wages

Employers frequently offer stock purchase plans to their employees as part of their compensation package. Stock incentive or purchase plans generally give an employee the choice of deducting a portion of his or her wages to purchase company stock, often at a reduced price. Stock purchase plans also may include provisions that require the employee to work for a set minimum period of time for the stock to vest. If an employee resigns or is terminated before the stock vests, the shares and the money used to purchase the shares are forfeited. Recently, in Schachter v. Citigroup, Inc. (2008) 159 Cal. App. 4th 10, the appellate court was faced with these facts and held these types of stock purchase plans do not violate the Labor Code provisions requiring payment of all earned wages at time of termination.

The defendant financial brokerage company, Citigroup, obtained summary judgment against the plaintiff employee who sued alleging the forfeiture provisions in the employer's stock purchase plan violated Labor Code § 201. The incentive stock compensation plan allowed employee participants the option of using a portion of their annual earnings to purchase shares in the parent company's stock at a price below the publicly-traded market price. If the participating employee resigned or was terminated for cause within a two-year vesting period, he or she forfeited the stock as well as the money used to purchase it.

The appellate court looked at the economic reality that employers now frequently offer stock purchase plans as an incentive and part of an employee's compensation. Labor Code § 200, subdivision (a), provides that "wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the time, task or other method of calculation. Labor Code § 200 does not state how the value is to be determined or "*otherwise prohibit employees from negotiating a compensation package that includes as part of their wages a conditional future interest in a valuable asset*". Employees who elect to participate in a stock purchase plan opt to set aside their own wages to purchase stock, which is consistent with Labor Code § 224. Also, Labor Code § 219 did not invalidate the forfeiture provisions as there was no unlawful forfeiture of earned wages as the stock had yet to vest.

In California, employees who elect to participate in an employer's stock purchase program are considered fully paid by the wages they designated to invest in company stock. The employer may withhold or divert any portion of an employee's wages for the benefit of the employee when the deduction is expressly requested and authorized by the employee in writing.



Employers with questions about employee stock plans should consult with an experienced employment attorney. Employers should review proposed stock plans with an employment attorney to ensure compliance with California labor laws.

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