

ATTORNEYS GENERAL OPINIONS

July 1, 1963

Opinion No. 53

TO: Paul H. Bachman
Commissioner of Labor

BY: Richard T. Anderson
Assistant Attorney General

QUESTION: This office is requested by numerous employees to adjudicate a claim for vacation pay when it has been earned under various circumstances, but at all times has been agreed to by the employer. The question, as it concerns us, is, "Can vacation pay be considered as wages earned; and further, would that qualify the claimant to appeal to my office for assistance in collection of vacation pay considering that in most instances vacation pay is considered a fringe benefit?"

ANSWER: Yes--qualified.

It is generally held that a vacation with pay is in effect additional wages, or in the nature of deferred compensation, in lieu of wages earned each week the employee works, which is payable at some later time. *Textile Workers Union of America, CIO v. Williamsport Textile Corp.*, 136 F. Supp. 407; *General Tire & Rubber Co. v. Local 512, etc.* 191 F. Supp. 911. Upon examining the judicial authority in this area, it appears that before an employee is entitled to receive vacation pay, the following conditions must exist:

1. There must be an agreement or contract between employer and employee which provides for vacation pay.
2. The agreement must specify some definite time element as to the period of employment which must be completed by employee before a right to vacation pay is earned.
3. Vacation pay must have been earned as provided in the agreement.

In the absence of one of these elements, an employee is not entitled to receive vacation pay. In re *Pringle Engineering and Manufacturing Co.*, 164 F. (2d) 299; *Cummings v. Chicago, Aurora and Elgin Railroad Co.*, 109 N.E. (2d) 378; *Drake v. Block*, 74 N.W. (2d) 577; *Knapp v. Atlantic Basin Ironworks*, 116 N.Y.S. (2d) 456

In conclusion, it is our view that vacation pay is in effect additional or deferred compensation. If an employee presents a claim for vacation pay to your office which is based upon a contract or agreement which makes provision for vacation pay and such pay has been earned according to the provisions of the contract or agreement, the claimant has a just claim which merits your attention.