

## Forfeiture of Unvested Benefits in Mandatory Plans is Not A Refusal to Pay Wages Under CA Law, Court Says

---

January 18, 2011

---

---

Plaintiffs alleged that they were required to accept part of their wages in the form of awards under the Company's bonus programs and "top hat" plan. When Plaintiffs terminated employment, they forfeited their unvested benefits in these plans. Under California labor law, an employer must pay any wages earned and unpaid at the time of termination of employment. In order to be "wages" under California law, all the conditions agreed to in advance for earning those wages have to be satisfied. The court found that the unvested benefits were not "wages" because the specific terms of the bonus programs and the top hat plan controlled whether the Plaintiffs were entitled to such wages and the bonus programs and top hat plan provided that such benefits were forfeited. *Callan v. Merrill Lynch & Co.*, No. 09 CV 0566 BEN, 50 EBC 1449 (S.D. Cal. Aug. 30, 2010).