



Is An Unlimited Vacation Policy Right For Your Workplace?

Insights

7.01.15

According to a survey by the Society for Human Resource Management, about 3% of companies in the U.S. maintain some form of unlimited vacation policy. The reasons for adopting such a policy are easy to see: they offer worklife balance and flexibility, empower employees with the responsibility of balancing their time off, and relieve the company of administering a vacation or paid time off (PTO) policy. While the unlimited vacation policy trend is growing, there are various considerations to take into account before diving in.

Appropriate Culture, Appropriate Workforce

Unlimited vacation policies are best suited for companies that already provide employees with flexible hours and autonomy. If your organization has a large number of nonexempt employees, then a blanket unlimited vacation policy may not be a good fit. Nonexempt employees typically have responsibilities that require a more structured schedule, and in such cases, employers will need to track their hours.

In such companies, perhaps an unlimited vacation policy can be applied to just a small group of employees within the organization (such as executives). Ultimately, employees who understand that they are still responsible for bottom line performance no matter how many hours they work are the best candidates for such a policy.

Consider State Law

Federal law does not require employers to provide vacation – paid or unpaid. But some states forbid use-it-or-lose-it policies and require employers to pay out unused or accrued vacation time, considering it earned compensation that cannot be taken away. In other states, written promises (e.g., in the employee handbook) will dictate whether unused vacation or PTO time needs to be paid out upon departure.

So it's important to develop a clear written policy regarding paid leave and follow it exactly. Be aware that if inconsistent past practice differs from your written policy, you may find that a court will enforce your "actual" policy and force a payout.

Some employers that operate in states which mandate payout of accrued vacation time might consider an unlimited vacation policy as an attempt to circumvent mandatory payouts. Since

consider an unlimited vacation policy as an attempt to circumvent mandatory payouts. Since employees are not limited to a certain amount of accrued vacation time, there is arguably no obligation for a payout if it is unused.

However, there is currently little case law and guidance regarding the relationship between vacation payout laws and unlimited vacation policies, and courts may conceivably deem some amount of the vacation as earned in these situations. Our advice? Confirm in writing that vacation time is not accrued, and therefore there will be no unused vacation to be paid out upon termination.

Fair And Consistent Administration

Although unlimited vacation policies may seem simple to administer, challenges may arise during actual implementation. For example, if an employee must obtain a supervisor's approval before scheduling a vacation, take care that the administration of your policy is fair and consistent. If perceived favoritism or unfairness occurs, this may create a risk of discrimination claims.

“To Infinity And Beyond!” ... And Back Again

If you decide to make the transition to an unlimited vacation policy, you will need to decide how to treat the vacation days that employees have already earned. You could decide to pay out the unused days, allow employees an amount of time to use up their remaining vacation days, keep a separate record of the unused vacation days earned under the traditional policy to be paid out upon termination, or other options. Regardless of which option you take, give reasonable advance notice to your workers.

Certain parameters can minimize risk of abuse. For example, you could require approval from management or the human resources department if an employee wants to take a particular number of consecutive days off. You should also consider limitations on certain time periods that are particularly busy. Further, some sort of advance notice requirement should be in place so that you know when each employee will be off and can ensure that your employees are not all taking vacation at the same time.

Train your managers on fairly and consistently approving vacation in order to reduce the risk of perceived favoritism or unfairness. Also, task them to pay attention to how an unlimited vacation policy is affecting morale, whether employees are actually taking any vacation, and if employees might be getting burned out because they feel that taking time off is actually discouraged under such a policy.

Conclusion

Unlimited vacation policies are becoming increasingly prevalent and they're worth considering. Ultimately, each employer has to judge whether such a program is appropriate for their workforce by taking into account benefits, potential drawbacks, and associated legal risks.

For more information, contact the author at ALau@laborlawyers.com or 713.292.0150.

Related People



Annie Lau
Partner
415.490.9023
Email

Service Focus

Employee Leaves and Accommodations

Wage and Hour