

UNCERTAINTY AROUND UNLIMITED PTO: IS IT ACTUALLY A PERK?

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Many companies, especially those in the technology industry, have created buzz over the last few years by offering employees “unlimited” paid time off (PTO). Traditionally, an employee’s time off has been separated into vacation and sick days, designated when the time is taken off work. In these scenarios, an employee may only take the number of vacation days allotted to that individual and, unlike paid sick leave, unused vacation at termination is paid out to the employee. Some companies provide PTO for “illness and wellness,” and a set number of PTO days are provided for use at the employee’s discretion.

Unlimited PTO policies go one step further: there is no cap on the amount of time an employee can take off of work. But with all the talk about more flexible PTO policies, only a small number of companies have actually committed to a true “unlimited” PTO policy. The question remains: Are these unlimited PTO policies too uncertain to implement?

POTENTIAL BENEFITS TO UNLIMITED PTO POLICIES

On its face, unlimited PTO seems like a win for both employees and employers. An unlimited PTO policy is a useful recruiting tool as it promotes autonomy over the employee’s own work/life balance. With more flexibility comes a greater responsibility for time management. Flexible policies around vacation can foster trust, avoid burnout, and focus on meeting objectives in a results-oriented environment rather than worrying about counting accrued vacation hours.

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Along with the benefits of a potentially happier and healthier workforce, unlimited PTO has employer benefits as well. Unlimited PTO is seen as a cost-saving technique. If an employee does not accrue vacation, then there is no need to pay out unused vacation days at the end of the employment relationship.

California courts have provided limited insight into the legality of unlimited PTO policies. In California, an employer is not mandated to provide vacation pay; however, if an employer does have an established policy to provide paid vacation, then certain restrictions are placed on the employer as to how it fulfills this obligation. California allows vacation accrual, caps on the maximum amount of vacation accrual, and bans “use it or lose it” policies. [Under California law](#), earned vacation time is considered wages, and vacation time is earned, or vests, as labor is performed. Because vacation pay is considered the same as all other forms of compensation at termination, accrued vacation pay must be paid to the employee upon termination.

Unlimited PTO policies that combine vacation and sick leave do not provide for any method to determine how much vacation is owed to an employee throughout the employee’s tenure or, more importantly, upon separation from the company. Moreover, without the burden of determining how much time is allotted to each employee, there is less of a burden on Human Resources to keep track of accrued hours.

POTENTIAL PITFALLS TO UNLIMITED PTO POLICIES

So, is unlimited PTO too good to be true? Problems identified as to unlimited PTO policies include, but are not limited to: inconsistent enforcement, employees taking less time off, and the creation of animosity among employees who are paying attention to which of their colleagues are taking time off and those who are not. For example, unequal administration and approval of PTO may lead to potential discrimination claims.

Employers must also remain cautious when combining sick days and vacation days into one unlimited PTO policy. California (and some municipalities like San Francisco) requires employers to provide a certain amount of paid sick leave. Mandatory sick leave presents a number of issues; for instance, what if an employee is denied leave that was

meant to be requested as a sick day under the law? Denial of leave may then expose an employer to potential risks for retaliation claims.

Other considerations may include: Does the workforce require “facetime” around the office? How are teams affected or treated differently? Is there a policy to determine whether the employee is using excessive leave or abusing the system? Will the employer compensate an employee for unused time? Will other paid sick leave be considered separately? How will the company avoid subjective approval or discriminatory application of the policy? Are the wage statements compliant with the current sick leave policy?

CONCLUSION

As vacation and time away from work is known to boost concentration, creativity, and morale, it is important to determine what works best for the employer and its employees when it comes to vacation policies and paid time off. While there is a lot of uncertainty surrounding the concept of unlimited PTO, it is clear that unlimited PTO may have great benefits to the employees and culture—but a carelessly crafted policy will also expose employers to substantial risks. Therefore, it is important to effectuate a clear written policy that considers the interplay of state and local leave laws and mitigates the employer’s risk while providing a benefit to the employee.

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