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Vacation Time: Frequently Asked Questions

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The summer is a popular time for employees to request time off for vacations. Whether offering paid vacations as a stand-alone benefit or as part of an overall paid time off (PTO) program, employers may face challenges when designing, implementing, and enforcing a policy on vacation time. The following are answers to some common questions about vacation and PTO policies to help address some of these challenges.

Q: Am I required to offer paid vacations to employees?

A: There is currently no federal, state, or local law that requires employers to offer paid vacation leave to employees. However, if an employer does choose to offer paid vacation, some state laws regulate rollover of unused leave from year to year as well as vacation payouts at the time of separation.

Q: Do I have to carry over employees' accrued but unused vacation from year to year? Does accrued but unused vacation need to be paid out when an employee leaves the company?

A: It depends on your state. Some states explicitly prohibit policies that force employees to forfeit accrued, unused vacation time (also known as use-it-or-lose-it policies). In these cases, employers must generally allow employees to carry over accrued but unused vacation time/PTO or pay employees for the unused time at the end of the year. Similarly in these states, the employer is required to pay out any accrued, unused vacation at the time of separation. In some other states, employers are allowed to have use-it-or-lose-it policies only if the employer has a written policy indicating such. For more information on state laws, see the Vacation Payout chart in the State & Federal Compliance Database section of HR411.

Q: Can I place a cap on the amount of vacation an employee can accrue?

A: Generally, employers can establish a reasonable cap on how much vacation an employee can accrue before they have to use vacation time, regardless of whether state law prohibits use-it-or-lose-it policies. Generally, a reasonable cap is considered 1.75 to 2 times the annual

accrual rate. For example, if an employee is entitled to 10 days of vacation per year, a best practice would be to set the accrual cap at some amount between 17.5 and 20 days. Once that employee earns, but does not use, 20 days of vacation time, that employee will have to "use" some of that time in order to earn any additional time. Any cap should be clearly communicated to employees in your written vacation/PTO policy.

Q: A lot of employees have requested to take vacation during the month of August. If I approved all of them, we wouldn't be able to meet our business needs. Can I limit the number of employees who are on vacation at any one time?

A: Yes, employers generally have the right to control when and how much vacation can be taken at any particular time. In the vacation or PTO policy, employers should clearly communicate that paid time off will be granted based on scheduling needs and may be restricted if necessary. This practice must be applied consistently.

Q: What are some strategies for maintaining staffing levels during peak vacation season?

A: Consider planning for peak periods by establishing an early deadline for submitting vacation requests. For example, an employer could require all summer vacation requests to be submitted by April 30. Other employers may respond by implementing blackout periods during which vacations are off limits. Another option is providing employees with incentives to take time off during less

desirable times of the year (i.e., providing an extra day of vacation). Whatever strategy you choose, it is important to give supervisors guidance on handling time off requests and hold them accountable for ensuring adequate staffing levels and enforcing your policy consistently.

Q: We close for one week during the summer. Am I required to allow employees to use their accrued paid vacation for that one-week furlough?

A: At the federal level, there is no requirement for employers to permit employees to substitute paid vacation leave for the time missed because of a one-week furlough. In fact, to maximize the cost savings of a furlough, some employers prohibit employees from substituting paid vacation. Your policy on the substitution of paid leave should be developed in accordance with applicable law and it should be communicated to employees in advance.

Q: An employee is on paid vacation for a week during which a paid company holiday (July 4) falls. Am I required to offer another paid day off because the holiday fell during her vacation?

A: No, it is not required. Some employers do choose to allow employees to take another day off if a holiday falls when they are on paid vacation leave. Whatever option you choose, it is important to apply it consistently.

Q: If an exempt employee has used all of his/her accrued vacation time and takes a day off can I deduct from the employee's salary?

A: Under the federal Fair Labor Standards Act (FLSA), exempt employees must receive their full salary in any workweek in which they perform any work. Deductions from an exempt employee's pay are permitted only in a few very limited circumstances, one of which is when an employee is absent for one or more full days for personal reasons other than sickness or disability. Therefore, only if an exempt employee is absent for a full day for personal reasons, can the employer deduct from his or her salary.

Q: What are the essential elements of a vacation/PTO policy?

A: When drafting and reviewing your policy, a good place to start is by assessing whether it addresses the issues covered above. Specifically, it is a best practice for a vacation policy to include:

- » Who is eligible for vacation/PTO (i.e. full time, part time, employees who complete a certain amount of service);
- » What is the accrual system (i.e. years of service and hours per accrual period);
- » Will the vacation/PTO time be considered "hours worked" for overtime purposes (most employers choose to exclude this time for the "hours worked" calculation);
- » When vacation/PTO can be taken, the amount of vacation that may be taken at any particular time, and any other restriction on vacation use;
- » How employees should request vacation/PTO, how much advance notice they must give, the process for receiving approval for requested vacation/PTO, and how employees should record used vacation/PTO for timekeeping purposes;
- » How is the balance of unused vacation/PTO treated at the end of a calendar year/service year (in accordance with state law);
- » Whether there is a cap on vacation/PTO accrual;
- » How vacation/PTO is treated at termination (in accordance with state law).



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