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California Paid Time Off and Sick Pay: Employment Law Compliance Tips

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Agenda

- ✓ Vacation
- ✓ Sick pay
- ✓ Q&A



California Vacation Law



Vacation Basics

- Generally, no California obligation to provide “paid vacation”
- But once provided, certain rules apply:
 - Accrual rules
 - No “use it or lose it”
 - Cash out at termination



Vacation Basics

Q: What is the difference between “vacation” and “PTO”?

A: PTO usually combines vacation and sick pay.

- No use it or lose it
- Must follow sick pay rules for sick days.
- Some employers disfavor due to sick pay complications



Vacation Accrual

- Employers may set the accrual rate
- Rate may vary depending on job classification, seniority, and other legitimate business criteria.
- Probationary / waiting period permitted.
 - **“Subterfuge” exceptions**
 - E.g. 0 first year, 4 weeks second year, 2 weeks every subsequent year
 - E.g. 0 during first 90 days, then receive 12 months of vacation during next 9 months.



Vacation Accrual

Q: What is the legally permitted accrual cap in California?

A: There is no specified legal limit, but 1.5x the annual accrual is a common standard.

- 1.5x endorsed by labor agency and safe
- Technically the cap can be lower than 1.5x
- *Reminder: whatever is accrued rolls forward!*



Vacation Accrual

Q: Do we have to accrue vacation during leaves of absence?

A: No.

- Most companies don't accrue vacation during unpaid leaves; many accrue it during paid leaves.
- Recommend specifying in policy.



Vacation Considerations

Q: What rate of pay is vacation paid at?

A: Generally, the rate that you specify in your policy.

- Presumably at the employees “base rate” of pay (hourly or salary)
- Best to specify in policy
- Technically OK to use another rate
- BUT cash out at termination must be paid at final rate of pay



Vacation Considerations

Q: Can we control the timing and duration of vacations?

A: Yes.

- Management may grant/deny vacation requests
- May specify procedure for requesting vacation (e.g. advance notice)
- May control when and for how long
- Best to specify in policy



Vacation Considerations

Q: If an employee gets sick during vacation, do we have to let her use sick pay instead?

A: No.

- Although your policy could allow employees to convert to sick pay, this is not mandatory.



Vacation Considerations

Q: If an employee works while on vacation, do I have to pay them extra?

A: Maybe.

- Salaried exempt – generally no.
- Non-exempt – maybe.
 - Best to prohibit work on vacation.



Vacation Considerations

Q: Are employees entitled to use vacation during leaves of absence?

A: Company may require or permit use of vacation during leaves of absence.

- Exception: California Pregnancy Disability Leave – may not require use of vacation.
- Best to specify use rules in policy



Vacation Pay Advances

Q: Is it legal to advance vacation for use before it accrues?

A: Yes, but...

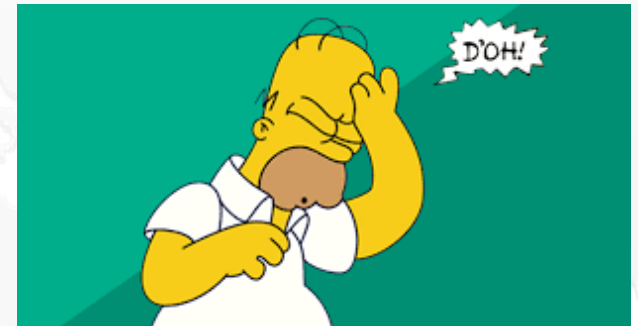
- Deducting the negative balance from final pay disapproved by state labor agency.
- Most employers do not allow advances.



Vacation Cash Out

Common Mistakes – Cash Out At Termination

- Failure to cash out at final rate of pay
- Poor record keeping / uncertainty about accrual balance.
- Failure to timely cash out along with final pay check
- Failure to prorate accrual in final period on a daily basis



Floating Holidays

- State labor agency deems floating holidays to be “vacation.”
 - No use it or lose it
 - Must be cashed out at termination if not used
- Exception:
 - Paid time off that can be used during the same pay period as a specified event.
 - E.g. paid day off for birthday, taken in same pay period as actual birthday.



Paid Holidays

- Paid holidays are not mandatory
- They do not accrue or carry forward (unless you promise)
- Employer can impose reasonable conditions
 - e.g. must work day before or after



Unlimited Vacation

“Unlimited” vacation is legal in California, but with important caveats.

McPherson v. EF Intercultural Foundation, Inc.,

- Three exempt employees sued the company for payment of unused vacation time at termination, despite being subject to an unlimited paid time off policy, because they argued the policy was neither unlimited in policy nor practice.
- The court agreed.

Unlimited Vacation

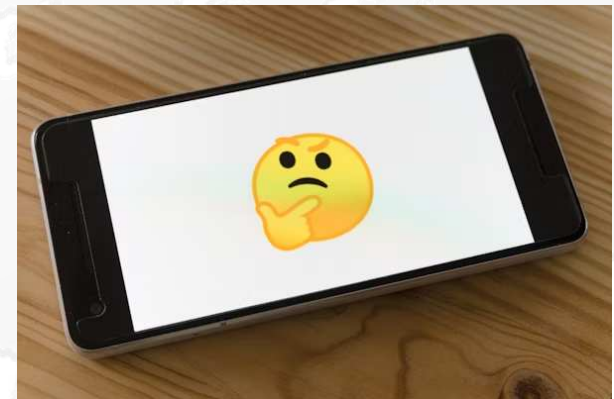
Key Elements of Unlimited Vacation Policy

- Provides, in writing, that an employee's ability to take paid time off is not a form of additional compensation for work performed, but perhaps **part of the employer's promise to provide a flexible work schedule.**
- Clearly **defines the rights and obligations** of both employee and employer and the consequences of failing to schedule time off.
- In practice allows **sufficient opportunity** for employees to take time off.
- Is **administered fairly** so that it neither becomes a de facto "use it or lose it policy" nor results in inequities, such as where one employee works many hours, taking minimal time off, and another works fewer hours and takes more time off.

Unlimited Vacation

Considerations:

- Don't do it; or:
- Limit to certain job classifications (e.g. executive level)
- Limit to personal time off and not protected leaves of absence or sick time.
- Get expert help drafting a policy.
- Carefully train managers on implementation



Sick Pay



California Sick Pay

Overview:

- Right to minimum accrual or lump sum (per your CA policy)
- Right to call off, using your attendance procedures
- No negative consequences (discipline, retaliation) for proper use
- Provide balances each pay period
- Cannot require employee to find substitute for shift
- State and local posters, individual notices

Sick Pay Amount

- **40 hours per year lump sum**
 - No carry over; renews each year

OR

- **Accrual : 1 hour per 30 hours worked**

OR

- **Accrual: some other method** (e.g. per pay period)
 - Must accrue 24 hours by 120th day
 - 40 hours by 200th day
- May cap accrual at 80 hours, cap use at 40 hours.



Sick Pay Considerations

Q: Can our company offer PTO rather than sick pay?

A: Yes, but follow sick pay rules.

- Accrual rates and caps
- Sick pay rates
- Use rules
- Pay stub display

Sick Pay Considerations

Q: If my employees regularly work a 4 day, 10 hour schedule, how much sick pay do they get?

A: Five days, 50 hours.

- Law states five days or 40 hours, whichever is greater
- State labor agency has opined on this topic.

Sick Pay Considerations

Q: When the state increased the sick pay allotment in 2024, how did that affect existing sick pay balances?

A: Companies that offered the minimum required to provide extra sick pay.

- Front load: (1) sick leave year starts Jan 1: provide 40 hours; (2) sick leave year starts on anniversary date: add 16 hours Jan 1, provide 40 hours on next anniversary date.
- Accrual: keep accruing but adjust cap / use.

Sick Pay Considerations

Q: What family members count for use of sick pay?

A: Parent, child, spouse, registered domestic partner, grandparent, grandchild, sibling, designated person.

- Designated person is basically anyone.
 - But can limit to one person per year.



Sick Pay Considerations

Q: Can I force my employee to use sick pay for days off?

A: Generally, employees decide when to use sick pay.

- But if the employee declines use sick pay, then the day off may be unexcused, unless it is otherwise protected by a leave law (e.g. FMLA or CFRA).

Sick Pay Considerations

Q: Does the employee need to notify us before taking sick leave?

A: Must give advance notice for planned absences (e.g. scheduled appointments) but if unforeseeable, notice given “as soon as practical.”

- Best practice to have a specific policy regarding the call off procedure.

Sick Pay Considerations

Q: *Can I require medical notes?*

A: *The law doesn't say, but this is not recommended.*

- Many sick days do not involve a medical appointment.
- Requiring a note may interfere with employee's right to use sick pay.
- Exceptions may apply where other leave laws are in play, such as FMLA or CFRA.



Sick Pay Considerations

Q: Can employees use sick pay for partial days off?

A: Yes.

- But employers may require a minimum use increment, not to exceed 2 hours.

Sick Pay

Common sick pay mistakes:

- Improper accrual rates
 - Must meet minimum standard of at least 40 hours/year or 1 hour per 30 worked.
 - Higher in some CA cities or counties
- Miscalculated pay out rate
 - Must pay non-exempts at the regular rate for the work week or use a 90 day lookback.



Sick Pay

Common sick pay mistakes:

- Balance not provided each pay day
 - Must be put on pay stub or other document provided to employee each pay day.
- Attendance points
 - Employees should not receive attendance points or other discipline if they properly use accrued sick pay.



Docking Salary

Q: If an exempt salaried employee exhausted all paid time off, can I dock their pay when they take time off?

A: Depends.

- Yes, for a full day absence taken for personal reasons, sickness or disability.
- Never for partial day absences.

Thank you!

Questions and
Discussion

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