

Can we give paid time off as a bonus to some?

Q. One of the owners suggested that paid time off for employees should not be a set benefit, but a bonus. Can we just award paid time off as a bonus to some employees and not to others? — L.V., New Jersey

A. If what you are suggesting is that none of your employees will earn vacation, personal or other time off, there is nothing in federal law mandating such leave and you could eliminate it for all employees (other than FMLA leave for those who are eligible).

Where you will run into trouble is with the “bonus” part. Some employees will inevitably become convinced that the “bonus” leave time is being handed out in a way that discriminates against members of a protected class. This is particularly true if the bonus criterion is based on subjective rather than objective factors.

For example, if it’s based on sales commissions, but the process by which sales leads are assigned is subjective, a protected group could claim that the awarded “bonus” vacation time is done on a discriminatory basis.

If the owners are adamant about implementing this, they should consult an attorney in your state to see if it’s possible to structure a bonus leave plan that uses criteria that are more objective and minimizes the risk of discrimination claims.