

# Unlimited vacation: How to implement the popular benefit



Unlimited vacation has become a popular benefits trend. The idea is simple: Employees may take as much vacation as they want so long as they get their work done.

It's a policy that may provide business benefits, but it also raises potential legal issues.

## Why offer unlimited vacation?

Unlimited vacation first became popular among Silicon Valley tech companies. The allure of the policy has much to do with California law, which requires employers to pay unused and vested vacation at the time of an employee's termination. Under an unlimited leave policy, vacation doesn't vest, so no vacation payouts are required.

Employers like unlimited vacation for other reasons, too. It helps employers recruit top candidates in a competitive hiring environment. It demonstrates a high level of trust and respect between management and employees.

## When it may not make sense

Unlimited vacation may not be right for every employer.

In order for parties to maximize the benefits of an unlimited vacation policy, employees have to trust that they will not be penalized for taking too much vacation. Employers have to trust that employees will not abuse the policy.

## How to minimize legal risks

Once you have decided to implement an unlimited vacation plan, minimizing the legal risks requires defining the plan, effectively communicating the plan and properly and consistently administering the plan.

**Definition:** It is important to define the exact terms of your unlimited vacation policy. Will it encompass only vacation, or will it also include other paid time off? What processes must employees follow to request and approve time off? When does vacation convert into a period of unpaid leave?

If you fail to adequately define the terms of the policy, then a denial of vacation time based on unwritten reasons may look like discrimination to an employee (or worse, a jury).

It is especially important to consult an attorney to assist in drafting or reviewing the policy before it is implemented.

**Communication:** The second step is ensuring that the policy is communicated clearly and effectively to employees.

The easiest way to do this is to include the policy in the employee handbook. In some circumstances, however, handbook provisions can become binding if the employer does not include sufficient discretionary language.

Although this is uncommon in Pennsylvania, you should nonetheless make it clear that you retain discretion to approve or deny vacation requests and that employees do not have an unfettered right to unlimited time off no matter the circumstances.

**Administration:** Finally, the third step in successfully implementing an unlimited vacation policy is proper administration. Follow defined and established processes.

Every time-off request should be submitted and reviewed by a supervisor and HR. If you must deny a request, clearly provide a reason why. With no set amount of vacation time allotted, employees who are denied time off may interpret it as disparate treatment, retaliation or discrimination. By documenting the process and providing a basis for denying time off, you can minimize that risk.

## **When other leave applies**

Proper administration of an unlimited vacation policy also requires tools to identify when an employee mistakenly asks for vacation to take time off for a protected purpose. Most notably, the FMLA requires unpaid leave to be available for certain family and medical reasons. Most states also have some state law equivalent.

In Pennsylvania, employers are sometimes required to provide leave to employees for appearing as witnesses in court, serving as jurors or participating in active military service.

In order to determine whether an employee is applying for protected leave, include a section on your leave request form asking if the time off is for vacation, a sick day, a personal day or some other reason. HR should then review the request to decide whether someone needs to speak with the employee to determine if the requested leave might actually be for a protected purpose.

The verdict is still out on whether unlimited vacation is a beneficial policy for some employers, for all or for none.

In the meantime, if you are considering implementing unlimited vacation, carefully weigh the potential benefits and downsides. If you decide to move ahead, ask your attorney to review your proposed policy to avoid the potential legal risks.