

# Frequently asked questions about vacation pay in California

## Is paid vacation a required benefit?

### Q. Must employers in California provide employees with paid vacation time?

**A.** Neither federal law nor California law require employers to provide paid vacation time to employees.

If an employer does choose to offer paid vacation time as a benefit, keep in mind that earned vacation time is considered wages under California law and that vacation time vests at the time labor is performed.

For that reason, so-called use-it-or-lose-it policies, in which employees forfeit accrued but unused leave, are unlawful in California.

## Is it legal to pay out vacation leave instead of granting time off?

### Q. Can we pay out employees at the end of the year for vacation that employees accrued but did not use?

**A.** An employer has the “right to manage its vacation pay responsibilities” and pay employees out for vacation accrued but not used at the end of the year. This differs from a use-it-or-lose-it policy because the employer is compensating employees for vested vacation time.

## Can we decide how leave is earned?

### Q. Our vacation policy does not grant employees paid vacation time until they have worked for us for one year. Is that legal under California law?

**A.** The California Division of Labor Standards Enforcement allows employers to place reasonable restrictions on the accrual and use of vacation time. Waiting periods (probationary and introductory periods) are considered to be reasonable restrictions provided they are not “subterfuges.”

An example of such a subterfuge would be an employer offering no vacation in the first year, four weeks of vacation in the second year and only two weeks of vacation in the third year. In such a situation, the four weeks of vacation time provided in the second year was likely two weeks earned in the first year of employment and two weeks earned in the second year of employment. On the other hand, a policy that provides no vacation in the first year, two weeks of vacation in the second year and three weeks of vacation in the third year would be valid.

If an employee terminates within the first year of employment and no vacation is provided in the first year of employment, that employee will not be entitled to any vacation pay.

## **Must part-timers, temps get vacation?**

### **Q. May an employer lawfully exclude part-time or temporary employees from a vacation plan?**

**A.** According to the Division of Labor Standards Enforcement, it is lawful to exclude certain classes of employees from a vacation plan. Classes of employees excluded in these policies may include part-time employees, temporary workers, casual workers and employees in a probationary period.