

Dear HR Knowledge: Because COVID-19 has impacted our employees' ability to go on vacation, we are considering implementing an Unlimited Paid Time Off Policy. I have heard mixed reviews; are unlimited policies a good idea?

We have seen an increase in clients asking about Unlimited Paid Time Off (PTO)/Vacation policies, due to the impact of COVID-19 on travel plans. Unlimited PTO means no vacation banks, caps, or accruals — employees take as much or as little vacation time as they desire, with approval. Employees appreciate the flexibility when it comes to taking time off, and employers appreciate not having to track time and, ideally, not having to pay out big vacation balances. But is it really that simple? As with many employee-related questions and issues, the answer is a resounding NO. Below, we have outlined the perks and pitfalls of unlimited PTO policies to help you determine if this policy is right for your organization.

Perks

- **Recruiting and Retention** – Having an unlimited policy is certainly an attractive feature to advertise to potential employees. A progressive plan like this can show how much your company values its employees by giving them flexibility with their time off to care for themselves or a family member.
- **Gain Trust Between the Employee and Employer** – Employees will feel their employer trusts them to make the right decision when taking time off and not abuse their time away.

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Employers will trust that their employees will take advantage of this policy to provide a more positive home/work life balance.

- **Flexibility** – The unlimited policy offers the employee the chance to take more time off, not necessarily longer periods of time, but perhaps more single days to care for themselves or family members, as they may not have had that flexibility in a traditional PTO/Vacation policy. A policy that restricts time off can put undue pressure on your employees to pick and choose when they can care for themselves or their families as they may be worried about running out of paid time off.
- **Happier and More Productive Employees** – Even with an Unlimited PTO/Vacation policy, there will be rules. Employees will have to meet certain production goals in order to have the time off approved and there will be blackout dates at certain times of the year when production must be at its best. Unlimited time off does not mean the employee can take whatever vacation time they want and with unlimited days. There will still be structure and rules built into the policy.
- **No Payouts** – Because unlimited PTO does not "accrue," the theory is that PTO does not "vest" as wages, and so there is nothing to pay out at termination. When implemented effectively, employers should no longer have to pay out any accrued PTO/Vacation time at the end of the individual's employment. However, you need to make this — and other rules — truly clear in your written policy. The devil is in the details (or lack of), and we can help you with this!

Pitfalls

- **Employees Abusing Time Off** – Unlimited means you don't have to negotiate more or less time off with new hires, since everyone is starting off the same way, right? Maybe not. In the case of an unlimited policy, your company runs the risk of at least one person abusing the system. Other employees may see a coworker taking "too many days off" and feel they are not being allowed to do the same. Therefore, having rules and guidelines for approving or declining someone's request will help prevent this from happening often and create a fairer environment.
- **Hard to Implement** – When you switch to an Unlimited PTO/Vacation policy from a traditional policy, you need to deal with the employee's existing bank of accrued time. Depending on the state you operate in, there are several ways you can do this, but you'll need to be careful in a state such as Massachusetts or California, where paid time off is considered wages. Some options include:
 - Allowing employees to use their accrued time until they spend down their vacation bank within a reasonable amount of time, then shifting to the new unlimited PTO system. But you'll have to plan carefully to do this successfully.
 - Paying out the balance to employees and starting with a clean slate, but this can come at a significant cost depending on how large your employee banks are.
- **Seasoned Employees See It as Unfair** – Your seasoned staff may feel that new employees are receiving a benefit that they worked hard for throughout their years of service through diligence and dedication to the company. If you foresee this as an issue, you can require

new employees to complete a set number of years of service before they can move to the unlimited PTO, in what would be considered a “hybrid” policy.

- **Interactions with Other Types of Employee Leaves** – If your policy isn't written clearly, you could potentially turn employee leaves related to medical, family, or parental leaves into fully paid leaves, with no clear end in sight. You will want to ensure that you have clear rules on the number of consecutive days a person can take be on paid time off under an unlimited plan before the employer and employee need to explore other leaves, such as FMLA. It is especially important to write clear rules for taking consecutive days and for distinguishing the types of leave available to ensure you are properly implementing the various types of leave, like FMLA, short-term disability (STD) long-term disability (LTD), and others.
- **Putting a Fence Around Leave Expectations** - Employers need to be careful about putting time band expectations around how much time is expected an employee will take under an unlimited plan. For example, we often see policies allowing a “minimum of two weeks but no more than five,” but at that point, what is the difference between that and a traditional vacation policy?
- **Employees Hesitant to Request Time-Off** – Employees who have managers or supervisors who do not take time off for whatever reason may be apprehensive in asking for time off as they don't want to appear lazy or opportunistic with this new type of policy. Who wants to be the only one in their department taking time off?
 - Creating productivity goals for individuals to meet in order to take their requested time off would help with this issue.
 - Managers and supervisors may need to encourage employees to take time off throughout the year to care for themselves and their loved ones if they do not see employees using the policy correctly. Employees with less flexible managers may end up taking little or no time off. Therefore, it's important to train your managers so that the unlimited leave policies work to everyone's advantage.
- **Protected Leave Compliance Concerns** – Unlimited PTO/vacation policies can also create issues when accounting for other forms of leave. For example, the Family and Medical Leave Act (FMLA) requires employers to allow available paid leave to run concurrently with an employee's FMLA leave. With an increasing number of states adding protected sick leave and state-run paid family leave, where does one end and the other begin? If you don't put a fence around the specific leaves and appropriately categorize the protected leave, you may run into a slew of compliance concerns and risks.
- **State Risks** – In some states, unlimited policies may not be a good idea — the cons will outweigh the pros. For example, California is a state with numerous laws. When it comes to vacation, California has very clear regulations and considers vacation time as “earned wages,” so any form of “use it or lose it” is not permissible. This applies to both payout upon separation as well as carryover at the end of the plan year. The California legislature has not made a definitive ruling on unlimited policies, leaving employers to rely on case law and general best practices. States with strict vacation laws, including but not limited to California, require a detailed policy in writing. Not only is the written policy important, but it must be



administered fairly, so as not to result in inequities.

The Bottom Line

In deciding whether to move to an Unlimited PTO/Vacation policy, you need to understand the perks and pitfalls in order to make an informed decision. A well-written unlimited policy that is clear and implemented correctly, can be a benefit to your employees and your organization. However, as with any employee benefit there are pros and cons that need to be carefully weighed.

When considering an Unlimited PTO/Vacation policy, before you implement reach experts, such as HR Knowledge, to confirm that you are complying with local, state, and federal laws.

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