California Employers Association™

FACT SHEET

Vacation and PTO (Paid Time Off)

California does not require its employers to offer paid vacations, holidays or paid time off (PTO) to their employees. If an employer chooses to offer any of these benefits, employers must follow the rules which regulate them.

Keep in mind that since July 1, 2015, employers have been required to provide paid sick leave to their employees and certain cities in California have additional paid sick leave requirements. Employers may use their PTO policy to comply with paid sick leave requirements. Review our "*Paid Sick Leave in CA*" Fact Sheet as well as locality-specific fact sheets, or contact an HR Advisor to assist you.

Labor Commissioner's rules concerning vacation/PTO benefits:
A vacation is seen as a contract between the employer and the employee. Therefore, the employer has the right to set the amount of vacation employees will earn each year or if they will earn any at all. They also have the right to determine when employees take vacation and for how long. Vacation policies should be clear about how much vacation is offered, the rate of accrual and whether accrual begins immediately or at some later period of time.

Vacations are a form of wages and therefore when an employment relationship is terminated, an employee is entitled to all accrued vacation time on their final paycheck. Vacation eligibility accrues based on regular hours paid during the anniversary (or calendar) year. The accrual rates for the vacation earned for each regular hour paid are as follows:

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Amount of vacation earned per year	# of vacation hours earned per hour worked	# of vacation hours earned per week	# of vacation hours earned per month
1 week/40 hours	0.0192 hours	.77	3.33
2 weeks/80 hours	0.0385 hours	1.54	6.67
3 weeks/120 hours	0.0577 hours	2.31	10
4 weeks/160 hours	0.0770 hours	3.08	13.33

No Use-It or Lose-It Policies are allowed. Once an employee has earned vacation, treat it like money in the bank for that employee. You may not require employees to forfeit accrued vacation for any reason. Alternatives to "use it or lose it" policies that have been approved by the Labor Commissioner are **"reasonable caps"** and **"cash-out policies"**.

Reasonable Cap Plan

Under a reasonable cap plan, once a certain level of accrued vacation is earned but not taken, vacation no longer accrues until some of the previously accrued vacation is taken. After vacation time is taken, vacation will again accrue at the usual rate. Employers are not required to retroactively grant the employee the amount they would have earned during the time the vacation was at the cap. The cap needs to allow an employee to have nine months after the accrual of vacation to use it before the cap is in effect. Caps should be reasonable. Per case law, the generally accepted amount is one and one half or even two times the annual accrual rate (example, 60 -80 hours for an employer who grants 40 hours of vacation per year). CEA recommends a minimum of 1.5 times the annual accrual rate.

Cash-Out Policies

Employers may offer their employees the option to cash out their vacation benefits. This option may be offered on an "as needed" basis or allow it only once a month or once a year. Employers can require employees to accept pay each year for vacation that have accrued but not been taken.

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