

Employment Law Corner

Monthly Report



FOLEY & FOLEY^{PC}
ATTORNEYS AT LAW

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March Updates

[And Now Your Severance Agreements Are Probably Unlawful](#)

[A Few Things to Know about Protecting Your Business Now...](#)

[OSHA Is Keeping Its New Year's Resolutions](#)

[Monsieur T Does Not Want to Be Fun at Work](#)

The Trend of Unlimited PTO Is Not as Easy as it Seems

Why it's Happening:

You may have noticed that many companies are transitioning to unlimited paid time off for employees. These policies do not restrict employees to a specified amount of vacation per year: employees can take as many or as few days as they want.

Why are companies doing this? As we have written about in the past, employee recruitment and retention is a serious problem. Employers are trying to be creative and find ways to make work more attractive to keep employees. Offering an unlimited paid time off policy can be a great "perk" when trying to attract and retain employees.

By having an unlimited paid time off policy, an employer generally is trying to communicate to their employees that their mental health and life outside of work is important to the employer. Balance it key! These policies can increase employee morale and may even get more employees in the door.

Sounds great! **What could go wrong?** Well, there are some unintended consequences and down-sides to such an arrangement.

The Downsides to Unlimited PTO Policies

First, in practice, unlimited paid time off policies tend to have the opposite effect of a set days' policy. Employers typically see employees either abuse the policy or not use it all. Employers begin to see some employees taking more time off than practical for operations, while other employees pick up the slack and end up taking little to no time off, hurting morale. With no set number of days, some employees are unsure of what is acceptable while others see it as the OK to take off whatever time they want!

Second, keeping track of time off taken becomes an administrative burden when an unlimited policy is in place. Without having set accrual rates and usage guidance, your HR team's task of keeping track of which employees have taken leave and when becomes much more difficult.

Last but certainly not least, termination payout requirements become extremely complicated. As you may know, many states require unused vacation time to be treated as wages at the time of termination. In those states, unused vacation time must be paid out at the time of separation. When an employer has a policy of unlimited paid time off, how much is an employee owed at termination?

Some states will look to accrual policies (even if amounts are not capped), while other states will try to determine how much vacation an employee would have accrued. Either way, having an unlimited time off policy makes termination pay and compliance with state laws on termination a tough call.

What Should you Do?

Setting expectations in the workplace favor both the employer and the employee. Having a clearly communicated time off policy that includes accrual rates, usage requirements, and amount allowed will help you to avoid the downsides discussed above. Our office can help craft paid time off policies that meet the needs of your business for use and morale. [Contact us.](#)

What is the Employment Law Corner?

At **Foley & Foley, PC** protecting your business and reducing your exposure and risk is our endgame. We get it! We created this Employment Law Corner to keep you up to date on current topics. Each month we will provide an update by one of our seasoned lawyers that will help your team successfully navigate employment law compliance obligations and Human Capital Risk Management so that you can remain focused on what you do best – operating your business.

Who We Are

We want to [introduce ourselves](#) to those we have not met:

- We represent employers exclusively from coast to coast in all facets of employment law and litigation. Our mission is solving problems and anticipating issues so you can concentrate on your business.
- We are constantly searching for the trends and upcoming issues in the law that will impact our clients. We want our clients to be informed and ready. Our familiarity with the workplace and our approach sets us apart from other law firms, making us well equipped to handle your unique needs.
- We are not like other firms: Anyone can tell you what the law states and its limits. That's easy. We find creative solutions within those restrictions that move your business forward. We seek to minimize your risk so you can get back to business. Learn how we can help your business: [Foley & Foley PC attorneys specializes Employment and Labor Law in the Public and Private Sectors \(foleylawpractice.com\)](#)

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