

Paid Time Off and “Use It or Lose It” Policies

In times of tight budgets, boards often turn to benefits trimming to balance budgets. One example is reducing the amount of accrued leave that an employee may retain from year to year. It is common for these “use it or lose it” policies to be a part of sick leave and vacation leave benefits to prevent excess accruals from becoming a large item on the debt side of a budget sheet.

Employers may limit termination claims to pay for sick or vacation leave so long as they follow the wage laws.

Paid time off (PTO) is a combination of traditional vacation days and sick leave. Employers may choose to use this combined type of leave, which puts the responsibility on an employee to preserve sufficient leave to cover emergencies. It rewards those employees who work more days with optional leave for other uses. Here is an example:

Time Frame	PTO Benefits Accrued
After 30 days of eligible service	1.0 days per month
After 1 year of eligible service	1.33 days per month (approx. 16 days per year)
After 3 years of eligible service	2 days per month (approx. 24 days per year)

Under this example, an employee’s time frame begins to run the first day of employment, and accruals start on the 30th day. The accrued leave is usually paid at the employee’s current pay rate if it is not used. It is common for the accruals to start over at the start of a calendar year or on the anniversary date of hire.

The most common approach is for a county to require that most of the accrual of PTO is lost at the time of termination regardless of reason. However, there is a potential liability for these accruals under the Colorado Wage Claims Act, CRS 8-40101 et seq. That act defines wages to include all forms of compensation, and specifically includes vacation pay. Thus accrued and unpaid vacation pay is considered wages under the act. In the case of PTO, the amount which is “vacation” and the amount which is “sick leave” is undetermined under most policies. Therefore, a claim for vacation accruals can be made in many instances.

What This Means For Counties

If using a PTO form of paid leave policy, make sure that the policy specifically limits or caps the amount of the PTO accrual which will be payable upon termination. Otherwise, the county may end up paying whatever amount remains in the accrual regardless of how the leave was used.

Source: Pps. 39-42, The Colorado Lawyer, June 2012, Labor and Employment Law article, Ed. John M. Husband, Denver, Holland and Hart: “Use-It –or-Lose-It Benefit Policies and the Colorado Wage Claim Act”, by Joshua D. Brown of Thomas, Pollart & Miller, LLC

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