

THE  
NATIONAL LAW REVIEW

---

## Summer (and with it, summer vacations) is coming!

---

Monday, June 4, 2018

As we head into the start of summer and employees begin to request more time off for vacation, this is a great time to review your vacation policies to ensure they are legally compliant and meet business needs.

With the exception of certain state or local paid sick leave laws, employees generally do not have a right to paid vacation unless an employer has voluntarily agreed to provide paid vacation (i.e., through a policy, practice or contract). However, once an employer decides to provide vacation, it must be mindful of a number of potential pitfalls and legal hurdles. Some of the key issues to consider addressing in your vacation policy are the following:

- Ensure adequate guidelines and reasonable restrictions on the use of vacation time, such as requiring advance notice and approval from management before time off can be granted, and addressing how scheduling conflicts will be handled. Not having such guidelines could result in too many employees taking vacation at the same time without adequate coverage for business needs.
- Ensure that the policy provides for a nondiscriminatory approach to approving/denying vacation requests. For instance, if a policy simply says “employees may take vacation subject to business needs” – what does “subject to business needs” really mean? An ideal policy should include objective methods to approve or deny vacation requests in the event of scheduling conflicts, such as by seniority or by timing of the notice.
- Ensure that non-exempt employees do not work during their vacation time (i.e., telephone calls, text messages or email on their mobile devices). In the rare circumstance that a non-exempt employee is called upon for any work, the employee must be compensated for the work in lieu of his or her vacation time.
- Place a limit on the maximum time that may be accrued if employees are allowed (or entitled by state law) to roll over their vacation time year after year.
- Ensure compliance with state laws that: (1) prohibit forfeiture of accrued and unused vacation, (2) require employers to provide a reasonable opportunity for employees to take vacation, or (3) require payment of accrued and unused vacation upon termination.
- Provide guidance on whether employees may or may not take more paid vacation time than they have already accrued. While allowing vacation advances may help increase morale, this can lead to employees taking advantage of such advances, especially in states that generally prohibit or make it difficult to deduct advances from wages or an employee’s final pay upon termination (i.e., California).
- Provide guidance on whether employees may or may not receive pay in lieu of vacation.
- State whether vacation time must be taken in specified increments (e.g., four hours or one day at a time).
- If vacation time will not continue to accrue during unpaid leaves of absence, make this rule clear.
- State whether an employee who becomes ill during vacation leave can treat the period of illness as sick



Article By [Foley & Lardner LLP](#)  
[Kamran Mirrafati](#)  
[Labor and Employment Law Perspectives](#)

[Labor & Employment](#)  
[All Federal](#)

leave instead of vacation.

- State whether a holiday that falls during a vacation period will be treated as a vacation day.
- Explain the circumstances under which vacation may be or must be substituted for unpaid leave under the Family Medical Leave Act or any other leave laws, including equivalent state laws.

As always, it is a good idea to seek legal assistance when revising/updating personnel policies, especially since many of the laws relating to vacations are state specific. Have a great summer!

© 2019 Foley & Lardner LLP

**Source URL:** <https://www.natlawreview.com/article/summer-and-it-summer-vacations-coming>