

PERSONNEL NOTEBOOK

For Your Most Important Resource

SICK LEAVE vs. PAID TIME OFF

When small companies start out they have to count every dollar for every purpose, every day. The public might be surprised to find out how many companies have employees that make more than the owners. In fact, in some start-up companies every employee makes more than the owners, and for many owners, vacations are a luxury that they may not enjoy for many years. So when the subject of paid time off comes up, the new employer's first thought might be "How much time should I be paying employees when they're not working? Sounds like a harsh or archaic attitude in today's entitlement society, but it is estimated that almost 10 percent of small companies pay no benefits at all.

As the company begins to grow, the owners find that keeping their existing employees becomes pretty tough and attracting good new ones becomes even tougher. They realize that competition is not just about getting new customers but may be even more so about keeping good employees.

One of the first tools employers use to attract and keep good employees is benefits. The cost of those benefits can be scary as every penny must either be added to the cost of the product or taken from the income of the company. And even though there is much emphasis on health

benefits these days, the reality is that the No. 1 benefit for most employees is paid time off. Holidays and paid vacation are the first considerations. How many holidays and how much vacation are the first questions. But as the company matures the natural progression is to provide sick leave. But the issue of sick leave has many twists and turns. Sick leave is where the controversy about benefits first begins to simmer.

Does all this talk about the high cost of benefits have anything to do with the issue of sick leave vs. paid time off (PTO)? Yes, because the major difference between the two is cost. Let's take a look at how each works by defining what each is.

What is sick leave?

Okay, were staring with what some would consider a silly question, but for our purpose here let's define it. Sick leave is a paid time off companies provide for employees who are too sick to come to work. Sick leave is not a "use it or lose it" game. It is pay provided for employees so that they can concentrate on getting better instead of worrying about the money they would otherwise be losing.

What is Paid Time Off (PTO)

Although any time an employee is being paid by the company when he or she is not doing work for the company is considered paid time off, the policy or practice known as PTO is a different concept. PTO is a bank or pool containing all the paid time off possibilities provided by the company under one title. Instead of identifying holidays separate from vacation time, separate from sick leave and so on, all paid time off is lumped together. Employees simply use up all their PTO for whatever reasons they choose with no need to identify the reason.

The original PTO concept became popular in the 1980s when lawsuits charging religious discrimination were becoming a nationwide problem. Initially the charges concerned companies granting holidays for Christian employees (Christmas, Easter, Good Friday etc) but not granting Jewish employees the same benefit for Jewish holidays. Some companies saw the PTO as a solution. Employees could use the paid time off for any holiday, or any other purpose they wish.

This bank of hours is provided through one of two different methods, the accrual method or the anniversary method. The primary difference between them is cost.

The Accrual Method: Under the accrual method the company credits the employee with additional hours usually every pay period. Some companies allow the employees to accrue a set number of hours for every month he or she is employed. If an employee left the company after six months, most state laws will require that the employee be paid for that six months of accrued time. So if an employee accrues 18 days of paid time off in one year, (based on five vacation days, seven holidays, three sick days and three personal days) and that employee leaves after six months, the employee must be paid for nine days of accrued time or for whatever is unused of those nine days.

Anniversary Method: Under the anniversary method the employee must work for one full

year at which time he is granted the 18 days of paid leave to use during the coming year. If he leaves the company during the first six months of employment, he is not paid for any additional time off.

Why is PTO good?

- Employees like it
- It helps attract good candidates. In both cases because they get more paid time off.
- It mostly eliminates the religious holiday issue.
- It cuts down on some administrative work in that there is no longer any need to create separate records to keep track of how many days were taken for which time off benefit.
- Employees feel like they are being treated like adults that you trust to be honest and reasonable.
- When emergencies occur employees are in better shape to deal with them.
- Employees enjoy the flexibility it allows.

Why is PTO bad?

- It is essentially more paid time off
- It invites abuse and overuse. Under a normal policy you would provide separate vacation allowances, specific holidays and a specified time for sick leave. Some employees would use some sick leave; very few would use it all. Under a PTO every employee will use every day in the pool.
- Under a PTO employees tend *not* to take days off when they are sick! They come to work sick in order to save those days for better times. Employees who use up all their PTO still get sick and need to have more time off.
- Employees tend to take more unscheduled time off causing disruptions on the job.

- As mentioned earlier, in some states accrued (or granted) but unused vacation time must be paid to the departing employee.
- If an employee uses up all his PTO you still cannot refuse him or her time off for religious purposes.
- You may *need* to keep separate records for time off; for example, in cases of Family and Medical Leave (FMLA) or lost time accidents.
- Some research has shown that after companies initiate PTO they tend to provide fewer paid days off than before to compensate for the additional use of PTO.

Notes and consideration

In that exempt employees cannot be docked for missing a day or partial day of work (except in some unique circumstances) such time may be charged against any paid time off policies you may have including a PTO. As long as the employee is paid, the money can be charged against any such benefit.

Companies with 50 or more employees are required to provide FMLA leave. Whenever an employee is on FMLA most companies will require that the first days of the FMLA must all be charged against any paid time off until it is used up. Otherwise, once an employee uses up all their paid time off, they will still be entitled to another 12 weeks of FMLA leave (although without pay).

Some companies do not include holidays, jury duty, bereavement leave and military service in the PTO. They use it only for vacation, sick leave and personal days off.

- *Holidays*- Companies often have specific policies regarding the use of holidays such as requiring the employee to work the day before and the day after in order to be paid

for the holiday. By removing holidays from the PTO pool they can establish rules they do not wish to apply to the PTO.

- *Jury duty and Bereavement leave*- Many areas are pretty harsh on companies that do not pay employees for at least some of their jury duty time. In some cities the names of companies that do not are published in the newspaper. In the event of bereavement leave as well as jury duty, even if a company did not have a PTO pool or vacation plan you would still likely pay an employee for some or all of this time. Even if the employee used up all their PTO the company would still likely pay them in these circumstances.
- *Military leave*-The rules on military leave are covered under the Uniformed Services Employment and Reemployment Act (USERRA) and most companies do not pay for military service.
- In the event that an employee has used all their paid time off and still needs additional time, you may, if you choose, grant them advance leave. That is, you will allow them to take the paid time off now and charge it against next year's paid time off once it's granted or accrued. It's a risk in that the employee may never return. Deducting such advances from pay can be troublesome. Regulations governing payroll deductions can limit the amount you may deduct. Some companies provide the time as a payroll advance and pay it to the employee as a separate check. Payroll advances are much easier to deduct than other types of deductions.

In that there is (as of yet) no law requiring you to provide such benefits as vacations, holidays or sick leave, you may provide these benefits in almost any way you choose, and that includes the policies, practices and terms you wish. For example you can decide whether to:

- Have any paid leave benefits or not
- Have a PTO pool or not
- Separate any benefits you choose from that PTO
- Use the accrual method or the anniversary method as a means of granting paid leave benefits
- Create a policy requiring all unexcused absences to be charged against the paid time off.
- Terminate employees that abuse the paid time off.
- Require that paid time off may only be used in full day increments and with two days advance notice.
- Require employees who miss three or more days to produce a doctor's statement.
- Provide any such benefits to one level of employees and not another.
- Delay eligibility of employees to such benefits until after a specific time period.
- Require employees to use all paid time off before using unpaid leave.
- Establish a policy where employees who leave because of specific egregious issues such as drug abuse, violence, theft etc will forfeit PTO.

Although many states now have laws that require companies to pay an employee for all accrued or earned vacation time when he or she leaves the company, most of those laws actually say that the state will require the company to abide by the policy they have established. So create the paid time off policy that fits your company, your culture, your employees and that you can live with.

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Have An Employment Question?

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