PTO – Putting All Paid Time Off in One Bucket

Back in the day companies doled out paid days off in little buckets. In bucket number one was vacation. Employees received five days after one year; ten days after 5-7 years; 15 days after 15 years, and 20 days after 20 years. In bucket number two were five days for sick time, and bucket number three had two days for personal business. Employees, always thinking and forever clever, found a way to manipulate this system, by lying! They just said they were sick if they had days in the sick bucket but needed vacation days and the vacation bucket was empty. That worked.

Since all of the days are paid days off, employers figured it out. Just put all of the days in one bucket and let the employees become responsible for managing their own time off with pay. About 60% of employers now have only one bucket labeled Paid Time Off (PTO). It eliminated the need for an employer to demand doctor's statements and make a decision whether the reason for absence is "excusable" and covered under the Sick Days Plan. The new method sounds easy enough but it is not as simple as migrating all the days into one bucket and handing the management over to the employee. A carefully thought out internal policy/procedure is essential. Since the new method, called Paid Time Off, is a form of indirect compensation, it is subject to all of the federal, state and local employment regulations that address how paid time off benefit plans are managed. Each element of the policy and procedure requires separate consideration.

WHO IS ELIGIBLE

A typical plan applies to "regular, full-time employees, who have completed the New Employee Introductory Period." A few companies offer a pro-rated number of days to regular part-time staff, but not many. Although the benefit starts on the first day of employment, the employee may not use any of the time until the New Employee Introductory Period has passed. The justification for insisting that employees have a waiting period is to prevent immediate abuse of a generous benefit.

NUMBER OF DAYS IN THE PLAN

The number of days will be based on which paid time off plans are collapsed into one PTO bucket. A recent survey provided these results:

PTO PLANS

Companies with a PTO Program	58%
Vacation in PTO	96%
Sick Leave in PTO	92%
Personal Days in PTO	86%
Care for ill dependents	42%
PTO days - 11-19 days for up to five years of service	38%
PTO days - 20-24 days for more than five years of service	30%
PTO can be carried over	78%

The longer the service, the more time deposited in the bucket. If vacation, sick, personal, and holidays are included, the number of days is greater. In a traditional plan, a new employee would have 15 days deposited the first year. This would usually include all the paid time off for vacation days, which is two weeks after a full year, three sick days, and two personal days. If holidays are also part of the PTO plan, there are a minimum of six Federal Holidays, plus whatever else may be offered in the local area (Hunting Day for the first day of deer season – yes, that is a legitimate holiday in some localities). To illustrate how they are calculated, consider this example:

- Vacation = 10 days/80 hours
- Sick = 3 days/24 hours
- Personal = 2 days/16 hours
- Total = 120 hours

Many employers calculate these annualized hours weekly and deposit 2.31 hours per week into the PTO account. For employees with longer service, it is easy to apply a multiplier based on service. It is also easy to pro-rate partial year payments with weekly calculations and the third party payroll providers have a formula they add to your pay system to do it automatically.

FOR WHICH ABSENCES CAN PTO BE USED

Most PTO plans are general and say the time can be used for any approved time off for which an employee asks to be paid – sick, personal or vacation. That means they can be used for absence related to traditional vacation, sickness or illness in family, personal business, such as real estate transactions or seeing a child off to college, etc. Other reasons may be extra days off following a death-in-family, helping an elderly neighbor move into a nursing home, volunteering to work at the voting polls, or to help build a house for the homeless.

PLANNED OR UNPLANNED PAID TIME OFF

To manage the business, employers need to know who is going to be there and who is in the Bahamas. Planning is essential to take care of the customers. The PTO policy states that employees who request PTO must give advanced notice whenever possible and the PTO must be approved. There are no plans that allow an employee to call up on Monday and announce a two-week paid time off absence for vacation. Unplanned requests for paid time off must be documented to prevent abuse and payment may be denied. Most HR professionals do not want to be known as the "Corporate Police," but they recognize that certain abusing employees call in absent on specific days:

- Monday after weekend off
- Day after payday
- Day before and day after a holiday
- During hunting or boating season (or other hobby)
- Day that very heavy deliveries are scheduled to be made to the warehouse or inventory must be counted

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This is a business management advisory and is not designed to substitute for the services of a competent legal advisor. It is not specific to the laws of any state in the U.S. Nancye can be reached at:

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When there is abuse of the PTO Plan, the request to be paid is denied and the typical employee discipline procedure is initiated.

USE IT, LOSE IT, CARRY IT FORWARD, CAP IT

The question of what to do about any paid time off balance at the end of the year must be addressed in the PTO Policy. The simple plan is called "Use It or Lose It." Any balance at the end of the year disappears. A new balance begins each January 1. The decision to allow employees to carry forward unused PTO requires very careful consideration of the financial consequences. PTO carried forward is an unfunded, increasing, accrued financial liability. It's a WHAT?

1. Unfunded: It is money to be paid from a previous year that is not budgeted for the next year.
2. Increasing: It may be paid out at a higher pay rate if the employee gets a raise before using it.
3. Accrued: It is escrowed and must be shown on the company balance sheet as a liability. (Your auditors will confirm this requirement.)

Moreover, it can be a lot of money, especially if there is no maximum. A quick example will demonstrate what it can cost.

- Twenty employees have accumulated 2,750 unused PTO hours carried forward into this year. Based on the current pay of the employees, immediate payout would cost $158,653.80, for which the company has not budgeted the money.

It is not uncommon for employers to say they do not want that kind of liability but they do not want a Use It or Lose It Plan. They allow the employee to carry forward a few hours (maybe 40) to use as a cushion if the employee has an extended absence for illness, injury or death in immediate family. Capping the plan limits the liability but does not punish your reliable employees. Whenever PTO is paid, it is always paid at straight time rate. It is interesting to note that California has recently passed a law that requires employers to provide three (3) days of sick leave effective July 1, 2015 and to allow carry forward.

WHAT ABOUT GRANDFATHERING

Transitioning from the traditional three-bucket to a one-bucket plan may not be as smooth as we hope it will be. What about giving employees credit for their existing unused time? The morale problem would be huge if an employer simply announces the change in plans and ignores the unused time employees have accumulated. There are options to address the unused balance:

- Pay it out (required by law in some states)
- Pay out part of it, let part of it be carried forward and used within one year, and leave no more than 40 hours in the carry forward account at the end of one year (This works for accounts with a huge balance)
- Carry the balance forward to be used up in one year, except for 40 hours
- Carry the balance forward and freeze the amount of money owed to the employee. When it is ultimately paid out, it will be paid at the employee pay rate on the last day of the old plan. (The amount of past liability will not increase.)

SHARING PTO DAYS

Some companies include a provision for "sharing" leave. Employees, with large, unused balances in their PTO account, may donate some of the days for use by employees with a need for emergency time off and no available days. On the surface, it sounds like a thoughtful, humanitarian gesture, however if you decide to include this provision, carefully explain how it will be managed. Assign a Leave Bank Manager. This person is the only person who knows who donates PTO days and how many days are in the bank. The Leave Bank Manager makes the decision regarding requests from donated leave, based on specific criteria. Include three specific stipulations:

(1) No employee may request leave from the Shared Leave Bank more than one time each year.
(2) No employee may donate leave for specific use by another employee.
(3) No employee may ask employees to donate leave to the Shared Leave Bank.

Those with Shared Leave Policies report that virtually every employee complains of intimidation to donate days if there is no provision to prevent solicitation. They also report that certain employees use up all their available PTO and then ask for shared PTO from the leave bank for a planned absence they were aware of months earlier.

WHO OWNS THE PTO ACCOUNT

One of the most sensitive and contentious issues with PTO Plans is what happens to the unused time when the employee leaves. We do not look to the Federal Government for guidance unless the plan is known as an "accrued" plan. If the employee "accrues" or "earns" PTO based on hours of work to the company (so many PTO hours for each 40 hours worked), the balance will be viewed as "unpaid wages" and must be paid at the time of separation. The Wage & Hour Division of the US Department of Labor has been consistent on this subject. If an employee "earns" paid time off, it must be paid and taxed as wages.

In some states however, there is a state law that says unused vacation must be paid at the time of termination. The employer is prohibited from holding unpaid time off, even if the employee is discharged or fails to give notice. It cannot be held hostage until the employee returns the company laptop.

In the absence of a law, some employers elect to pay out the unused PTO and some do not. Those who pay out the PTO write that stipulation into the plan document. Those who do not pay out the PTO have plans that are not considered to be earned or accrued. It is granted as a reward for service and is designed only to be used while actively employed. The account is dissolved at the time of separation of employment. They do not consider the PTO to be "earned" and clearly state that in their policy and procedure.

When a plan states that PTO will not be paid unless the employee gives notice of termination, the company faces a serious issue of whether this requirement negates the company "at will" protection. In states where employees with no employment contract and are employed "at-will," employers may terminate with or without cause, and employees can leave without or without a reason. Under the at-will provision, neither the employer nor the employee will have any consequences. IF the employer imposes a consequence (loss of PTO benefits) for employers who do not give required notice, then a crafty attorney can advise the employee that the "at-will" provision no longer applies. To assure their "at-will" protection, some plans includes only vacation, sick and personal days, and pay out the balance upon separation. They also include a provision to deduct any deficit balance from final pay and require employees to sign off on the policy.

OTHER QUESTIONS ABOUT PTO PLANS

1. If the employee has time in their PTO Account, can an employer refuse to pay if the absence is unscheduled and suspected to be abuse?
   Answer: Sure. Do not get your PTO plan confused with a no-fault absence plan. Employees have the same level of accountability they had under the previous plans.

2. Is there an ideal time to make the transition from the traditional plans to a PTO Plan?
   Answer: If you manage your plans on a calendar year, January 1 is the ideal time. Your accountants will have less hassle with a clean start date. For a January 1 start date, make the announcement around October 1. Employees, like executives, hate surprises, and they need time to prepare for change. It is very important to make the transition with the least amount of upheaval as possible because employee morale affects customer service.

3. Can I let my employees vote on whether to keep the plans they have or move to a PTO system?
   Answer: NEVER in a million years. The short answer is that non-union employees should never be allowed to vote on wages, benefits, or working conditions. If you do that, then you can expect the National Labor Relations Board to declare that you have an employer-dominated union and you may be required to negotiate with the employees. Do not ever allow non-union employees "vote" on anything more substantial than where to hold the holiday party. You can certainly ask your employees for their opinion, but voting is out!

4. Is it true that some plans let employees sell their days to each other?
   Answer: Selling days is known to exist but it is a bad idea. There should no provision that allows employees to negotiate with each other or pressure a co-worker to take an action that may cause the employee to be uncomfortable.

5. Can we allow employees to donate all of their days or carry forward all of their days?
   Answer: You should require employees to personally take time off and use some of their PTO. The reason may sound sinister, but it is widely recognized that employees involved in illegal activity are resistant to taking time off. Banks figured that out years ago and require employees to take up to two continuous weeks off.

6. Should we require employees to sign that they have received the new policy?
   Answer: It is always wise to have employees sign for any major change (manually or electronically), but it is especially important when the policy addresses pay issues.

7. May I share this advisory on PTO with my colleagues and friends?
   Answer: Yes, you may. All who know me say I have a "teaching heart." This advisory comes to you without charge. It should reach those who will benefit from the information.

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This management advisory was prepared by Executive Consultant, Nancye Combs. It was not created to replace the services of a competent legal advisor and is not specific to the laws of any specific state. Nancye Combs is also the endorsed Human Resources consultant for six major trade associations in the distribution industry. She is a nationally respected authority in human resources and organizational management. She speaks, writes, serves as an expert witness on sex harassment issues, and consults worldwide on management issues. She is a University instructor for human resources professionals seeking to become nationally certified by the Human Resources Certification Institute.

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