



# LEAVE LAWS: THE INTERSECTION BETWEEN PAID, SICK, AND LEGALLY REQUIRED LEAVES

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# OVERVIEW

- Learn about the interplay between paid time off policies and statutorily required paid sick leave.
- Understand legal obligations to provide unpaid leave.
- Review best practices for implementing and managing flexible or unlimited paid time off policies.

# CHARACTERISTICS OF LEAVES/TIME OFF PROVIDED TO EMPLOYEES

- Paid v. Unpaid
- Legally Required v. Discretionary
- Sick v. Personal/Vacation v. Paid Time Off
- Earned v. Accrued
- Accrued Over Time v. Lump Sum on Anniversary/Calendar/Other Date
- Unused Time Upon Separation: Payable v. Forfeited

# WHY OFFER MORE THAN WHAT IS LEGALLY REQUIRED?

- What is legally required?
- Why would you offer more than what is legally required?
  - Competition
  - Prevent burnout
  - Attract and retain top talent



# CURRENT TRENDS

In 2021, Glassdoor the 25 highest rated companies for vacation and paid time off provided these benefits:

- Starting with three weeks' vacation (15 days) and increasing periodically
- Begin accruing PTO and vacation time on the first day of employment
- Ability to use time in one-hour increments (rather than 8 hours)
- 16 paid holidays
- Unlimited sick leave
- Policies that permit "buying and selling" vacation days





# **THE INTERPLAY BETWEEN PAID TIME OFF POLICIES AND STATUTORILY REQUIRED PAID SICK LEAVE**

# COMMON TYPES OF PAID TIME OFF

- Vacation Days
- Personal Time
- Sick/Medical Leave
- Paid Time Off
- Holidays
- Bereavement Leave
- Parental Leave



# OTHER LESS COMMON TYPES OF PAID TIME OFF

- Jury Duty/Witness Leave
- Caregiver Leave
- Voting Time Off
- Paid Leave for School Activities





# STATUTORILY REQUIRED SICK LEAVE

- Federal law
  - There is currently no federal law generally requiring private employers to provide paid sick leave.
    - Effective January 1, 2017, employees of federal contractors must receive at least 7 days (56 hours) of paid sick leave per year on an accrual basis.
- State statutes/city ordinances
  - Several provide sick leave on an accrual basis of 1 hour for every 30-52 hours worked, up to 5-6 days (40-48 hours) per year, depending on the size of employer.

# MICHIGAN PAID MEDICAL LEAVE ACT (PMLA)

- Which employers are covered?
  - Employers with 50 or more employees
- Which employees are entitled to leave?
  - Non-exempt employees who worked an average of 25 hours per week in the previous calendar year, with several exceptions.



# PMLA – BENEFIT GRANTED

- 40 hours of paid medical leave
- Two options for employers:
  - Accrual at a rate of at least 1 hour of paid medical leave for every 35 hours worked.
  - Lump sum to provide at least 40 hours of paid medical leave to an eligible employee at the beginning of the benefit year.
- Presumption of compliance

# PMLA – USE OF PAID MEDICAL LEAVE

- Employers are permitted to require an employee to wait until the 90th calendar day before using.
- The leave must be used in one-hour increments unless a different policy is set forth.
- Employers may establish notice, procedure, and documentation requirements (provide at least 3 days).





# PMLA - LEAVE MAY BE USED FOR ANY OF THE FOLLOWING REASONS:

- Physical or mental illness, injury, or health condition of employee or family member
- Medical diagnosis, care, or treatment of employee or family member
- Closure of employee's primary workplace by order of public official due to public health emergency
- Care of employee's child whose school or place of care has been closed by order of public official due to public health emergency
- Employee or family member's exposure to a communicable disease that would jeopardize the health of others as determined by health authorities or a health care provider
- For care, counseling, victim services, relocation, and/or participation in civil or criminal proceedings after domestic violence and sexual assault



# **LEGAL OBLIGATIONS TO PROVIDE UNPAID LEAVE**

# FEDERALLY MANDATED UNPAID LEAVE

- **Family Medical Leave Act (FLMA)**
  - **Covered Employers:** 50 or more employees during a 20-week period of the current calendar year or the previous calendar year.
  - **Eligible Employees:** Must work for a covered employer for at least 12 months (need not be consecutive), for at least 1250 hours in the past year, and work at a location that employs at least 50 people within a 75-mile radius.





# BENEFITS PROVIDED UNDER FMLA

- 12 weeks of leave in a 12-month period for:
  - Birth of child, adoption or foster child care, and to bond with newborn or newly-placed child
  - Care for spouse, son, daughter, or parent who has a serious health condition
  - Serious health condition that makes employee unable to perform the essential functions of the job
  - Any qualifying exigency arising out of the fact that a spouse, son, daughter, or parent is a military member on covered active duty or call to covered active duty status





# BENEFITS PROVIDED UNDER FMLA

- Up to 26 weeks of leave during a single 12-month period:
- To care for a covered servicemember with a serious injury or illness incurred in the line of duty when the employee is the spouse, son, daughter, parent, or next of kin of the covered service member.



# FMLA COORDINATION WITH OTHER LEAVES



- FMLA is not required to be paid.
- Employers may require that other paid leaves run concurrently with FMLA.

# AMERICANS WITH DISABILITIES ACT (ADA)

- Provide reasonable accommodations to employees with disabilities unless undue hardship or poses a direct threat to the safety of the employee or others in the workplace.
- Unpaid leave can be considered a “reasonable accommodation.”
- Protections upon return to work.



Americans with Disabilities Act



# STATE MANDATED UNPAID LEAVE

- Michigan Persons with Disabilities Civil Rights Act
  - Applies to employers with one or more employees.
  - Employees in Michigan must make such request within at least 182 days of having reason to know of the need for an accommodation (including leave).






# CRIME VICTIM LEAVE

- In Michigan, employees who are victim to a crime (and their representatives) are entitled to unpaid leave to attend judicial proceedings related to a crime.
- Do not threaten (or actually) discharge or discipline employees for attending such court proceedings.





# **BEST PRACTICES FOR IMPLEMENTING AND MANAGING FLEXIBLE OR UNLIMITED PAID TIME OFF POLICIES**

# FLEXIBLE AND UNLIMITED PAID TIME OFF POLICIES

- What are the pros?
- What are the cons?



# WRITE. IT. DOWN.

- Write and distribute a policy that is clear and accessible for employees.
- Create a management checklist to ensure consistency and accountability for employees.
- Create an open dialogue regarding the policies so that employees understand the expectations regarding the policy and work performance.
- For states that have specific paid leave, make sure any denial in use of leave does not result in denying employees the minimum leave to which they are statutorily entitled.



# CONSIDERATIONS WHEN DRAFTING A PAID TIME OFF POLICY

- Will vacation, personal, and sick time be in the same “bucket” (consider calling it paid time off or “PTO”) or will employees have to specify the type of leave they are using?



# CONSIDERATIONS WHEN DRAFTING A PAID TIME OFF POLICY

- Which employees will be eligible?
- Accrue or lump sum?
- Will longevity be rewarded?
- Granted based on a calendar year, fiscal year, or anniversary date of employment?
- Allow to carry time over from year to year? If so, how much?



# CONSIDERATIONS WHEN DRAFTING A PAID TIME OFF POLICY

- Advance notice/scheduling requirements?
- Expectations upon return to work, especially if the leave is related to an illness/injury?
- Voluntary resignation or job abandonment upon no-call no show?





# CONSIDERATIONS WHEN DRAFTING A PAID TIME OFF POLICY

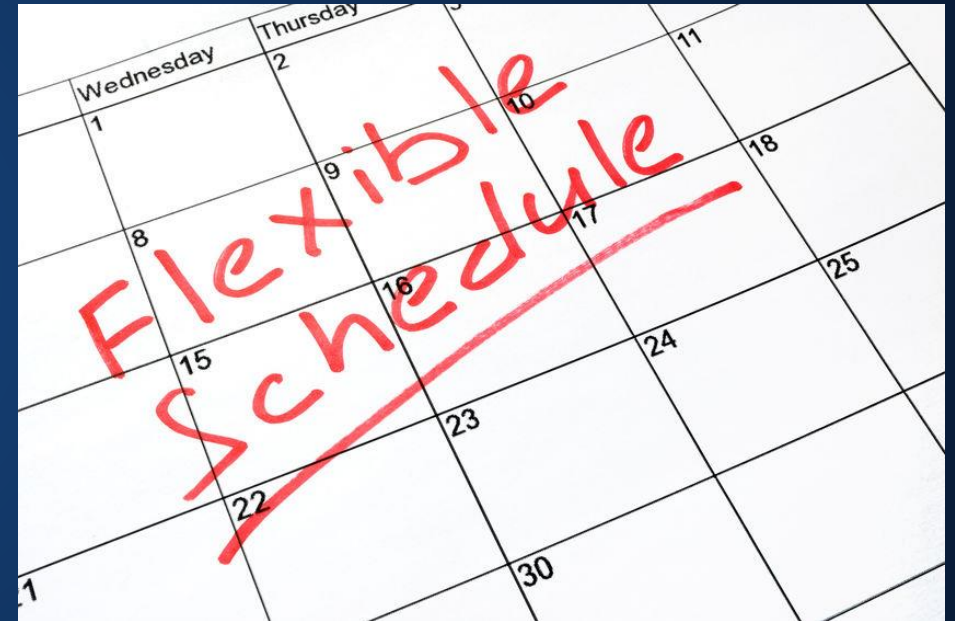
- Upon separation from employment:
  - Will unused accrued time be paid out?
  - Are employees permitted to use paid leave after providing notice of resignation?
  - What happens if there is a negative balance of paid leave upon separation from employment?





# FLEXIBLE PTO POLICY – OTHER CONSIDERATIONS

- Eligibility:
  - Must employees be in good standing (without any disciplinary action for a finite period of time) to be eligible?
- Use of Flexible PTO:
  - How will employees communicate and track the time they are taking off work?
  - What accountability structures are in place?



# FLEXIBLE PTO POLICY – OTHER CONSIDERATIONS

- Limits on flexible PTO:
  - How much time consecutively?
  - Interplay with medical benefits/leave?
  - Abuse/excessive use of PTO.
- Address what will happen to existing accrued time under former policies.



# FLEXIBLE PTO POLICY – OTHER CONSIDERATIONS

- How will you promote the policy as part of an attractive workplace culture?





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THANK YOU



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