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Reminder: State analysis *supplements* the national analysis. For a complete explanation of compliance requirements and best practices for Vacations, read the national analysis and then the state analysis to see how laws or practices differ in your state.

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☐ Private Sector

If Vacation Is Promised, It Must Be Granted

Although no California law requires private sector employers to provide employees with vacations, whether paid or unpaid, most employers do offer their employees some version of vacation. It is important for employers to keep in mind, that in California, if employers "promise" vacation, they may be legally bound to provide it--and a binding promise does not require embodiment in a formal employment contract. California case law says that an employer's assurance of paid vacation time, whether made in an employee handbook, or given orally, or simply a matter of consistent practice, under most circumstances, constitutes a binding and enforceable implied contract.

In addition, California employers have the right to decide when employees may take their vacations and the length of time employees are allowed to be away on vacation.

Employers may allow employees the option of receiving cash instead of using their vacation days. The employer can establish certain times during the year when an employee can receive the cash instead of using their accrued vacation time, or can allow employees to cash in at any time during the year.

Employers may allow employees to take vacation time before it is accrued, but do not have to allow this.

When Vacation Pay Is Due at Termination

The state Supreme Court has ruled that vacation pay is, in effect, additional wages for services performed, a form of deferred compensation. When an employee is terminated without having taken his vested vacation time, compensation for the vested, unused vacation must be paid as wages at the employee's final rate. California does not allow a "use it or lose it" vacation policy; no employment contract or agreement may allow for the forfeiture of accrued, or "vested" vacation time. There is an exception for employees under a collective bargaining agreement; the "use it or lose it" policy may apply if it is part of the agreement.

Accrual Method

Employers are free to devise their own system for vacation accrual. There are several different commonly used options:

- On a monthly basis
- On a pay-period basis
- Upon completion of a 6-month or 12-month period

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It is important for employers to be clear and unambiguous when drafting their vacation policies. If the policy is intended to ensure that employees work the entire accrual period to earn their vacation days, it should state clearly that employees will not be entitled to pro rata payment if they leave partway through the period. Remember that any vagueness in the policy is likely to be construed against the employer.

Such a system may limit only the period of vacation that may be accrued--not whether it must be compensated after it is vested.

Cap on accrual. Employers *may* reasonably limit the accrual of vacation beyond a certain limit--for example, at $1\frac{1}{2}$ or 2 times the annual accrual. Once a level of vacation beyond the employer's cap accrues, the employee may accrue no more days until one or more are taken. Then the employee begins to accrue vacation time again.

Vacation pay vests as it is earned. Both statutory and case law say that vacation pay vests as it is earned, so that an employee who leaves the job must be paid pro rata for vested vacation no matter what the employer's policy might say. For example, an employer's policy might provide that an employee may take 2 weeks of vacation after 1 full year of service--but an employee who leaves after 6 months is entitled to be paid for 1 week, even though the person could not actually have used vacation time until the year was up.

Four-Year limit on payment. There is a 4-year limit on payment of accrued vacation at termination (because it is based upon contract). In other words, an employee that is allowed to take vacation as soon as it is accrued, may not ask for any more than 4 years retroactive vacation pay at termination .

Paid time off. Employers may lump together vacation, sick leave, personal days, etc. into an amalgam of time called "paid time off" (PTO). However, employers should note that at termination the entire PTO will be considered vacation, and all unused time must be compensated (*CA Lab. Code, Sec. 227.3, DLSE Interpretive Bulletin No. 86-3, Sec. 6(a); Suastez v. Plastic Dress-Up Co.*, 31 Cal. 774 (1982); *Boothby v. Atlas Mechanical, Inc.*, 8 Cal.Rptr.2d 600 (1992); *Sequiera v. Rincon-Vitova Insectaries, Inc.*, 32 Cal. App.4th 632 (1995)).

☐ Public Sector

In the public sector, vacation time is mandated by law. After 6 months of continuous work, full-time state employees must receive (*CA Gov. Code Sec. 19858.1*):

- $\frac{5}{6}$ day per month from the first month to 3 years of service
- $1\frac{1}{4}$ days per month after the third and through the 10th year of service
- $1\frac{5}{12}$ days per month after the 10th and through the 15th year of service
- $1\frac{7}{12}$ days per month from the 16th through the 24th year of service
- $1\frac{2}{3}$ days per month after 25 years of continuous service

Annual leave. As an alternative to the regular system of vacation accrual, public employees may make an irrevocable choice to participate in an annual leave program that combines sick leave and vacation time (*CA Gov. Code Sec. 19858.4*).

☐ **Address**

For additional information about vacation policies and pay in California or for answers to specific questions, employers may contact:

Division of Labor Standards Enforcement

California Department of Industrial Relations

455 Golden Gate Avenue, Ninth Floor

San Francisco, CA 94102

415-703-4810