Agenda

- Discuss best practices for vacation, sick leave, and other PTO policies with a focus on ensuring legal compliance, clarity, productivity, and employee satisfaction
Types of Paid Leave Policies

- Vacation
- Sick leave
- Personal leave
- Holidays
- Bereavement/funeral leave
- Jury duty/witness leave
- Paid time off or personal time off (PTO)
Vacation

- Private sector employers are not legally required to provide their employees with vacations
- Economic incentives to offer vacation:
  - To help employees be more focused and productive
  - To better recruit and retain employees
- Vacation benefits are governed by state law and employer policies
Vacation

- Vacation policies must be clear and objective to:
  - avoid employee confusion about entitlement to vacation
  - avoid litigation under the North Carolina Wage Payment Act or the wage laws of other states
Vacation

- Is a “use it or lose it” vacation policy lawful in North Carolina?
  - Yes, provided the policy is clear about the terms of forfeiture and the employee is given advance notice of the policy in writing.

- Can an employer limit the amount of vacation that may be carried over from one year to another and/or cap the accrual of vacation?
  - Yes, provided the policy is clear and employee is given advance written notice
Vacation

- NC law defines “wage” to include vacation pay and sick pay when the employer has a policy or a practice of making such payments.

- Employers must notify employees orally or in writing at the time of hiring of the promised wages, and employers must notify employees in writing or through a posted notice at least 24 hours prior to any changes in promised wages.

- Likewise, employers must notify employees in advance of any policy or practice which requires or results in loss or forfeiture of vacation time or pay.
Vacation

- In NC, all vacation policies *must* address:
  - How and when vacation is earned
  - Whether or not vacation time may be carried over year to year, and if so, how much
  - When vacation must be taken
  - When and if vacation pay may be paid in lieu of time off, and
  - Under what conditions accrued vacation pay will be forfeited upon termination of employment for any reason
Vacation

- How and when vacation is earned
  - Is vacation awarded each calendar year, on employees’ service anniversaries, or in small increments each pay period?
  - Consider:
    - Fairness to employees
    - Ease of communication
    - Ease of recordkeeping and administration
Vacation

- When vacation must be taken
  - Notice and permission procedures
    - How far in advance should employees request and schedule vacation?
    - Will employees be allowed to use vacation to cover sudden or last-minute absences?
    - What happens when two or more employees request vacation for the same period of time?
  - Best practice: Use a Vacation Request Form
  - Limits on vacation length?
  - Part-day absences?
Vacation

- All vacation policies *should* also address:
  - Which employees are eligible?
    - Regular full-time employees
    - Regular part-time employees
    - Temporary or short-term employees?
Paid Sick Leave

- Under NC law, paid sick leave is “wages” and must be paid unless the employer’s policy provides otherwise and the employee is given advance written notice.
Paid Sick Leave

- A paid sick leave policy should address:
  - Eligibility requirements
    - Full-time employees
    - Part-time employees?
    - Waiting period for new hires?
  - Accrual
    - How much sick leave may employees accumulate and carry over from year to year?
    - Will accrued sick leave be paid upon termination?
  - Sick leave use
    - E.g., illness, non-work related injury, medical or dental appointments, care for a sick child, spouse, or family member
Paid Sick Leave

- A paid sick leave policy should address:
  - Notification procedures
    - Most employers require employees to notify their supervisors in advance of their scheduled starting time
  - Documentation requirements
    - Require medical certification for *any* sick leave or only if employee misses a specified number of workdays or is suspected of abusing sick leave privileges?
  - Other leave and benefits
    - Make reference to FMLA policy
    - Discuss how short-term disability benefits are coordinated with sick leave
Personal Leave

- A personal leave policy should address:
  - Is personal leave paid, partially paid, or unpaid?
  - Which employees are covered? Any waiting period?
  - How many days of personal leave per year?
  - May personal leave be taken in increments of hours, half-days, or only full days?
  - Permitted reasons for taking personal leave
  - Notice and permission procedures
    - Reserve the right revoke or reschedule if necessary
  - “Use it or lose it” language preventing employees from carrying over personal leave year to year
  - After paid personal leave is exhausted, employer may grant unpaid personal leave at employer’s discretion
  - Will personal leave be paid or forfeited upon termination? *Be clear!!*
Holidays

- While neither federal law nor NC law requires it, most employers give employees at least some holidays off with pay.
- In standard holiday policies, employers choose to observe some or all of the federal holidays.
- Some employers have a flexible holiday policy, in which some federal holidays are observed at the election of the employer and employees are given a certain number of additional days per year to take as paid holidays.
  - A flexible holiday policy helps employers to meet religious accommodation obligations.
Holidays

- Holiday policies should spell out whether employees will have Monday or Friday off if the holiday falls on a weekend.
  - If an employer does not want to set that determination in stone, a holiday policy might state that a list of holidays will be distributed during the first full week of January each year. That way, the employer can make Monday/Friday decisions on an annual basis without changing its vacation policy.
Holidays

- Policy should state that employees on scheduled paid leave will receive pay and not be charged a leave day for any holiday that occurs during scheduled leave.
- Policy should state that employees on any type of unpaid leave are not eligible for holiday pay.
- **Holiday pay calculations**
  - Will employees receive their customary pay or a premium for working on a holiday (e.g., full-time nonexempt and part-time employees paid 1.5x their regular rate)?
Bereavement/Funeral Leave

- Not required by law, but good business practice
- A bereavement leave policy should address the following:
  - Eligibility
    - Most employers grant all regular, full-time employees paid bereavement leave
    - Will part-time employees or temporary employees be eligible?
  - Length of leave
    - 3 days is common, but some employers grant 4 or 5 days for immediate family members, with fewer days for more distant relatives
Bereavement/Funeral Leave

- A bereavement leave policy should address the following:
  - Covered family members
    - Don’t use the term “immediate family” unless it is defined. Spell out: spouse, parent, step-parent, child, step-child, sibling, grandparent, spouse’s parent, etc.
  - Is the leave paid, unpaid, or a combination?
    - Some policies allow employees to take additional, unpaid leave when they are unable to return to work after exhausting bereavement leave, and/or allow employees to use vacation, sick, or personal leave.
Bereavement/Funeral Leave

- A bereavement leave policy should address the following:
  - What proof, if any, will be required to demonstrate that the employee actually attended a funeral or memorial service?
    - If an employer requires proof, this requirement should be applied uniformly.
Jury and Witness Duty Leave

- Federal law requires employers to grant (unpaid) leave to employees called to serve on federal court juries, and most states have similar laws.
- NC law provides that employees may not be discharged or demoted for being called for jury duty or serving as a juror, including service on a grand jury.
- Some state laws require employers to grant leave to employees obligated to appear as witnesses in court.
Many employers pay employees on jury duty or witness duty leave, even if they are not legally required to do so.

Jury/witness duty leave policy should address:

- Eligible employees
- When and how notice must be given to employer
- Whether jury or witness duty leave is paid or unpaid
- If paid leave is limited, the number of days or weeks employees can receive paid leave.
Jury and Witness Duty Leave

- Jury/witness duty leave policy should address:
  - Early adjournment → Some policies require employees to report to work if released from court early, or to call in each day after dismissal from jury duty to learn whether they should report to work
  - Postponement requests → Some policies require employees to cooperate in attempting to reschedule the jury service upon the employer’s request
Jury and Witness Duty Leave

- Jury/witness duty leave policy should address:
  - Pay policy → e.g., pay = difference between employee’s regular pay (including shift premiums) and the compensation the employee receives for jury service; travel expenses paid by court are not deducted from employee’s regular pay
Paid Time Off (PTO)

- Employers should ensure that their various leave policies work together cohesively and do not conflict.
- More and more employers are adopting a universal PTO policy instead of separate vacation, sick, personal, and bereavement leave policies.
Paid Time Off (PTO)

- Advantages of a universal PTO policy:
  - Eliminates the risk of inconsistent leave policies
  - Gives employees more discretion and flexibility
    - Employees may take more frequent but shorter vacations (this is the current trend in the U.S.)
  - Attractive benefit for healthy employees because they are essentially offered more vacation
  - Reduces paperwork and eases administrative burden because management does not have to track vacation, sick, and personal days
  - Encourages advance scheduling of PTO and discourages “calling in sick” at the last minute
Paid Time Off (PTO)

Disadvantages of a universal PTO policy:

- More difficult to obtain information necessary to designate FMLA leave. Employees will use up all of their PTO and then request 12 weeks of FMLA leave.
- Employees may use their PTO unwisely (i.e., take too much vacation) and incur financial hardship when they really need to be absent from work.
- In most states, including NC, courts will consider PTO to be the same as vacation pay, and the employer will be required to pay for all accrued but unused PTO at the time of termination unless an agreement or policy clearly states otherwise.
Carefully review state wage payment laws when drafting or amending paid leave or PTO policies.

If your company has separate vacation, sick, and personal leave policies, etc., make sure that the policies are clear and consistent.

Paid leave policies should be in writing and should be given to employees at the time of hire or whenever such policies are amended.

Any “use it or lose it” policy or policy providing for forfeiture of accrued vacation (or other paid leave) upon termination must be clear (and provided to employees in advance) to ensure its enforceability.
Questions?
Paying Your Employees Not to Work: Best PTO Practices

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