



## Employer Options When Creating/Modifying a Vacation/PTO Plan

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Employers are **not** required to provide paid vacation/PTO to employees. However, in CA, when an employer chooses to do so, there are regulations around specific components of such policies.

### Employer Chooses Specifics of the Policy

When creating or revising a policy, the employer has many choices:

- which job classifications (full-time, part-time, seasonal, temporary) are eligible,
- how much time is earned (and if at a pro-rated rate for less than full-time),
- when employees begin to earn vacation/PTO time (upon hire, after Introductory Period, after one year, etc.),
- a reasonable “cap” on accrual (typically at 2 times the current accrual rate, future accrual is suspended until the employee takes time off to bring the level below the cap),
- when the employee can take time off,
- how to request time off, and many other provisions.

### CA Labor Commissioner Sets Regulations

- Vacation/PTO rights **vest** on a *daily* basis, which means that once an employee has earned vacation, it must be treated like money in the bank for that employee and can never be taken away.
- A “use-it-or-lose-it” policy, in which employees lose earned vacation/PTO which is not taken by a specific time, is specifically prohibited.
- Since vacation accrued is considered wages, all accrued but unused vacation must be paid out at the separation of the employment relationship (even for an employee who has accrued vacation which he/she was not yet eligible to take).
- Accrued but unused vacation/PTO must be paid out at the employee’s current rate of pay, regardless of the rate at which it was earned.

### **PTO = Vacation**

Paid Time Off (PTO) is a common name for a bank of time employers provide which bundles together vacation and sick time. A **pro** to PTO is that employees can use the time as they see fit; a **con** is that the CA Labor Commissioner views the entire bank of PTO as “vacation” and therefore the entire PTO bank is vested.

For purposes of this article, the words PTO and Vacation are the same and interchangeable.

### **A case for unbundling PTO into Vacation and Sick**

Unlike vacation/PTO, paid sick time is **NOT** a vested benefit and does not have to be paid upon separation of employment. Additionally, unlike vacation/PTO, paid sick time does **NOT** have a prohibition against a “use-it-or-lose-it” policy. Due to these two points, many employers are rethinking their PTO policies and are unbundling into traditional vacation and sick policies.

If you would like to discuss changing your PTO/Vacation/Sick policies, please contact Melissa Irwin at [melissai@tpohr.com](mailto:melissai@tpohr.com) or 831-647-7292 for assistance.

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