

What to Consider When Drafting Company Leave Policies



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Introduction

If your company hasn't prepared written leave policies, there is no time like the present to get started.



Written leave policies can:

- Ensure compliance with the law
- Provide a consistent approach to leave authorization and administration
- Allow employees to understand their leave entitlements and obligations
- Help employees to plan for life circumstances accordingly

And, for employers who want to [attract top talent](#), comprehensive leave policies help recognize that employees have lives outside of work.

But making company leave policies that comply with the law may be more complex than you think. When drafting a leave policy, you'll need to make sure it complies with applicable federal, state, and local leave laws.

Leave policies may include:

- Vacation days
- Family and medical leave
- Parental leave
- Time off to vote
- Holidays
- Domestic violence, sexual assault, and crime victim leave
- Volunteer emergency worker or first responder leave
- Sick days
- Pregnancy disability leave
- Personal leave
- Military leave
- Bereavement leave
- Blood, organ, and bone marrow donation leave
- Jury duty, court attendance, and witness leave

With that in mind, where do you even get started? In this guide, we outline some of the laws and issues you should consider when drafting leave policies.

PART ONE

Making Company Leave Policies

When creating leave policies for your company, take these steps...



STEP 1 - KNOW YOUR LAWS

There are a wide range of leave policies employers must follow to stay compliant with the law.

And under certain circumstances, some required leave laws may even overlap. For example, provisions of the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA), and workers' compensation laws can apply to the same situation. If employees need time off because of a medical or disability-related issue, they may have rights under several laws at the same time.

Study up on federal, state, and local leave laws and check with an attorney to ensure you've gotten it right. Mismanagement of employee leave is a common cause of legal challenges that can be avoided by implementing proper policies and practices.

STEP 2 - LEARN HOW INSURANCE CAN HELP

Purchasing certain types of insurance can help cover the costs of employee leave. For example, almost all employers are required to pay into **workers' compensation**. That, and other insurance like **disability insurance**, may provide benefits for employees when they are on a leave due to illness, injury, or even pregnancy and childbirth.

STEP 3 - DRAFT YOUR COMPANY'S LEAVE POLICIES

When drafting your company leave policies, make sure they comply with applicable laws, incorporate any available insurance, and your company's other offerings.

Once you've established the legal baseline of what's required, you may want to sweeten the deal with offerings like extra vacation days or better **paid parental leave** to recruit top talent.

PART TWO

Paid and Unpaid Leave Laws

Know which laws may affect your leave policies.



[FAMILY MEDICAL LEAVE ACT](#)

Under the Family Medical Leave Act, or FMLA, eligible employees working for private companies with 50 or more employees are entitled to take:

- Up to 12 weeks of job-protected, unpaid leave during a 12-month period for qualifying [family and medical reasons](#), or to handle [qualifying exigencies](#).
- Up to 26 workweeks of unpaid, job-protected leave in a single-12 month period for [military caregiver leave](#).

Several states have enacted their own family and medical leave laws, some of which apply to smaller employers, provide greater amounts of leave and benefits than those provided by the FMLA, and/or provide benefits to employees who are not eligible for FMLA leave.

PAID FAMILY LEAVE

There are only a few jurisdictions that require paid family leave. Currently, California, New Jersey, New York, Rhode Island, Washington, the District of Columbia and San Francisco have enacted laws offering paid family leave.

PREGNANCY DISABILITY LEAVE

Several states have passed laws requiring employer to provide job-protected leave for pregnant employees. That includes when employees need time off for disabilities related to pregnancy and/or childbirth. In some states, like California, pregnancy leave is in addition to any leave the employee is eligible for under the FMLA.

UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT

USERRA is the primary federal law that governs leave for employees who are military service members. It requires employers to provide leave to employees to serve in uniformed services and reemploy employees who have taken military leave.

Many states have military leave provisions that require additional obligations from employers.

AMERICANS WITH DISABILITIES ACT

The Americans with Disabilities Act (ADA) is a federal law that applies to private employers with 15 or more employees.

In sum, the ADA requires covered employers to make reasonable accommodations for qualified employees with disabilities if necessary to perform essential job functions. Accommodations can include modifications to work schedules, such as leave.

Some state and local laws may similarly require employers to provide unpaid leave as a reasonable accommodation.

PAID SICK LEAVE

Many states and localities across the country have enacted paid sick leave legislation. States like Connecticut, California, Massachusetts, and Oregon have statewide paid sick days. And even more cities and states are considering putting additional sick leave laws on the books. Check the law for the jurisdiction your employees work in to ensure your policy satisfies all the applicable requirements.

ADDITIONAL LEAVE LAWS

State laws may impose additional or different leave requirements for employers, such as leave for jury duty, voting, or blood donation. A few states provide for a limited number of hours annually for parents to attend school-related events and activities for their children.

Insurance For Leave



Although leave insurance may overlap with leave policies, it's best practice to put the two in separate sections of your employee handbook. The insurance portion should include a general overview of available insurance. Typically, if there is a reference to insurance in a leave policy, it's very brief, to prevent conflict with any plan documents.

[WORKERS' COMPENSATION](#)

Employers are generally required to provide workers' compensation insurance (WCI) for all employees.

Benefits generally include:

- Partial wage replacement
- Restitution for medical expenses
- Vocational services
- Vouchers
- Survivor benefits in the case of death

Although WCI doesn't affect the number of days you give your employees off work, it could affect how you pay them if they leave due to accident, illness, or injury on the job.

DISABILITY INSURANCE

Disability insurance is required by state law in California, Hawaii, New Jersey, New York, Puerto Rico, and Rhode Island.

Disability insurance replaces a portion of employee income when they can't work due to an illness or disability. For the most part, disability insurance will not replace all of someone's income. Instead, disability insurance provides wage replacement benefits that cover, on average, up to 60% of an employee's earnings.

There are two types of disability insurance: short- and long-term. Short-term disability typically pays out a portion of employee's income from nine to 52 weeks, depending on the plan. Short-term disability benefits generally kick in after a waiting, or "elimination" period, which is usually set from seven to 14 days.

PART FOUR

Creating Your Company Policies



DETERMINING APPROACH

Many modern workplaces choose to provide more flexible time off. That is, time off that can be used for a variety of reasons, such as vacation, illness, or personal reasons.

Policies that only allow employees to take time off for specific reasons, such as only illness or vacation, are less flexible. Employers should determine whether they should have a separate vacation/personal leave and paid sick leave policies or an all-inclusive paid time off (PTO) policy. That may be influenced by:

- Company size/organization
- Local/industry practice as to the amount and type of expected paid leave
- State/local laws on how paid leave is administered

ADDITIONAL CONSIDERATIONS

Vacation Days

The Fair Labor Standards Act (FLSA) has **no law** that requires paid time off for vacation. However, some states or cities may have different requirements. And offering additional PTO is a great way to recruit talent and keep your employees from burning out.

Paid Holidays

Consider whether you will pay for time off for all employees during major holidays such as New Year's Day or the Fourth of July.

Parental Leave

Parental leave laws vary greatly by state and local policy. For example, New York State will soon **require 12 weeks** paid family leave, and many companies are increasingly offering **generous paid parental leave packages** to retain talent.

Sick Leave

Many state and local governments are passing sick leave entitlements. Make sure you're in compliance with applicable sick leave laws.

PINNING DOWN THE DETAILS

Your written policy should address the following components:

- Employee eligibility
- How much leave is offered, and whether the leave is paid or unpaid
- Employee obligations (i.e., notice, pre-approval, return upon completion of leave)
- Coordination with other leave policies
- Contact person for questions or leave-related communications

Lastly, when you're drafting a leave policy for your company, remember to include descriptions and explanations for the following elements, taking into consideration the requirements of applicable laws:

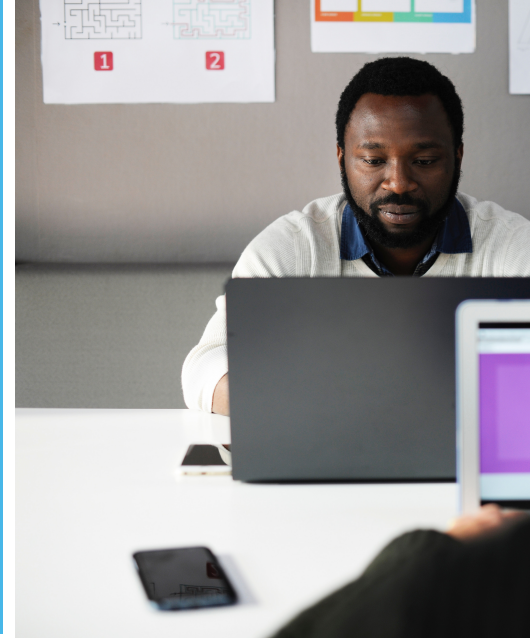
- Flexibility
- Paid vs unpaid leave
- Waiting periods for accruing and using leave
- How and when leave is earned
- Accrual rates and methods
- Carryover of unused leave
- Payout leave upon termination

Conclusion

Creating a leave policy is a complex undertaking. It's best to contact an employment attorney to understand all the applicable federal, state, and local laws.

Additionally, take the time to consider what will work best both for your business and your employees. Flexible PTO packages are a great way to recruit and retain talent — and an effective way to show that you care about your employees' well being.

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