



Can we require an employee to use paid time off (PTO) if he or she hasn't requested it? Can we limit when an employee can use PTO?

Editor's Note: Employees taking leave covered by the Families First Coronavirus Relief Act (FFCRA) due to COVID-19 may not be required to use existing paid time off before using the emergency paid sick time provided under the law. In addition, employees may choose to use available paid time off during the first 10 days of leave under the Emergency Family and Medical Leave Expansion Act to care for a child whose school or place of care is closed however, an employer may not require an employee to do so. After the first ten days of leave, the employer can require that the employee use any paid leave available under the employer's policies concurrently with paid leave under the Emergency Family and Medical Leave Expansion Act. See How does the Families First Coronavirus Response Act (H.R. 6201) impact employers?

(www.shrm.org/ResourcesAndTools/tools-and-samples/hr-qa/pages/how-does-the-families-first-coronavirus-response-act-hr-6201-impact-employers.aspx)

In general, yes, employers may require the use of vacation/paid time off (PTO) and restrict its use. When there are no legal requirements, such as state and local paid sick leave laws, restrictions on the amount of notice required and the increments in which PTO may be used, are common. For consistency, employers should have policies regarding the use of PTO.

Many employers have peak operating times when an employee's absence would cause a hardship. Employers may apply restrictions regarding the use of vacation leave during these times as long as they do so consistently and without discrimination. Keep in mind, however, that leave protected by law, such as FMLA leave, cannot be restricted due to the operations of the business. For more guidance on FMLA and PTO interaction, see [Can an employer require the use of paid leave while an employee is on FMLA leave?](http://www.shrm.org/ResourcesAndTools/tools-and-samples/hr-qa/Pages/canemployerrequiretheuseofpaidleavewhileemployeeisonfmlaleave.aspx) (www.shrm.org/ResourcesAndTools/tools-and-samples/hr-qa/Pages/canemployerrequiretheuseofpaidleavewhileemployeeisonfmlaleave.aspx)

Employers are cautioned against unduly restricting the use of leave; if an employer offers the benefit of paid time off, employees should have a reasonable opportunity to take advantage of the benefit. Employers restricting the use of PTO or forcing employees to use PTO should check state legal requirements prior to implementing such a policy. For example,

a California DLSE internal memorandum (http://www.fels.net/Data/Laws/DLSE_Vacation_Pay_Memorandum-2005.PDF) indicates employers must provide a minimum of a 90-day advance notice when requiring exempt employees to take mandatory vacation/PTO.

There may also be times when a company's business operations deem it necessary to reduce staff temporarily through furloughs, plant shutdowns or slow operating periods. During these times, an employer may require employees to use their paid time off benefits, again, if it does so consistently and without discrimination.

A U.S. Department of Labor Wage and Hour Division opinion letter (http://www.dol.gov/whd/opinion/FLSA/2009/2009_01_14_02_FLSA.pdf) regarding forced use of PTO for exempt employees during a plant shut down indicates the following:

"Since employers are not required under the FLSA to provide any vacation time to employees, there is no prohibition on an employer giving vacation time and later requiring that such vacation time be taken on a specific day(s). Therefore, a private employer may direct exempt staff to take vacation or debit their leave bank account [...] whether for a full or partial day's absence, provided the employees receive in payment an amount equal to their guaranteed salary."

In situations where an employee takes time off, either in full or partial days, but does not request to use his or her PTO benefits, the employer's policy will determine whether time off benefits will automatically be deducted when available. Because exempt employees cannot have their salary docked for partial-day absences, many employers will require the use of PTO for these absences as part of their company policy.

A clearly written company policy regarding the use of PTO is key. Employers must ensure employees clearly understand the company's expectations, and supervisors and managers are trained to properly enforce the policy. The policy should indicate the periods of time during which vacation leave is restricted, the number of employees that can be out at one time, procedures for requesting leave, process for prioritizing multiple requests (first come/first served, seniority, etc.), whether available leave will be automatically deducted for absences, and the appropriate use of leave without pay.

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