



## Top Summer Legal Pitfalls for Employers: Vacation and Sick Leave Benefits

July 10, 2017 By [Avi Attal](#) — [Leave a Comment](#)



It's officially summer! Days are longer, temperatures are higher and school's out. As a result, many employees are looking to cash in their accrued vacation benefits, and employers who don't offer vacation benefits may see healthy workers calling in sick to enjoy an extended weekend. If you have not looked at your vacation benefit handbook recently, now is a perfect time to review it and make sure you are ready to handle these tricky situations!

### **Vacation Benefits – Policies and Handbooks Are Key**

California has no law requiring employers to provide paid vacation, thus employers may elect to grant this benefit as part of employment compensation. Hopefully, you have standardized practices for you and employees to follow. Here are some key points to include in your vacation policy:

1. Notice: The length depends on the type of business you operate, as well as the type of leave the employee requests. There is no rule as to how much notice to require, but you should review your policy to ensure the expectation of employer notification is clear.
2. Multiple requests for the same time off: A written policy for this situation is paramount. Identify criteria for handling multiple employee requests and clearly communicate who is entitled to take the time off. Common standards are often based on seniority or who requested the vacation first.
3. Discretionary clauses: Employers love flexibility. On many occasions, they need a discretionary clause to deny vacation requests due to business requirements. However, discretion is a minefield of potential liabilities and might put you at risk for a discrimination claim. Therefore, use caution when denying vacation based on the needs of the company. Document the reason the absence was not accommodated. It's safer to cite non-discretionary reasons when denying vacation.

Finally, in any vacation policy, and most employment policies – apply your policy indiscriminately, consistently and predictably to reduce potential liability.

### **Sick Leave – Are Your Employees Really Sick?**

Under the California sick leave law (supplemented by many city and county ordinances), an employee will not be compensated for accrued (but unused) sick leave time at the conclusion of employment. The sick leave law also allows employers to limit the maximum use per year, creating an urge to ‘use it, or you lose it’ for employees. As a result, employers may notice a high number of sick employees around the Independence Day and Labor Day holidays. The sick leave law allows employees to use accrued sick leave benefits for “diagnosis, care, or treatment of an existing health condition of, or preventative care for, an employee or an employee’s family member,” among other grounds. *Cal. Labor Code* section 246.5, subd. (a)(1). But what can you do when an employee calls in sick and was seen later at the beach? Can you ask for documentation to corroborate a visit to the doctor or other treatment? California precedent has not formally determined whether or not this is acceptable, but there are many reasons to refrain from this practice.

First, while not expressly declaring the practice unlawful, the California Department of Industrial Relations [conducted a webinar](#) stating that an employee may file a sick leave claim against an employer who “den[ies] sick leave due to a failure to provide details.” The webinar [further commented](#) that it may be unlawful for an employer to deny sick leave benefits for failure to provide a doctor’s note.

Second, employers who question employee use of sick leave risk traveling down a slippery slope of dictating what is and is not valid care or treatment. It’s possible an employee seen at the beach is actually treating a vitamin D deficiency by laying in the sun.

To avoid this issue, employers should institute the usage limits provided by the respective statutes and ordinances. Employers cannot deny the use of accrued sick leave benefits for valid purposes. However, they can attempt to curtail the abuse by creating a policy that employees are only paid for holidays if they work the regularly scheduled day prior to and after the holiday. This approach may not eliminate abuse, but it may discourage it.