

COMPLIANCE OVERVIEW



Overview of State Paid Time Off Payout Laws

The federal Fair Labor Standards Act (FLSA) does not require payment for time not worked, such as vacations, sick leave or federal or other holidays. These benefits are matters of agreement between an employer and an employee (or the employee's representative).

However, if employers choose to provide paid vacation or paid time off (PTO) to their employees, states have taken different approaches as to whether such time must be paid out upon an employee's termination from employment. Some states consider paid vacation or PTO to be wages and require employers to pay out accrued, unused vacation or PTO upon an employee's termination. Other states may take different approaches (such as leaving the payout decision to employer policy) or may not address the issue at all.

This Compliance Overview provides a high-level overview of each state's approach to payout of accrued, unused vacation or PTO at termination of employment. However, this Compliance Overview does not address paid sick leave laws or paid family and medical leave laws, nor does it address case law or any applicable local laws. This document is not comprehensive and should not be treated as exhaustive. Generally speaking, if an employer has agreed, either in a written or oral policy or by practice, to pay employees for accrued but unused time off, it is often considered a best practice to include such payment in the final paycheck (whether or not a state has enacted a specific law to that effect).

Employers should ensure compliance with the laws of their applicable state(s). Failure to comply with PTO payout requirements can expose employers to unpaid wage claims and reputational harm. Therefore, it is important that employers carefully review the laws of their state(s) and any available state agency guidance. It is also a best practice for employers to communicate their policies with respect to vacation or PTO to employees in writing in advance of their employment.

Employers with questions on whether to pay out accrued PTO to employees upon separation from employment should consult with local counsel for specific legal advice. Local counsel can also conduct comprehensive case law research to determine whether applicable state courts have opined on an employer's obligation to pay out accrued, unused PTO upon termination of employment.



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OVERVIEW OF STATE PTO PAYOUT LAWS

ALABAMA

PTO Payout Requirements

Alabama law does not address the payment of unused benefits upon termination. Generally speaking, if an employer has agreed, either in a written or oral policy or by practice, to pay employees for accrued but unused time off, it is often considered a best practice to include such payment in the final paycheck (whether or not a state has enacted a specific law to that effect).

ALASKA

PTO Payout Requirements

According to [guidance](#) from the Alaska Department of Labor and Workforce Development, employees are entitled to vacation pay **only if** the employer has promised that they will receive these payments. Vacation pay is a benefit provided to an employee, allowing them to be paid while not working. Therefore, an employer only has to pay these benefits if the employer has a policy to pay such benefits, or has made a promise or has a contract with an employee to pay these benefits. The department enforces an employer's own rules for these kinds of payments.

As noted below, the definition of "rate of pay" in the Alaska Administrative Code includes **accrued vacation**. Employers with questions on whether to pay out accrued vacation or PTO to employees upon separation from employment should consult with local counsel for specific legal advice.

Key Definitions

"Rate of pay" in the Alaska Administrative Code means all remuneration for service from whatever source, including the basic hourly rate of pay, commissions, **accrued vacation or holiday pay**, cash value of board and lodging if customarily furnished by the employer, and **other similar advantages or fringe benefits** received or anticipated to be received by an individual in the course of service that are a contractual condition of the employment.

ARIZONA

PTO Payout Requirements

Arizona law does not address the payment of unused benefits upon termination. Generally speaking, if an employer has agreed, either in a written or oral policy or by practice, to pay employees for accrued but unused time off, it is often considered a best practice to include such payment in the final paycheck (whether or not a state has enacted a specific law to that effect).

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Key Definitions

“**Wages**” in the Arizona Revised Statutes means nondiscretionary compensation due an employee in return for labor or services rendered by an employee for which the employee has a **reasonable expectation to be paid** whether determined by a time, task, piece, commission or other method of calculation.

ARKANSAS

PTO Payout Requirements

According to [guidance](#) from the Arkansas Department of Labor and Licensing, if an individual is filing a wage claim because they believe they are due **vacation pay**, sick pay, **holiday pay**, a bonus or severance pay, they must provide a copy of the company **policy** that states they will be paid for the type of pay they are claiming.

CALIFORNIA

PTO Payout Requirements

Unless otherwise provided by a collective bargaining agreement, whenever a contract of employment or employer policy provides for paid vacations and an employee is terminated without having taken off their vested vacation time, all vested vacation **must be paid** to them as wages at their final rate in accordance with such contract of employment or employer policy respecting eligibility or time served. An employment contract or employer policy may **not** provide for forfeiture of vested vacation time upon termination.

According to [guidance](#) from the California Division of Labor Standards Enforcement, a PTO plan or policy does **not** allow an employer to circumvent the law with respect to vacations. Where an employer replaces its separate arrangements for vacation and sick leave with a program whereby employees are granted a certain number of paid days off each year that can be used for **any purpose**, including vacation and sick leave, the employees have an absolute right to take these days off. Such a program is subject to the same rules as other vacation policies. Thus, for example, vested PTO days **cannot** be forfeited, and if an employee has earned and accrued PTO days that have not been used at the time the employment relationship ends, the employee **must be paid** for these days.

Key Definitions

“**Wages**” in the California Labor Code includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis or other method of calculation.

Under California law, earned **vacation time** is considered wages, and vacation time is earned, or vests, as labor is performed.

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COLORADO

PTO Payout Requirements

If an employer provides paid vacation for an employee, the employer **must pay** all vacation pay earned and determinable in accordance with the terms of any **agreement** between the employer and the employee upon separation from employment. The “earned and determinable in accordance with the terms” provision does **not** allow a forfeiture of any earned (accrued) vacation pay.

According to [guidance](#) from the Colorado Department of Labor and Employment, vacation pay is any paid leave usable for **any purpose** the employee chooses, at their discretion—unlike paid leave usable **only** for qualifying events like health needs, caretaking, bereavement or public holidays. Because vacation pay is usable without a qualifying event, it is a form of **guaranteed pay** that an employee can use or save for eventual payout, at their discretion. Some paid leave meets this vacation pay definition, but has a different name—personal days, PTO, annual leave, floating holiday, etc. Labor rights depend on how employment works in reality, not just how it is labeled. If paid leave **by any name** meets the vacation pay definition, then it counts as vacation pay that Colorado law **requires to be paid** when an employee separates from their job.

Key Definitions

“**Wages**” or “**compensation**” in the Colorado Revised Statutes includes **vacation pay** earned in accordance with the terms of any **agreement**.

“**Vacation pay**” in the Code of Colorado Regulations is pay for leave, **regardless of its label**, that is usable at the employee’s discretion (other than procedural requirements, such as notice and approval of particular dates), rather than leave usable only upon occurrence of a qualifying event (for example, a medical need, caretaking requirement, bereavement or holiday).

CONNECTICUT

PTO Payout Requirements

If an employer policy or collective bargaining agreement provides for the payment of accrued fringe benefits upon termination (including but not limited to **paid vacations, holidays**, sick days and earned leave), and an employee is terminated without having received such accrued fringe benefits, the employee **must be compensated** for the accrued fringe benefits (exclusive of normal pension benefits in the form of wages) in accordance with the agreement or policy—but in no case less than the earned average rate for the accrual period pursuant to [Connecticut law](#).

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DELAWARE

PTO Payout Requirements	An employer who is party to an agreement to pay or provide benefits or wage supplements to an employee must pay the amount(s) necessary to provide the benefits or furnish the supplements within 30 days after the payments are required to be made. Employers with questions on whether to pay out accrued vacation/PTO to employees upon separation from employment should consult with local counsel for specific legal advice.
Key Definitions	“Benefits or wage supplements” means compensation for employment other than wages, including (but not limited to) vacation , separation or holiday pay —but not including disputed amounts of such compensation subject to handling under dispute procedures established by collective bargaining agreements.

DISTRICT OF COLUMBIA

PTO Payout Requirements	The definition of “wages” in the Code of the District of Columbia includes fringe benefits paid in cash and other remuneration promised or owed (see below for more). Employers with questions on whether to pay out accrued vacation to employees upon separation from employment should consult with local counsel for specific legal advice.
Key Definitions	“Wages” in the Code of the District of Columbia means all monetary compensation after lawful deductions, owed by an employer, whether the amount owed is determined on a time, task, piece, commission or other basis of calculation. The term “wages” includes (among other things) fringe benefits paid in cash and other remuneration promised or owed: <ul style="list-style-type: none">• Pursuant to a contract for employment, whether written or oral;• Pursuant to a contract between an employer and another person or entity; or• Pursuant to District or federal law.

FLORIDA

PTO Payout Requirements	Florida law does not address the payment of unused benefits upon termination. Generally speaking, if an employer has agreed, either in a written or oral policy or by practice, to pay employees for accrued but unused time off, it is often considered a best practice to include such payment in the final paycheck (whether or not a state has enacted a specific law to that effect).
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GEORGIA

PTO Payout Requirements

Georgia law does not address the payment of unused benefits upon termination. Generally speaking, if an employer has agreed, either in a written or oral policy or by practice, to pay employees for accrued but unused time off, it is often considered a best practice to include such payment in the final paycheck (whether or not a state has enacted a specific law to that effect).

HAWAII

PTO Payout Requirements

Hawaii law does not address the payment of unused benefits upon termination. Generally speaking, if an employer has agreed, either in a written or oral policy or by practice, to pay employees for accrued but unused time off, it is often considered a best practice to include such payment in the final paycheck (whether or not a state has enacted a specific law to that effect).

IDAHO

PTO Payout Requirements

Idaho law does not address the payment of unused benefits upon termination. Generally speaking, if an employer has agreed, either in a written or oral policy or by practice, to pay employees for accrued but unused time off, it is often considered a best practice to include such payment in the final paycheck (whether or not a state has enacted a specific law to that effect).

ILLINOIS

PTO Payout Requirements

Unless otherwise provided in a collective bargaining agreement, whenever a contract of employment or employment policy provides for **paid vacations**, and an employee resigns or is terminated without having taken all vacation time earned in accordance with the contract of employment or employment policy, the monetary equivalent of all earned vacation **must be paid** to them as part of their final compensation at their final rate of pay. An employment contract or employment policy may **not** provide for forfeiture of earned vacation time upon separation.

Oral promises, handbooks, memoranda and uniform patterns of practice may create a duty to pay the monetary equivalent of earned vacation.

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	<p>The Illinois Department of Labor recognizes policies under which an employer does not have separate arrangements for vacation and sick leave. Under the policy, employees earn a certain amount of PTO that they can use for any purpose, including vacation and sick leave. Because employees have an absolute right to take this time off (unlike traditional sick leave in which using sick leave is contingent upon illness), the department will treat PTO as earned vacation days.</p> <p>An employer cannot effectuate a forfeiture of earned vacation by a written employment policy or practice of the employer.</p> <p>According to guidance from the Illinois Department of Labor, if an employer has a vacation policy, which allows employees to take reasonable amount of vacation during the course of the calendar year subject to business needs and the employee's own judgment and the policy does not provide for the employee receiving a defined number of days after a defined period of employment, the employer is obligated to pay an employee who separates from employment a monetary equivalent equal to the amount of vacation pay to which the employee would otherwise have been allowed to take during that year but had not taken. However, the employer would not be obligated to pay any monetary equivalent for earned vacation for a future calendar year.</p> <p>Also, according to the guidance, if an employee quits or is fired, an employee is not entitled to severance pay, sick pay or holiday pay upon separation, unless the employer has promised the pay in an employment contract or other agreement.</p>
Key Definitions	<p>In the Illinois Wage Payment and Collection Act, payments to separated employees are termed “final compensation” and are defined as wages, salaries, earned commissions, earned bonuses, the monetary equivalent of earned vacation and earned holidays, and any other compensation owed the employee by the employer pursuant to an employment contract or agreement between the two parties.</p>

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INDIANA

PTO Payout Requirements

According to [guidance](#) from the Indiana Department of Labor, when an employee leaves employment, their former employer **is required** to pay them for any **accrued vacation time**. Accrued vacation pay is considered a form of compensation. An employee may be entitled to a pro rata share of their accrued vacation at the time of termination. If there is a company policy or employment contract stipulating that certain conditions **must be met** before accrued vacation pay will be paid, these conditions must be met in order to receive accrued vacation pay. Vacation policies are generally left to the discretion of the employer.

IOWA

PTO Payout Requirements

According to [guidance](#) from the Iowa Department of Inspections, Appeals, and Licensing, an employee is entitled to their **unused vacation** when they are fired or if they quit, **only if** the employer has a contract, policy or procedure to pay vacation to departing employees.

According to the [Iowa Code](#), if vacations are due an employee under an agreement with the employer or a policy of the employer establishing pro rata vacation accrued, the increment must be in proportion to the fraction of the year during which the employee was actually employed.

Key Definitions

“**Wages**” in the Iowa Code includes compensation owed by an employer for **vacation, holiday**, sick leave and severance payments, which are due an employee under an agreement with the employer or under a policy of the employer.

KANSAS

PTO Payout Requirements

According to [guidance](#) from the Kansas Department of Labor, if an employee quits or is fired, they are entitled to payment for their unused accrued vacation time **only if** their employer has a policy or practice of paying for unused vacation time. Also, an employer can adopt a vacation policy that provides that vacation days are earned only upon reaching the employee's anniversary date and no payment will be made if employment ceases before the anniversary date.

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Key Definitions

“**Wages**” in the Kansas Statutes Annotated means compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission **or other basis** less authorized withholding and deductions.

“**Or other basis**” includes all agreed compensation for services for which the conditions required for entitlement, eligibility, accrual or earning have been met by the employee. Such compensation may include, but is not limited to, profit sharing, **fringe benefits** or compensation due as a result of services performed under an employment contract that has a wage rate required or implied by state or federal law. Conditions subsequent to such entitlement, eligibility, accrual or earning resulting in a **forfeiture** or loss of such earned wage are **ineffective** and **unenforceable**.

KENTUCKY

PTO Payout Requirements

Kentucky law does not address the payment of unused benefits upon termination. However, the definition of “wages” in the Kentucky Revised Statutes includes any compensation due to an employee by reason of their employment, including (among other things) **vested vacation pay** and advantages agreed upon by the employer and the employee or provided to employees as an established policy (see below for more specific information). Employers with questions on whether to pay out accrued vacation to employees upon separation from employment should consult with local counsel for specific legal advice.

Key Definitions

“**Wages**” in the Kentucky Revised Statutes includes any compensation due to an employee by reason of their employment, including salaries, commissions, **vested vacation pay**, overtime pay, severance or dismissal pay, earned bonuses, and **any other similar advantages** agreed upon by the employer and the employee or provided to employees as an established policy.

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LOUISIANA

PTO Payout Requirements

Vacation pay will be considered an amount due **only if**, in accordance with an employer's stated vacation policy, both of the following apply:

- The employee is deemed eligible for and has accrued the right to take vacation time with pay; and
- The employee has not taken or been compensated for the vacation time as of the date of discharge or resignation.

The provisions above may **not** be interpreted to allow the **forfeiture** of any vacation pay actually earned by an employee under the employer's policy.

Also, an employer may **not** require its employees to sign contracts by which the employees will **forfeit** their wages if discharged or the employees resign their employment before the contract is completed. In all such cases, the employees **are entitled to** the wages actually earned up to the time of discharge or resignation.

MAINE

PTO Payout Requirements

Whenever the terms of employment or the employer's established practice includes provisions for paid vacations, vacation pay on cessation of employment has the same status as wages earned. All **unused paid vacation accrued** under the employer's vacation policy on and after Jan. 1, 2023, **must be paid** to the employee on cessation of employment **unless** the employee is employed by an employer with 10 or fewer employees or by a public employer. If the employee's employment is governed by a collective bargaining agreement that includes provisions addressing payment of vacation pay upon cessation of employment, the collective bargaining agreement supersedes the rules in this paragraph. See the Maine statute at [26 Maine Revised Statutes §626. Cessation of employment](#) for more details.

According to [guidance](#) from the Maine Department of Labor, in determining the application of the rules above to private employers, the state counts only employees **who work in Maine**. For example, if an employer has six workers in Maine and six workers in New Hampshire, the state would consider this employer as having 10 or fewer employees for the purposes of the rules above.

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Also, according to the guidance, any vacation accrued prior to Jan. 1, 2023 is **not covered** by the amended statutory language—however, if prior to that date, it was the employer’s established practice or policy to pay accrued vacation on cessation of employment, the employer is **still obligated** to do so.

In addition, according to the guidance, the statute does **not** obligate employers to pay for any leave time other than vacation. Pursuant to the Earned Paid Leave rules, whenever the terms of employment or the employer’s established practice includes provisions to pay the balance of unused earned paid leave at the time of separation, earned paid leave on cessation of employment has the **same status as wages earned** in accordance with 26 Maine Revised Statutes §626. Employers may have separate vacation and earned paid leave policies. If an employer has no earned paid leave policy but has a policy or practice of paying out vacation, the state will consider the employer’s policy or practice to cover earned paid leave as well. For additional details, see the guidance linked above.

For more information, including the sale of a business, see [here](#). For details on employer insolvency, see [here](#). Employers with questions on whether to pay out accrued vacation or other paid leave to employees upon separation from employment should consult with local counsel for specific legal advice.

MARYLAND

PTO Payout Requirements

An employer is **not** required to pay accrued leave to an employee if:

- The employer has a written policy that limits the compensation of accrued leave to employees;
- The employer notified the employee of the employer’s leave benefits in accordance with [Maryland law](#); and
- The employee is not entitled to payment for accrued leave at termination under the terms of the employer’s written policy.

According to [guidance](#) from the Maryland Department of Labor regarding whether **unused vacation** at termination is payable, the answer depends on the employer’s **written policy**, and whether this policy was communicated to the employee at the time of hiring. For example, if an employer informs employees in writing at the time of hiring that unused vacation leave will be lost or forfeited upon termination, then an employee will not be able to claim it. On the other hand, where the employer does not have a written policy that limits the compensation for accrued leave to a terminated employee, that employee is entitled to the cash value of whatever unused earned vacation leave was left, provided it was otherwise usable.

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	Also, according to the guidance regarding whether unused sick leave at termination is payable, because sick leave is generally meant to be used in the case of sickness or for medical attention, its use is limited to those situations. Sick leave is therefore a contingency against illness, and cannot be claimed at termination in the same manner as unused vacation leave, unless expressly allowed in a contract or an employer's policy.
Key Definitions	“Wage” in the Maryland Code means all compensation that is due to an employee for employment. “Wage” includes (among other things) a fringe benefit or any other remuneration promised for service.

MASSACHUSETTS

PTO Payout Requirements	<p>According to guidance from the Massachusetts state website, if an employer offers any holiday or vacation payments to an employee as part of an oral or written agreement regarding their employment, these payments are considered wages under Massachusetts law. When an employee leaves their position, their accrued vacation time will be included in their final paycheck and will be paid to them in accordance with Massachusetts law, depending on whether they resigned or were discharged.</p> <p>According to an advisory from the Massachusetts Attorney General’s Fair Labor Division, employers who choose to provide paid vacation to their employees must treat those payments like any other wages under Massachusetts law. Like wages, the vacation time promised to an employee is compensation for services that vests as the employee’s services are rendered. Upon separation from employment, employees must be compensated by their employers for vacation time earned under an oral or written agreement. Withholding vacation payments is the equivalent of withholding wages and, as such, is illegal.</p> <p>Also, according to the advisory, Massachusetts law provides that no employer may, by special contract with an employee or by any other means, exempt themselves from the law or from its penalty provision. Since the statute provides for the timely payment of all wages earned, an employer may not enter into an agreement with an employee under which the employee forfeits earned wages, including vacation payments. Examples of these agreements are vacation policies that condition the payment of vacation time on continuous employment or that require that employees provide notice to quit. Employees who have performed work and leave or are fired, whether for cause or not, are entitled to pay for all the time worked up to the termination of their employment, including any earned, unused vacation time payments.</p>
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	<p>In addition, according to the advisory, generally, time earned under any vacation policy need be compensated only with the equivalent time off. The exception is where an employee separates from employment or where an employee agrees to receive monetary compensation in lieu of vacation time.</p> <p>Furthermore, according to the advisory, some employers combine sick leave, personal leave, vacation leave and/or other types of leave into one general category called annual leave. This combined leave is also called PTO, earned time or paid days off. Employers who provide annual leave instead of vacation leave should designate the amount of hours or days of the leave which are considered vacation time. Employers who have previously designated vacation time in this manner, whether orally or in writing, must produce proof of such designation to rebut a complaint of unpaid wages pursuant to Massachusetts law. See the links above for additional information.</p>
Key Definitions	<p>“Wages” in the Massachusetts General Laws include any holiday or vacation payments due an employee under an oral or written agreement. No person may, by a special contract with an employee or by any other means, exempt themselves from the law.</p>

MICHIGAN

PTO Payout Requirements	<p>An employer must pay fringe benefits to or on behalf of an employee in accordance with the terms set forth in the written contract or written policy. An employer may not withhold a payment of compensation due an employee as a fringe benefit to be paid at a termination date unless the withholding is agreed upon by written contract or a signed statement obtained with the full and free consent of the employee without intimidation or fear of discharge for refusing to agree to the withholding of the benefit.</p> <p>According to guidance from the Michigan Department of Labor and Economic Opportunity, an employer must pay fringe benefits due to an employee at termination on the regularly scheduled payday for the period in which the termination occurs, unless otherwise specified in the terms of a written contract or written policy. The employer is required to pay fringe benefits in accordance with the written contract or written policy. If the company policy has a payout provision that states that unused time will be paid to an employee when they separate from their employment, then the employer would be obligated to pay them for the unused time. The employer would not be legally obligated to pay an employee for unused time if the company policy does not address the issue.</p>
Key Definitions	<p>“Fringe benefits” in the Michigan Compiled Laws means compensation due an employee pursuant to a written contract or written policy for holiday, time off for sickness or injury, time off for personal reasons or vacation,</p>

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bonuses, authorized expenses incurred during the course of employment, and contributions made on behalf of an employee.

“**Wages**” means all earnings of an employee, whether determined on the basis of time, task, piece, commission, or other method of calculation for labor or services, **except** those defined as **fringe benefits** under the paragraph above.

MINNESOTA

PTO Payout Requirements

According to [guidance](#) from the Minnesota Department of Labor and Industry, **company policy** can determine when any benefits are due, such as **vacation**, sick leave and severance packages. Benefits are payable within 30 days of when they become due.

According to a Minnesota [employer’s guide](#), Minnesota employers are **not** required by law to provide their employees vacation time (also referred to as PTO). Paid vacation or PTO, however, is almost universally provided to employees. Employers should notify employees of the manner in which vacation or PTO days accrue, whether vacation days/PTO can be carried over from year to year, and whether vacation/PTO is forfeited if unused at the end of the year. Employers **should also inform** their employees whether they will be paid for unused accrued vacation/PTO time **upon termination** of employment. Although such payment is **not** necessarily required by Minnesota law (i.e., use it or lose it policies are permitted), most employers do pay for unused accrued vacation/PTO time upon termination.

In Minnesota, according to the employer’s guide, employers **may impose conditions** on payments for unused vacation or PTO upon termination of employment when the conditions are incorporated into a clear policy. More specifically, a court stated that although vacation and PTO benefits are wages under applicable Minnesota law, employers **may** legally adopt and enforce a written policy **not** to pay earned, but unused vacation or PTO benefits to departing employees who fail to provide the required notice of resignation or are terminated for misconduct (as was the situation before the court). The court also commented with approval on written policies of employers relating to capping the amount of accrued vacation or PTO benefits and use-it-or-lose-it vacation or PTO benefits—both of which are common practices among employers.

In light of the foregoing, according to the employer’s guide, vacation and PTO policies should **clearly communicate** the employer’s intended policy choices. If an employer decides to change these policies, it is imperative to communicate the new policies to employees, including securing a proper acknowledgment. Policies that directly

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establish what, if anything, is owed at the time of termination should also include language preserving the employment-at-will status of each employee.

According to the employer's guide, if the employer has a vacation/PTO policy stating that employees will be paid any unused, accrued vacation at termination, **failure** to make such payments may result in an employer being found guilty of a gross misdemeanor.

Furthermore, according to the employer's guide, most Minnesota employers provide paid holidays to their full-time employees for certain **holidays**. Some employers also provide PTO for an employee's birthday or floating holiday days. The law does **not** require that employees be paid for holidays, nor that employees who work on holidays be paid at a premium rate. See the link above for more information.

MISSISSIPPI

PTO Payout Requirements

Mississippi law does not address the payment of unused benefits upon termination. Generally speaking, if an employer has agreed, either in a written or oral policy or by practice, to pay employees for accrued but unused time off, it is often considered a best practice to include such payment in the final paycheck (whether or not a state has enacted a specific law to that effect).

MISSOURI

PTO Payout Requirements

According to [guidance](#) from the Missouri Department of Labor and Industrial Relations regarding whether an employer is required to pay an employee for unused vacation if they lose their job or quit, employers are **not required** to provide **vacation pay, holiday pay** or severance pay—these are benefits given at an employer's discretion. The exception would be instances where an employer has entered into a contract where certain benefits are established by **agreement**. If an employer does **not** follow their policy, the employee has the option of filing a private right of action against the employer in small claims court.

MONTANA

PTO Payout Requirements

According to [guidance](#) from the Montana Department of Labor and Industry regarding whether an employer needs to pay out vacation upon termination of employment, there is no requirement in state or federal law that requires private sector employers to provide **vacation pay**. However, if provided, once vacation has been earned according to

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the employer's policy, it is then considered wages and is **due and payable** in the same manner as regular wages. So called use it or lose it policies are **not** permitted in Montana.

Also, according to the guidance, regarding whether an employer is required to pay for unused sick leave, PTO or severance pay, private-sector employers are not required to pay out severance pay, **sick leave or PTO**. These are considered benefits and may be paid based on the employer's policies. There is **no requirement** in state law to provide these benefits. In the case of a PTO benefit, payout of this benefit is dependent on the employer's **policy** as stated in a Montana Supreme Court ruling.

NEBRASKA

PTO Payout Requirements

Paid leave, **other than earned but unused vacation leave**, provided as a fringe benefit by the employer is **not** included in the wages due and payable at the time of separation, **unless** the employer and the employee or the employer and the collective bargaining representative have specifically agreed otherwise. See [here](#) for more information, including annotations on court cases.

According to [guidance](#) from the Nebraska Department of Labor, fringe benefits such as **vacation pay**, sick pay, **paid holidays**, and pay raises are not required by law to be offered by an employer.* Should an employer choose to offer vacation/PTO, any earned but unused vacation at the time of separation **is to be paid** as wages to the employee on their final paycheck. Unless previously agreed to, **no other fringe benefits are payable** upon separation.

*Note: Nebraska has certain paid sick time requirements. See [here](#) for more information.

Key Definitions

"Fringe benefits" in the Nebraska Revised Statutes include sick and **vacation leave plans**; disability income protection plans; retirement, pension or profit-sharing plans; health and accident benefit plans; and any other employee benefit plans or benefit programs, regardless of whether the employee participates in such plans or programs.

"Wages" means compensation for labor or services rendered by an employee, including **fringe benefits**, when previously agreed to and conditions stipulated have been met by the employee, whether the amount is determined on a time, task, fee, commission or other basis.

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NEVADA

PTO Payout Requirements

The Nevada statutes do not specifically address the payment of unused benefits upon termination. Employers should consult a Nevada attorney knowledgeable in employment law regarding their legal rights and obligations with respect to the payment of unused vacation time.

NEW HAMPSHIRE

PTO Payout Requirements

As noted below, **vacation pay**, severance pay, **personal days**, **holiday pay**, sick pay, and payment of employee expenses, when such benefits are a matter of employment practice or policy (or both), **are considered wages** when due.

Employers must inform their employees in writing of any change to such employees' rate of pay, salary, or employment practices or policies as referred to in state rules prior to the effective date of such change. Any **vacation pay**, **holiday pay**, sick pay, bonus pay, **personal day pay**, employee expenses, and all other fringe benefits **earned, accrued or vested** prior to any change **may not lapse** due to the change.

Also, an employer may **not** withhold or divert any portion of an employee's wages unless (among other things) the employer has a **written request** from the employee—made at the time of the original request without coercion or pressure—that authorizes the employer to deduct from the employee's final wages at the termination of employment any amount the employee may owe for voluntary payments for vacation pay, PTO pay, earned time pay, personal time pay, annual pay, sick pay, sick dependent pay, and bereavement pay made pursuant to a written employment policy as required by state law, when the payments have been requested and paid to the employee **in advance of eligibility**.

Employers with questions on whether to pay out accrued vacation to employees upon separation from employment should consult with local counsel for specific legal advice.

Key Definitions

"Wages" in the New Hampshire Statutes means compensation, including hourly health and welfare, and pension fund contributions required pursuant to a health and welfare trust agreement, pension fund trust agreement, collective bargaining agreement, or other agreement adopted for the benefit of an employee and agreed to by their employer, for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission, or other basis of calculation. **Vacation pay**, severance pay, **personal days**, **holiday pay**, sick pay and payment of

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employee expenses, when such benefits are a matter of employment practice or policy (or both), **are considered wages** when due.

NEW JERSEY

PTO Payout Requirements

According to [guidance](#) from the New Jersey Department of Labor and Workforce Development, regarding whether an employer is required to provide fringe benefits such as vacation, severance, holiday pay, etc., fringe benefits like **vacation**, severance, **holiday**, or any other type of benefit pay are **not required** by New Jersey state law. If the employer chooses to provide these benefits, they must be administered uniformly in accordance with the **established policy or employment agreement**. An individual may have a basis for a complaint if the employer fails to adhere to the policy or agreement. Click the link for more information, including details on sick leave.

Employers with questions on whether to pay out accrued vacation to employees upon separation from employment should consult with local counsel for specific legal advice.

NEW MEXICO

PTO Payout Requirements

According to the New Mexico [Investigations Manual](#) (Labor Relations Division), any remaining **vacation pay** earned under an employer's vacation pay policy **must be paid out** upon termination of employment, just as any other form of wages must be paid.

Key Definitions

According to New Mexico regulations, **vacation pay and other forms of pay** for time that is not worked are included in the definition of “**wages**” if such pay is compensation for labor or service rendered pursuant to the employer's written policy.

NEW YORK

PTO Payout Requirements

According to [guidance](#) from the New York Department of Labor regarding whether, when employees resign or are discharged from a job, the employer must pay them for any **accrued, unused vacation time**: Whether an employer must pay for unused time **depends upon the terms** of the vacation and/or resignation policy. New York courts have held that an agreement to give benefits or wage supplements, like vacation, can specify that employees lose accrued benefits under certain conditions. To be valid, the employer **must have told** employees, in writing, of the conditions that nullify the benefit.

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	<p>If an employee has earned vacation time and there is no written forfeit policy, then the employer must pay the employee for the accrued vacation. See the link above for more, including sick leave.</p>
Key Definitions	<p>In the New York statutes on Payment of Wages, “wages” means the earnings of an employee for labor or services rendered, regardless of whether the amount of earnings is determined on a time, piece, commission or other basis. The term “wages” also includes benefits or wage supplements, except for the purposes of certain sections of the law.</p> <p>“Benefits or wage supplements” include but are not limited to reimbursement for expenses; health, welfare and retirement benefits; and vacation, separation or holiday pay.</p>

NORTH CAROLINA

PTO Payout Requirements	<p>According to guidance from the North Carolina Department of Labor, earned vacation pay, commissions and bonuses cannot be forfeited unless the employer has a written forfeiture clause in its vacation, commission or bonus policy or termination policy pursuant to state law. Vacation pay, commissions or bonuses have to be earned, regardless of a verbal promise or a written policy, before an employer has to pay them at all.</p> <p>Also, according to the guidance, even if there is a written policy that has a written forfeiture clause, an employee may still be due the earned vacation pay, commissions or bonuses at termination. It all depends on the language of the forfeiture clause and the reason(s) the employee's employment was discontinued and if the reason(s) meet the criteria in the written forfeiture clause.</p> <p>According to the guidance, the North Carolina Department of Labor takes the position that sick leave does not have to be paid at termination, even if there is no written forfeiture clause, unless the policy actually states that sick leave will be paid at termination or there is the practice of such payments. Click the link above for more information.</p> <p>An employer is not required to provide vacation pay plans for employees. However, if an employer provides these promised benefits for employees, the employer must give all vacation time off or payment in lieu of time off in accordance with the company policy or practice. Employees must be notified in accordance with state law of any policy or practice that requires or results in loss or forfeiture of vacation time or pay. Employees not so notified are not subject to such loss or forfeiture.</p>
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	<p>All vacation policies and practices must address (among other things) when and if vacation pay may be paid in lieu of time off; and under what conditions vacation pay will be forfeited upon discontinuation of employment for any reason. Ambiguous policies and practices are construed against the employer and in favor of employees. Vacation benefits granted under a policy which does not establish an earning period cannot be reduced or eliminated as a result of a change in policy. See here for more.</p> <p>An employer may not enforce an unwritten policy or practice resulting in the loss or forfeiture of vacation time or pay, commissions, bonuses or other forms of calculation. The employer may not deny to any employee any vacation time or pay, commissions, bonuses or other forms of calculation on the basis of the application of an unwritten forfeiture or loss policy or practice.</p>
Key Definitions	<p>In the North Carolina General Statutes, “wage” paid to an employee means compensation for labor or services rendered by an employee whether determined on a time, task, piece, job, day, commission or other basis of calculation, and the reasonable cost as determined by the Commissioner of Labor of furnishing employees with board, lodging or other facilities. For the purposes of certain provisions, “wage” includes sick pay, vacation pay, severance pay, commissions, bonuses and other amounts promised when the employer has a policy or a practice of making such payments.</p> <p>“Other amounts promised” are those amounts which the employer has promised or has a policy or practice of paying and include, but are not limited to, travel expenses, holiday pay, birthday pay, jury duty pay, shift premium pay, prizes, moving expenses, educational expenses or telephone expenses.</p>

NORTH DAKOTA

PTO Payout Requirements	<p>PTO, once earned or awarded, is considered wages upon separation from employment. If the PTO is available for use at the time of separation from employment, the employer must pay the employee for that time at the regular rate of pay earned by the employee prior to separation.</p> <p>An employment contract or policy may not provide for forfeiture of earned PTO upon separation. An employment contract or policy may require an employee to take vacation by a certain date or lose the vacation (use it or lose it), provided that the employee is given a reasonable opportunity to take the vacation. The employer must demonstrate that the employee had notice of such contract or policy provision.</p>
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	<p>According to guidance from the North Dakota Department of Labor and Human Rights, regarding whether an employer is required to pay accrued vacation when an employee separates from employment, the guidance provides: In most situations, yes. Generally, once PTO is made available for an employee's use, any unused portion of such time is considered wages upon separation unless a limitation is met. There are circumstances in which an employer is not required to pay any unused portion of PTO to an employee upon separation from employment.</p> <p>If an employee separates from employment voluntarily, a private employer may withhold payment for accrued PTO if:</p> <ul style="list-style-type: none">• At the time of hiring, the employer provided the employee written notice of the limitation on payment of accrued PTO;• The employee has been employed by the employer for less than one year; and• The employee gave the employer less than five days' written or verbal notice. <p>If an employee separates from employment, a private employer may withhold payment for PTO if:</p> <ul style="list-style-type: none">• The PTO was awarded by the employer but has not yet been earned by the employee; and• The employer provided the employee with written notice of the limitation on payment of awarded PTO before awarding the PTO.
Key Definitions	<p>PTO in the North Dakota Administrative Code includes annual leave, earned time, personal days or any other provisions of the employment relationship intended to provide compensation as vacation. Provisions where employees earn time off and can use the days for any purpose are PTO unless separate arrangements are made for sick leave.</p>

OHIO

PTO Payout Requirements	<p>Ohio law does not address the payment of unused benefits upon termination. Employers with questions on whether to pay out accrued vacation to employees upon separation from employment should consult with local counsel for specific legal advice.</p>
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OKLAHOMA

PTO Payout Requirements

For the purpose of clarification of state law, specifically, when **accrued vacation pay**, sick pay, severance pay or other similar advantages are **payable as a wage** upon termination of employment:

- Vacation pay, sick pay, severance pay or other similar advantage is considered **wages** only if the payment of such is **agreed upon** between the employer and the employee or it is provided by the employer to their employees in an **established policy**.
- The state Department of Labor will accept and process accrued leave claims only if the claims arise by virtue of express language in a written employment contract or policy manual which provides for the payment of cash in lieu of time off; or the claims arise by virtue of an **established policy** based upon a promise by the employer, either express or implied, and supported by a prior course of conduct by the employer where payment of cash in lieu of time off was actually made to previous employees.
- If payment of cash in lieu of time off is provided in a written employment contract or policy manual, the employee must meet all conditions precedent set out in the contract or the manual before entitlement to payment for accrued leave vests in that employee.
- The state Department of Labor will reject any claim if the written contract, policy manual or established policy does not provide for the payment of cash in lieu of time off or if the claimant has failed to meet all conditions precedent required for such payment.

Entitlement to benefits and/or the receipt thereof may be found upon proof of an established policy, or pursuant to the terms of a written agreement, and may be conditioned upon a certain level of job performance or any other criteria not otherwise unlawful.

Any restrictions, criteria or conditions on benefits, including employer discretion and any limits thereon, must be contained in a written policy signed by the employee or they will **not** be held valid. The employer will be held to the terms of the benefit arrangement, and once the employee meets the criteria set forth therein, the benefit becomes part of **wages earned and due** and is thereupon payable as provided by state statute.

Key Definitions

“Wages” in the Oklahoma Statutes means compensation owed by an employer to an employee for labor or services rendered including salaries, commissions, **holiday and vacation pay**, overtime pay, severance or dismissal pay, bonuses and **other similar advantages** agreed upon between the employer and the employee, which are **earned and due**, or provided by the employer to their employees in an **established policy**, whether the amount is determined on a time, task, piece, commission or other basis of calculation.

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“Earned and due” in the Oklahoma Administrative Code means that wages derived from labor or professional services are presently and immediately matured and enforceable and the **time for payment** has arrived. The term “earned and due” necessitates that all conditions precedent to payment have happened, **have been met** or have been performed.

“Established policy” means a statement, written or oral, or a course of conduct from or by the employer, of general applicability to all similarly situated employees regarding the business affairs of the employer. An “established policy” includes a written employment contract, a written employee manual or employment policy, or a written promise by the employer. An “established policy” also includes a verbal or implied promise by the employer that is supported by evidence of a past course of conduct consistent with the promise.

Benefits are special wages that are paid at certain times under certain conditions, according to the terms of the employment agreement. These include **vacation**, sick pay, **paid holidays**, severance, bonuses and **other similar advantages**.

OREGON

PTO Payout Requirements

According to [guidance](#) from the Oregon Bureau of Labor and Industries, holiday and vacation pay are not required to be given to workers, but employers **must honor** any established policy or agreement they have. If an employee is discharged from employment and his/her employer has a **policy** of paying out benefits such as accrued vacation or severance pay, they **must do so**.

According to the guidance, regarding whether an employee is entitled to be paid for unused vacation time or receive severance pay upon termination, **vacation pay, holiday pay**, bonuses and severance pay are examples of wage agreements that may be made between employers and employees as a part of the employee’s total compensation. There is no legal requirement to offer these benefits. An employer is required to **honor** any established policy or agreement relating to the payment of benefits, such as accrued vacation or severance pay, upon termination. If an employee qualifies for payment of benefits under the employer’s **policy**, they **should be paid** for these upon termination. See [here](#) for more information, including sick time.

See [here](#) (see “652.140 Payment of wages on termination of employment; exception for collective bargaining”) for information regarding when a termination of employment results from the sale of a business or business property.

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PENNSYLVANIA

PTO Payout Requirements

“Wages” in the Pennsylvania Wage Payment and Collection Law includes **fringe benefits or wage supplements** (including **vacation or holiday pay**). See below for more information.

However, according to [guidance](#) from the Pennsylvania Department of Labor and Industry, there is no Pennsylvania labor law that requires an employer to pay an employee not to work. Benefits like sick leave, **vacation pay** and severance pay are payments to an employee not to be at work. Therefore, an employer only has to pay these benefits if the employer has a **policy** to pay such benefits or a contract with an employee to pay these benefits. An employer **must follow its own rules** for these kinds of payments.

Employers with questions on whether to pay out accrued vacation to employees upon separation from employment should consult with local counsel for specific legal advice.

Key Definitions

“**Wages**” in the Pennsylvania Wage Payment and Collection Law includes all earnings of an employee, regardless of whether determined on time, task, piece, commission or other method of calculation. The term “wages” also includes **fringe benefits or wage supplements**, whether payable by the employer from their funds or from amounts withheld from the employees' pay by the employer.

“**Fringe benefits or wage supplements**” includes all monetary employer payments to provide benefits under any employee benefit plan, as defined in federal law; separation, **vacation, holiday** or guaranteed pay; reimbursement for expenses; union dues withheld from the employees' pay by the employer; and **any other amount** to be paid pursuant to an agreement to the employee, a third party or fund for the benefit of employees.

RHODE ISLAND

PTO Payout Requirements

Whenever an employee separates or is separated from the payroll of an employer after completing at least **one year** of service, any **vacation pay** accrued or awarded by collective bargaining, written or verbal company policy, or any other written or verbal agreement between the employer and employee becomes **wages and payable** in full or on a prorated basis with all other due wages on the next regular payday for the employee. See [here](#) for more information, including employers' liquidating the business, merging the business, disposing of the business or removing the business out of state.

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According to [guidance](#) from the Rhode Island Department of Labor and Training, employers are not required to provide paid vacation time. However, if an employer does provide vacation time, they are required to **pay out** any remaining accrued vacation pay upon separation if an employee has worked for it for at least **one year**.

SOUTH CAROLINA

PTO Payout Requirements

According to [guidance](#) from the South Carolina Office of Wages and Child Labor, regarding whether an employer has to provide employees with **paid vacation** and/or sick time, the guidance provides no. State law does **not** require an employer to provide an employee with benefits. However, if an employer decides to do so, they must give notice of the policy to the employee, **abide by the policy** and not discriminate in their administering of the policy. Also, regarding whether, upon leaving a company, an employee is entitled to receive pay for any vacation and/or sick time that they have earned but not used, the guidance provides that it depends on the **company's policy**.

Key Definitions

“Wages” in the South Carolina Code of Laws means all amounts at which labor rendered is recompensed, whether the amount is fixed or ascertained on a time, task, piece or commission basis, or other method of calculating the amount and includes **vacation, holiday** and sick leave payments which are due to an employee under any employer policy or employment contract.

SOUTH DAKOTA

PTO Payout Requirements

According to [guidance](#) from the South Dakota Department of Labor and Regulation on what the state law is regarding paid leave (i.e., **vacation** and sick time), South Dakota has **no law** requiring paid leave. This is a matter of **employer policy**. Also, South Dakota does **not** have a law that requires **holiday pay**. This is employer policy.

In addition, regarding whether, if an employee terminates their employment without giving two weeks’ notice, an employer can withhold their compensation or vacation pay, the guidance provides that whether compensation for vacation pay is withheld for failure to give notice is a **matter of agreement** between employer and employee.

Certain sections of the South Dakota Codified Laws regarding wages do **not** apply to any form of compensation other than cash wages owing to any employee by or on behalf of any employer. See [here](#), including “60-11-14. Provisions applicable to cash wages only.”

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TENNESSEE

PTO Payout Requirements

According to [guidance](#) from the Tennessee Department of Labor and Workforce Development, **fringe benefits** are those benefits that are determined by the employer. These include **PTO, vacation** or sick pay, **holiday pay**, severance pay and health insurance. Regarding whether an employer is required by law to provide fringe benefits, the guidance provides no. There is **no** Tennessee law that regulates fringe benefits. **Company policy** is the determining factor. These and similar matters are also determined by an agreement between the employees and the employer or their authorized representatives.

Also, regarding whether, if an employer's policy provides fringe benefits and the employee voluntarily or involuntarily separates, the employer is required to compensate for any of these benefits accrued, but not used, the guidance provides **no**. Unless the employer's **policy** or its labor agreement **specifically requires** compensation of unused fringe benefits to an employee upon their separation of employment. Tennessee law does **not** require that an employee's final wages include such compensation. See the link above for more information.

For the purposes of certain provisions of state law, the final wages of an employee who quits or is discharged include any **vacation pay or other compensatory time** that is owed to the employee by virtue of **company policy** or labor agreement. This paragraph does **not** mandate employers to provide vacations, either paid or unpaid, nor does it require that employers establish written vacation pay policies. See also the [Tennessee Code](#) at “50-2-103. Payment of employees in private employments” for more information, including coverage information.

TEXAS

PTO Payout Requirements

According to [guidance](#) from the Texas Workforce Commission, payouts of **accrued leave** are required under the Texas Payday Law **only if** such a payment is promised by the employer in a written policy or agreement. The payout would be controlled by the wording of the policy or agreement. If no such policy exists, the company would **not** owe such a payment. See the link provided and [here](#) for more information.

According to the Texas Administrative Code, **vacation pay** and sick leave pay are payable to an employee upon separation from employment **only if** a written agreement with the employer or a written policy of the employer **specifically provides** for payment. Also, absent the inclusion of definitions of terms in a written agreement with the employer or under a written policy of the employer, a term will be given its ordinary meaning unless a party establishes that it is defined in another way. In addition, PTO or paid days off (PDO) are **wages** unless the employer's written policy defines PTO or PDO as something other than a combination of vacation pay, holiday pay, sick leave pay,

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	parental leave pay, or severance pay. PTO or PDO is payable to an employee upon separation from employment only if a written agreement with the employer or a written policy of the employer specifically provides for payment. See here for more information, including information on the sale of an employer's business.
Key Definitions	“Wages” in the Texas Labor Code means compensation owed by an employer for: labor or services rendered by an employee, whether computed on a time, task, piece, commission or other basis; and vacation pay, holiday pay , sick leave pay, parental leave pay, or severance pay owed to an employee under a written agreement with the employer or under a written policy of the employer.

UTAH

PTO Payout Requirements	<p>According to guidance from the Utah Labor Commission regarding whether an employer is required to provide paid vacation, holiday pay, sick leave or severance pay: In general, Utah labor law does not require an employer to provide benefits to its employees. If an employer does establish a policy or practice of providing benefits, they are expected to abide by the policy or practice in a non-discriminatory manner.</p> <p>As noted below, in the Utah Administrative Rules regarding wage claims, wages includes the following items, if due under an agreement with the employer or under a policy of the employer: vacation, holiday, sick leave, PTO, and severance payments and bonuses. See below for more.</p> <p>Employers with questions on whether to pay out accrued vacation to employees upon separation from employment should consult with local counsel for specific legal advice.</p>
Key Definitions	In the Utah Administrative Rules regarding wage claims , besides amounts due an employee for labor or services on a time, task, piece, commission or other reasonable method of calculating the amount, wages also includes the following items, if due under an agreement with the employer or under a policy of the employer: vacation, holiday , sick leave, PTO , and severance payments and bonuses. See R610-3-4. Filing Procedure and Commencement of Agency Action for more.

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VERMONT

PTO Payout Requirements

According to [guidance](#) from the Vermont Department of Labor, an employer is not required to provide its employees with paid or unpaid **holidays** or paid or unpaid **vacation time** when an employee leaves the business. However, employers that are parties to **written agreements**, which can be in the form of an employee handbook, memorandum, correspondence, etc., providing for vacation time and/or holidays, **are liable** to their employees for these benefits. See the link for more information.

Employers with questions on whether to pay out accrued vacation to employees upon separation from employment should consult with local counsel for specific legal advice.

VIRGINIA

PTO Payout Requirements

The Virginia Department of Labor and Industry Division of Labor and Employment Law [Field Operations Manual - Chapter 10 Payment of Wage](#) provides the following under money that is **uncollectible**: **fringe benefits**. Fringe benefits include such items as the following:

- **Vacation pay**
- **Severance pay**
- **Sick pay**
- **Holiday pay**
- **Any other benefit provided for by company policy**

According to the manual, an employer **cannot** offer such benefits and then later deduct the money from the employee's wages for actual hours worked. Department policy is that, should an employer give an employee money for a benefit that was **earned** under a written company policy for such benefit, the employer **cannot** later deduct such amounts from money identified as owed to the employee for time actually worked. The compliance officer will review all relevant facts, including any written policies, the frequency of pay periods, and the length between the granting of the benefit and monetary recovery by the employer. This rule does not apply to advances on wages. On the other hand, if the employer advances money to an employee for benefits not yet earned under company policy, the employer may deduct the amount from money identified as owed for time actually worked.

The manual also provides the following regarding taken-but-not earned paid vacation benefits and other fringes: Often, employers allow employees to take paid vacation before the time has been accrued under company policy. If

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the employer has paid all money owed at the time the employee leaves the employer's company, the employer may deduct the value of the vacation time that had not accrued at that time. If the employee has received full pay for all time worked, a written and signed authorization is not required. The department **will not pursue** cases involving **unpaid PTO that had accrued** by the time the employee **has left** the employer. The employee must pursue those claims individually.

See the link above for more information. Employers with questions on whether to pay out accrued vacation to employees upon separation from employment should consult with local counsel for specific legal advice.

WASHINGTON

PTO Payout Requirements

According to [guidance](#) from the Washington State Department of Labor and Industries, Washington State does **not** require employers to provide leave or pay for **holidays, vacations** or bereavement. These benefits can be found in employer **policies** or collective bargaining agreements. They are generally an agreement between an employer and employee. The Department does not enforce these agreements.

According to the guidance, if an employer agrees to provide leave benefits and then does not do so, an employee may take private legal action in court or hire a private attorney.

Also, **holiday pay** is a benefit that may be paid at the employer's discretion, according to the guidance.

See the link above for more, including exceptions. Employers with questions on whether to pay out accrued vacation to employees upon separation from employment should consult with local counsel for specific legal advice.

WEST VIRGINIA

PTO Payout Requirements

According to [guidance](#) from the West Virginia Division of Labor, regarding whether employers are required to provide vacation and sick leave benefits to their employees, the guidance states that no, state law does **not** require employers to provide any type of employee fringe benefits such as **holiday pay, PTO, vacation pay**, sick leave, etc. to their employees. However, when an employer chooses to provide such benefits, that employer is responsible for establishing a written **policy** outlining how those benefits are **earned and paid**.

Regarding whether fringe benefits are considered as part of final wages, and, if not, when an employee should receive payment for those benefits, the guidance provides that earned fringe benefits that are determined by company policy

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as being payable directly to the employee are normally **payable as final wages**. However, if the employer's written policy designates such benefits as being payable at a time **other than** separation from employment, the benefits would **not** be payable as final wages but at the time **designated** within company policy.

Regarding whether an employer may pay out unused benefits to some employees when they leave the company, but **not** to others, the guidance provides that, yes, employers have the right to designate within their written policies specific terms and conditions that may **restrict** the payment of unused benefits to **certain** employees, while allowing those same benefits to be **paid** out to others. Should an employer choose to include such provisions in their written policy, the conditions allowing for such differences must be clearly stated and/or defined.

See the link above for more. Information is also available in the [Wage Claim Authority & Referral Information](#) from the West Virginia Division of Labor, including details on fringe benefit complaints.

Fringe benefits that are provided an employee under an agreement between the employee and employer and that are due, but under the terms of the agreement, are to be paid at a **future** date or upon **additional** conditions which are ascertainable are **not** subject to [certain provisions](#) of the West Virginia Code and are **not** payable on or before the next regular payday, but must be paid according to the **terms** of the agreement.

Key Definitions

"Wages" in the West Virginia Code means compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission or other basis of calculation. As used in certain sections of the code, the term "wages" also includes then accrued **fringe benefits** capable of calculation and payable directly to an employee. However, **nothing** in the provision requires fringe benefits to be calculated contrary to any agreement between an employer and their employees which does not contradict the provisions of the article. See [here](#) for more information.

"Fringe benefits" means any benefit provided an employee (or group of employees) by an employer, or which is required by law, and includes regular **vacation**, graduated vacation, floating vacation, **holidays**, sick leave, **personal leave**, production incentive bonuses, sickness and accident benefits, and benefits relating to medical and pension coverage.

"Wages due" includes at least all wages earned up to and including the 12th day immediately preceding the regular payday.

For more definitions, including "earned wages" and "employ," see the [West Virginia Code of State Rules](#).

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WISCONSIN

PTO Payout Requirements

According to [guidance](#) from the Wisconsin Department of Workforce Development, regarding whether an employee is entitled to their unused **vacation/PTO** when they are fired or if they quit, whether an employer must pay for unused benefit pay depends upon the terms of the employer's vacation or resignation **policy**. Wisconsin employers are not required to provide fringe benefits such as vacation, holiday, or sick pay. When an employer does decide to create a benefit policy, the employer is free to impose **any conditions** it chooses. Generally, if the employer implemented a written vacation policy and it does **not** include a written forfeiture policy, then the employer **must pay** the employee for any earned, unused vacation pay.

Also, regarding whether an employer is required to give an employee notice when the employer fires the employee and whether an employee has to give notice when they quit, the guidance provides that, generally, notice is not required by either party. However, notice of quitting may affect the **payout of fringe benefits** like vacation or PTO. It may also affect the payout of final wages. If an employer has a policy that requires resignation notice or an employee's final paycheck's rate of pay is reduced if the employee does **not** fulfill the notice requirement, and the employee does not follow the policy after having been made aware of the policy, the employer may be able to reduce the final paycheck.

See the link above and [here](#) for more information.

Key Definitions

“Wage” or **“wages”** in the Wisconsin Statutes mean remuneration payable to an employee for personal services, including salaries, commissions, **holiday and vacation pay**, overtime pay, severance pay or dismissal pay, supplemental unemployment benefit plan payments when required under a binding collective bargaining agreement, bonuses and **any other similar advantages** agreed upon between the employer and the employee or provided by the employer to the employees as an **established policy**.

WYOMING

PTO Payout Requirements

[Guidance](#) from the Wyoming Department of Workforce Services addresses whether it is permissible for an employer to adopt personnel policies which provide that no payment will be made upon cessation of employment (whether by retirement, resignation or discharge) for unused **sick days, personal days and vacation days**—and, if so, whether such a policy can provide that no such payment will be made if an employee resigns without giving at least 10 days' written notice or before their anniversary date.

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	<p>According to the guidance, with regard to unused sick days and personal days, an employer may provide that these will not be paid upon cessation of employment. An employer may also provide that no such payment will be made if an employee resigns without giving at least 10 days' written notice or before their anniversary date.</p> <p>According to the guidance, with regard to unused vacation days, an employer may provide that this will not be paid upon cessation of employment if the written policies of the employer provide that accrued vacation is forfeited upon termination of employment and the written policies are acknowledged in writing by the employee.</p> <p>Also, according to the guidance, an employer can adopt a vacation policy which provides that vacation days are earned only upon reaching the employee's anniversary date, and as such, no pro rata use or payment will be made if employment ceases before the employee reaches their anniversary date.</p> <p>Whenever an employer has agreed with any employee or their agent to provide or make payments to a health or welfare fund, pension fund, vacation plan, apprenticeship program, or other such employment benefits, it is unlawful for the employer to willfully, or with intent to defraud, fail to make the payments required by the terms of any such agreement.</p>
Key Definitions	<p>"Wages" in the Wyoming Statutes means compensation, including fringe benefits, for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission or other basis, but does not include the value of vacation leave accrued at the date of termination if the written policies of the employer provide that accrued vacation is forfeited upon termination of employment and the written policies are acknowledged in writing by the employee.</p> <p>"Fringe Benefits" in the Wyoming Administrative Rules means any payments to the employee or to a fund for the benefit of the employee which are due the employee under an agreement with the employer or under a policy of the employer, including but not limited to vacation, holiday, welfare, pension, subsistence or profit sharing.</p>

Next Steps for Employers

Employers should confirm whether they are in compliance with the applicable laws of their state(s) regarding payment of accrued, unused PTO upon termination of employment. It is always recommended that employers consult with local counsel to have their policies reviewed and, if needed, updated to ensure compliance with all applicable laws.