

OK at Work: Crafting Effective Flexible Leave Policies for Employers

Sarah Sawyer: Welcome to this week's OK at Work with myself, Sarah Sawyer, my colleague Russell Berger, both attorneys at Offit Kurman, and today we are talking about leave policies. There's been a big movement in the last couple of years, especially for certain types of jobs or what some might refer to as unlimited PTO or flexible, PTO, flexible vacation time where employees who are, salaried employees, might have more flexibility around how much leave they take as long as they get their job done, that they're able to manage their schedules. However that can come with some complications and challenges, which are mostly obvious in thinking about how you might manage something like that, but still less obvious.

What are some things that folks should be thinking about, companies should be thinking about if they wanna have a flexible leave policy, [00:01:00] Russell?

Russell Berger: First off is, and you mentioned it, the nomenclature, which is not just nomenclature, I think it is of substance here. So we say unlimited leave, by definition means no limits. People come and go as they please. And that's obviously not what you want, what you really want, and what employers are really saying when they're accidentally using the term unlimited leave is flexible or unmeasured, by days or by hours. So using the term flexible leave makes a lot more sense. And that's really, critical to building into the policy. There are some limits. We're not gonna track you, we're not gonna micromanage you on this.

We trust you enough to use this responsibly. There are limits, and those limits are things like, productivity. If there's specific times of the year, specific demands or we're getting crushed right now, now's not the time to take this leave. So there's still a process for getting approval of time off.

There are limits on how long you can go. Hey, my kids are off of school. I'm just gonna take summer vacation. I'll see you in six weeks. You wouldn't allow that with a traditional [00:02:00] leave policy either. There's gotta be some kind of limits and while we want it to be flexible, you can only take up to x amount of time off in one chunk or you can only take off, a wide number of weeks in a month whatever it is. You can build in inherent parameters that still give a ton of flexibility to the employee and treat that employee with the respect they've earned, but also, gives you some control as an employer as opposed to just saying, Hey, all you, I'm outta here. You figure out when you want to work and when you don't want to work.

Sarah Sawyer: Yeah, I think those are great points, and also the interaction between the flexible leave policy and other types of leave. If someone ends up taking protected leave, FMLA, some other type of leave, you'll wanna have policies around how that interacts with the flexible leave policy as well.

And so those are things to be mindful of 'cause there's different types of leave and how you categorize it's going to be important from a protected leave perspective and how much of that they're using and how that gets documented as well.

Russell Berger: Yeah, to that point, let's say [00:03:00] someone takes, 12 weeks job protected, FMLA leave and FMLA is job protection.

It's not compensation, but if you have a policy that just says unlimited PTO, why isn't that person getting paid for that full 12 weeks? And in practice you might have short-term disability, you might have, parental leave. There's all different things that might come into play and make sure that person gets some compensation for that period.

But, without putting some limits around it, in theory, you've got infinite amount of vacation time and you can use it whenever and however. I think that example highlights the need to, think of it more as flexibility, as opposed to, unlimited unburdened leave.

Sarah Sawyer: One other thing in closing dimension also is communication about that leave and professionalism in that regard as well. When someone is talking about another limit, right? And something else you might put in a policy is also around how they're gonna notify people when they take that flexible leave.

How much notice to [00:04:00] provide. And what's expected from folks in communicating that they're out as well. Those are all still things you'll want to have in your policy even with flexible leave.

Russell Berger: Yeah, flexible leave doesn't mean that it's, not subject to an approval process.

Sarah Sawyer: Yeah. Well thank you Russell and we'll see you next time.

Russell Berger: Thanks Sarah.