



# Coordinating Unlimited PTO With Extended Leaves of Absence Giving You A Headache?

## *Careful Policy Drafting Is Your Cure*

By Matthew C. Sgnilek

**Unlimited paid time off (“PTO”) policies** are in vogue in California. They open a whole new world of attractive benefits to companies such as:

- ✓ Avoiding the administrative headache of tracking days off; and
- ✓ Unlike traditional vacation or PTO policies, not having to pay out accrued but unused days off upon an employee’s separation. (The paid aspect of unlimited PTO pertains only to paying for days off while employed.)

However, if an unlimited PTO policy is not properly integrated with extended leaves of absences such as those under the FMLA/CFRA, it can quickly turn into a financial nightmare.

Typically extended medical leaves of absence under the FMLA/CFRA, PDL (pregnancy disability leave), the ADA or workers’ compensation are unpaid, whereas days off under a PTO policy are paid. If these extended medical leaves of absence are not explicitly excluded from a company’s unlimited PTO policy, an employee can exercise their *paid* unlimited PTO when taking an extended medical leave of absence. This will turn an unpaid leave of absence into a paid one. Given that one option is to limit unlimited PTO policies to C-Suite high earning employees, the costs of failing to do so are substantial. As an example, a paid FMLA leave for an employee earning \$100,000 amounts to \$25,000 for the three-month FMLA leave.

The good news is that the solution is relatively simple: exclude extended medical leaves of absence from your unlimited PTO policy. Language, such as the below, explicitly excluding extended leaves of absence from the purview of unlimited PTO minimizes these risks:

*This policy applies to routine time-off work for purposes such as vacation, relaxation, personal, religious, family needs, bereavement and non-extended illnesses, for regular, full-time exempt employees. It does not apply to either leaves of absence provided by law, including but not limited to, Family and Medical Leave, Pregnancy Disability Leave, Short Term Disability, Workers’ Compensation, or any other extended medical leave of absence provided by the Company. The appropriate Company policies should be consulted for any time off that does not fall within this PTO policy.*

To further emphasize the point, reference in the corresponding medical leaves of absence policies should explicitly state that the policy is separate from unlimited PTO and that unlimited PTO is not applicable to an extended leave of absence. A company can then go on to state in conformance with its culture and resources that either an extended medical leave of absence is

unpaid, or, alternatively that all or a portion of the extended leave of absence is paid. Of course, if a company wishes to provide for limited paid leave for a medical leave of absence it can. By carefully drafting an unlimited PTO policy, companies can enjoy all the benefits of unlimited PTO with none of the risk.

---

**Matthew Sgnilek** is a Partner in the Employment practice at O'Hagan Meyer in Los Angeles and Newport Beach. He represents employers in a variety of employment cases and administrative actions, including claims for civil rights violations, harassment, discrimination, retaliation, wrongful termination, single plaintiff, class, collective wage and hour, ADA and ADEA violations, unfair business practices, misappropriation of trade secrets and class action disputes.

Matt represents employers in both state and federal courts as well as before state and federal agencies, such as the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, the National Labor Relations Board, Workers' Compensation Appeals Board and the Division of Labor Standards Enforcement. He also conducts employee audits, provides preventive counseling and frequently presents seminars and workshops on employment issues, including AB 1825 Sexual Harassment and Discrimination Training, to executives, supervisors, managers and human resources professionals.

Matt can be reached at [msgnilek@ohaganmeyer.com](mailto:msgnilek@ohaganmeyer.com) or (949) 942-8502.