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Risks and Costs of Using PTO Buckets in a Paid Leave Statute World

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With a growing number of states and cities implementing paid sick leave statutes, employers with PTO policies may be wondering whether it still makes sense to bundle different types of time off – sick, personal, and vacation – into a single bucket. The good news is that employers generally do not have to change their policies so long as they give employees at least the same amount of leave for the same purposes, under the same conditions, and with the same accrual and carry-over requirements as the applicable state or city law. The bad news is that there may be risks and additional costs facing employers who use PTO buckets to satisfy the local law's requirements.

For example, many of the state and city paid sick leave laws have provisions prohibiting retaliating against an employee for taking leave they are entitled to under that law. At the same time, many employers have time and attendance policies prohibiting excessive use and abuse of time off. If employers do not distinguish between the time off provided pursuant to the applicable paid leave law and the additional time off provided by employers, they may run the risk of retaliation claims when they discipline employees for violating their attendance policies. To avoid this risk, employers may want to differentiate between the leave required under the local law and the time off they give employees beyond that. That way employers will be able to

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discipline employees under their attendance policies for use or abuse of the additional time off they provide without running the risk of a claim that they were retaliating against an employee for taking leave under the local law.

Depending on where the employer is located, using a PTO bucket to satisfy the local paid sick leave statute's requirements may also result in additional costs to employers. For example, under Seattle's ordinance, employers with 250 or more employees must provide more sick leave hours to employees if they use a PTO policy to satisfy the law's requirements. The ordinance provides that employees accrue one hour of leave for every 30 hours worked. Employees can use up to 72 hours of leave in a year if their employer provides separate sick days, but if the employer uses a PTO policy, employees can use up to 108 hours of leave.

The use of single PTO buckets can cost employers in other ways. California law requires that employers pay out all accrued, unused PTO time. California's paid sick leave law, on the other hand, does not require employers to pay employees for unused sick time. If employers use a PTO bucket, they will have to pay employees for all their unused time, including sick time, which they are not required to do under the paid sick leave law. Employers can avoid these potential additional costs by instituting a stand-alone sick day policy.

Given the differences among the various paid leave statutes and their interplay with PTO policies, employers (and especially those with locations in multiple cities and/or states) should be mindful of the possible consequences of using a PTO bucket to satisfy the requirements of state or city paid sick leave statutes. Akerman Labor and Employment attorneys are available to assist employers in determining whether their current PTO policies comply with the applicable state and local laws and whether they run the risk of any additional costs by

maintaining such policies rather than a stand-alone sick leave policy.

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