Separate vs. Combined Leave Policies - The Pros and Cons
by Kimberly A. Ross, Partner, FordHarrison

Executive Summary: With more and more jurisdictions on local and state levels enacting paid sick leave laws, and likely more to come, a frequent question from affected employers is whether it is preferable to have separate vacation/personal leave and paid sick leave policies or an all-inclusive paid time off (PTO) policy. There is no right or wrong answer to the question and, instead, many factors should be considered such as the size and structure of the company, the number of locations in which a company operates, the amount of time that can be carried over to the next year, tracking of leave, and state laws on paid leave. Employment practices liability may find it easier to track combined leave because they only have to determine whether the reason for the leave qualifies under either its paid sick leave or vacation and personal leave policies, whereas with separate leave policies, an employer can limit the time that can be carried over to only sick leave. Therefore, it will be worth more. With a combined PTO policy, in which it does not matter whether it is for something medically-related, an employee can keep private medical information private and will not have to divulge details to the employer. Not only does combined leave allow for better tracking of leave, but even if the employer’s jurisdiction does not require paid sick leave, the discussion is still instructive.

How and When Leave is Earned: Paid sick leave required by law is frequently earned by the number of hours worked, as opposed to vacation and personal leave, which is more commonly earned by the employee’s length of service. Although many organizations do not provide vacation and other personal leave to part time or temporary employees, most of the current paid sick leave laws apply to part time and temporary employees. With a combined PTO policy, this may require employers to provide vacation or other personal leave to part time employees even when not desired. The employer could draft separate leave policies, one for full time employees providing PTO, and one for part time or temporary employees that minimally complies with state or local laws on paid sick leave. Because avoiding providing part time or temporary workers paid vacation would require separate written policies, employers would lose the benefit of having only one policy for all employees.

Waiting Periods for Accruing and Using Leave: Most jurisdictions that regulate vacation time allow employers to require employees to work a certain length of time (perhaps six months or a year) before they begin to accrue and/or use vacation or personal leave. On the other hand, many paid sick leave laws (such as in Chicago and Cook County) require accrual to begin immediately upon hire (though some do allow a waiting period for an employee to begin taking paid sick leave – 180 days in Chicago and Cook County). With a combined PTO policy, employers in jurisdictions that require paid sick leave to accrue upon hire will not be able to require a waiting period for accrual, and the waiting period for accrual and use of vacation and personal time will need to be consistent with applicable paid sick leave accrual and use laws. This would potentially also lead to having to pay out more accrued but unused leave upon termination.

Flexibility and Morale: PTO policies allow for more flexibility to employees on how to use their time off. An employee who does not often get sick can take more vacation, while an employee with a large family to care for will have a better opportunity to receive pay while attending to family medical issues. PTO policies may also improve employee morale in terms of allowing this additional flexibility in how leave is used, without having to justify the reason for the use. Employees can be encouraged to use all of their PTO time to avoid burnout, while it would not be possible to encourage employees to use all their paid sick leave if they do not actually need it for one of the reasons allowed in the various laws or by company policy. Combined PTO policies also have the potential to reduce resentment among other employees towards those they perceive to be abusing their paid sick leave, and also to eliminate the need to lie about the reason for the leave.

Privacy Issues: For an employee to use paid sick leave, he or she must divulge to the employer the reason for the leave (at least a bare minimum that the employer can determine whether the sick leave is being used appropriately either under the company’s policy or relevant law). With a combined PTO policy, in which it does not matter the reason for the time off, an employee can keep private medical issues private and will not have to divulge details to the employer. Not

- Continued next page
having to divulge the reason for the absence may also encourage more sick employees to actually stay home rather than fearing reprisal for taking time off and also potentially getting others sick at the same time. On the other hand, it may be argued that having a combined leave policy might encourage sick employees to go to work so that they can save days to take a longer vacation. This would not ultimately affect the total payout, but it could cause inconvenience for a longer vacation absence. Organizations can separately institute limits of the amount of vacation that can be taken at one time to alleviate these concerns.

Employers’ Bottom Line: There are many good reasons for separate or combined leave policies. Because every organization is different, and states and local municipalities may have laws pertaining to various types of leaves, it is important for each organization to evaluate its own needs, using some of the above considerations as a starting point.

For more information about CIRMA’s Employment Practice Liability Helpline Program, please contact your CIRMA Risk Management Consultant.