

OC REGISTER Q&A

USE IT OR LOSE IT VACATION PLAN

Q. Our company is based back East and most company policies are dictated from there. We do not receive "sick days" so all voluntary time off is called PDO or Personal Days Off. All employees receive a set amount of PDO at the beginning of the year depending on years of service.

As I understand California law, no employee can 'lose' or forfeit any vacation time they have earned during the year. Our company policy is 'if you have carryover greater than 40 hours and you do not use your entire annual accrual, the amount of your 2004 annual accrual not used will be deducted from your 2005 annual accrual. ...any PDO unused greater than 40 hours will be deducted from your 2005 annual accrual". Is this legal?

A. When an employer has employees working in different states, the labor law of the state in which they are employed applies. California Labor Code does not allow for a "use it or lose it" vacation plan. Once an employee has earned vacation, it is treated like money in the bank for that employee and can never be taken away. Employers may not require employees to forfeit accrued vacation for any reason. The only exception to this rule is for employees under a collective bargaining agreement.

Employer are however, allowed to impose a reasonable cap plan. Under the cap, once a certain level of accrued vacation is earned but not taken, vacation no longer accrues until some of the previously accrued vacation is taken. Once some vacation is taken, vacation accrual begins again. The standard cap used by employers is one-and-one-half or two times the annual accrual rate.