

# Seven Do's & Don'ts for Unlimited Paid Time Off Policies



Offering UPTO doesn't get you out of employment standards vacation requirements.

The pandemic has had a lasting impact on work habits. Stated simply, people want to not only work less but also exert more control over their schedules. Traditional vacation models may not be enough to satisfy these new demands. That's why many companies across Canada are adopting a hot new approach: unlimited paid time off (UPTO). But does that mean you should implement a UPTO policy at your company?

## What Is a UPTO Policy

UPTO goes beyond flexible scheduling and reduced work hours that gives employees the freedom to take off as much time to totally disconnect from work as they want, whenever they want, at full pay, as long as it doesn't interfere with their overall productivity and effectiveness. In addition to being a powerful recruitment and retention tool, offering UPTO enables employees to balance work-life responsibilities, avoid burnout and work more productively when they are on duty. It also boosts morale and simplifies the payroll process by eliminating the need to track vacation accrual and pay.

At least, that's the theory. Unfortunately, it doesn't always work out that way in practice. That employees sometimes abuse their UPTO rights by taking much more time off than expected is hardly a surprise; but what is surprising is that research has shown that employees with UPTO generally take **less time off** than they would under a more structured vacation policy. UPTO can also generate compliance headaches. This is particularly true in Canada, where UPTO arrangements may run afoul of vacation requirements under employment standards laws (which we'll refer to as "ESA").

## 7 UPTO Do's & Don'ts

If your company is considering implementing a UPTO policy, here are 7 Do's and Don'ts to keep in mind.

### 1. DON'T Call It "Unlimited"

In reality, there are limits to paid time off. So, calling the policy "unlimited" is

apt to generate false expectations. That's why you should avoid using the term. Fostering clear and realistic expectations is crucial to the success of the UPTO model, HR experts say.

## **2. DO Establish Performance Criteria**

The tradeoff for UPTO is that employees will work as long as necessary to get the job done effectively and productively. So, there need to be clear, objective and measurable criteria for what getting the job done means for the particular position.

## **3. DO Require Minimum Time Off**

Several jurisdictions, including BC, require employers to ensure that employees use the vacation time they accrue each year, depending on how long they've worked for you. And since you're not allowed to contract out of ESA minimum requirements, you must require employees to take their minimum vacation weeks to avoid liability under the law.

## **4. DO Provide Minimum Vacation Pay**

For the same reasons, you need to ensure that employees receive the minimum vacation pay to which they're entitled under the ESA regardless of how much paid time off they actually take during the year.

## **5. DO Continue to Track Vacation Time & Pay**

The part about UPTO sparing HR the need to track vacation time and pay is false. Because ESA vacation requirements still apply, you do need to keep records to track either as "vacation" or "other" time taken. If you just lump everything together, it may prove difficult to verify and document that employees used their minimum ESA vacation time for the year. You also need to keep records to ensure employees receive their minimum vacation pay each year.

Vacation records are also essential to calculate "vacation pay" owed to employees under the ESA when their employment ends. Thus, for example, if an employee with 2 years' service hasn't gotten their 4% vacation earnings, you'll have to pay it out to them at termination. Without proper records employees could argue that all the PTO they took was for sick days and that you still owe them 2 weeks "vacation" under the ESA. And they may be right.

## **6. DON'T Rely on UPTO to Replace Other ESA Obligations**

Offering UPTO doesn't get you out of your other ESA payment obligations, even if it provides greater value than the required ESA minimum. **Example:** You can't contract to offer UPTO in lieu of paying overtime.

## **7. DO Establish & Implement Clear Procedures for Requesting Time Off**

Even in a UPTO system, you still need a clear and orderly process for approving individual time off requests so that employees don't feel free to come and go as they please. So, make it clear that time off requests require advance approval and explain what and when employees must do to get that approval.