Unlimited Vacation: Dream or Drama?



Unlimited Vacation sounds great in theory – employees take time when they need it, the administrative burden of 'counting days' is alleviated, the 'use it or lose it' drama disappears, and employers are able to avoid the "helicopter parenting" style of monitoring an employee's vacation entitlements.

The Unlimited Vacation perk has become increasingly popular with the rise of burnout recognition, a greater understanding of the value of 'mental health days', and a less rigid take on the typical 9 to 5. It's trendy too: In 2024, 26% of tech companies offered Unlimited Vacation (versus 15% total market)[1]
Before you start deleting any vacation request forms from your HR drive, consider this: in Ontario (and across Canada), Unlimited Vacation policies may create more problems than they solve, especially if they're not drafted carefully or maintained properly.

Let's break it down.

The Basics: Minimum Entitlements Still Apply

In Ontario specifically, under the *Employment Standards Act, 2000* (*ESA*), most employees are entitled to a **minimum** of:

- 10 days of vacation per year (increasing to 15 days after 5 years of service)
- 4% vacation pay (increasing to 6% after 5 years of service)

An Unlimited Vacation policy **doesn't replace this.** In other words, even if employees can take "as much vacation as they want," employers must still ensure compliance with the ESA by:

- **Tracking** your employees' vacation taken to ensure they are taking their minimum statutory vacation;
- **Paying out vacation pay** accurately and on time; and
- **Keeping proper records** for at least 3 years.

What If My Employees Take Too Much Time Off?

They won't.

Since this emerged as a trending concept over a decade ago, there's been a 400% increase in companies offering this perk (predominantly in technology or finance spaces). In that time, the data has consistently shown that Unlimited Vacation often

leads to employees taking ***less*** time off. In fact, employees with Unlimited Vacation end up taking roughly 10% less vacation days than their counterparts.

Why?

There are a few speculated reasons for this.

- No clear rules = Lots of uncertainty.
- Employees don't want to appear less committed.
- High performers (or those with achievables) underuse vacation to stay competitive.
- Company Culture doesn't support disconnecting.

Legal Risks to Watch

Here are the most common risks we're seeing emerge when companies implement Unlimited Vacation policies in Ontario:

1. Non-Compliant With ESA

The correlation between employers not tracking vacation time or vacation pay and Ministry of Labour complaints or claims for unpaid wages is significant.

2. No Records = No Defence

Unlimited Vacation policies often skip tracking because the assumption is that employees will "take what they need." This is a costly mistake. The *ESA* requires employers to keep clear records of vacation time and pay. If an employee complains, and there's no paper trail, the employer has no defence.

And trust us – any ESA compliance defence that starts with "but the employee was supposed to…" is **NOT** a defence!

3. Constructive Dismissal Risk

If the company had a banked or accrued vacation policy and suddenly switches to an Unlimited Vacation policy, you risk a constructive dismissal claim. Why? Employees.

But seriously, if the new setup is unclear or inconsistent, an employee could argue that you've reduced their compensation or entitlements.

Can It Work? Yes – But You Need a Clear Policy.

If you want to roll out an Unlimited Vacation policy, you'll need to include:

- A clear statement that ESA minimums still apply and will be tracked and paid
- A clear path for how vacation time is requested and approved
- A clause stating that any vacation above ESA minimums won't be paid out on termination
- Employer discretion to approve or decline time off requests

You'll also need:

- Tracking system to ensure ESA compliance
- Employment contracts that reference the policy properly and align with how it's applied

Final Comments

Unlimited Vacation can be seen as an effective tool in attracting high-level employees who are interested in work-life balance, but it’s not as simple as a bullet point in a job description. If you’re going to offer it, you need to do the legal and admin work to make sure it’s enforceable, trackable, and ESA-compliant.

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