



Mineral



Question of the Week

July 3, 2024

Question

If an employee runs out of paid time off, do we have to allow them to take unpaid time off?

ANSWER

It depends on why your employee needs the unpaid time off and what you've done in the past.

In some situations, such as those that would be covered by the Family and Medical Leave Act, Americans with Disabilities Act, Pregnant Workers Fairness Act, or a similar state law, the employee may be legally entitled to unpaid leave. In those cases, you would need to approve the unpaid leave at least to the extent required by the applicable laws.

In the absence of any legal requirements, if you've historically granted similarly situated employees unpaid time off, you should continue to do so. Inconsistency can lead to discrimination claims. (You can make a permanent change in policy and stop granting unpaid time off when it's not required by law, but that's the kind of policy shift you'd want to share widely, and if possible, with some advance notice.) If neither of the above situations apply, you could deny a request for unpaid time off, but be sure to let the employee know why. People appreciate transparency, especially when being told "no."

This Q&A does not constitute legal advice and does not address state or local law.