



Fox Rothschild LLP
ATTORNEYS AT LAW

News & Publications

Are Your Employees Entitled to PTO?

Author: John D. Horowitz

NYReport.com

September 22, 2010

Employers usually provide bonuses to incentivize and reward employees, and to engender feelings of loyalty towards the company. For employees (especially in this economy), bonuses have now become an integral component of compensation and are often spent on necessities rather than luxuries.

Similarly, paid-time-off (PTO), in the form of vacation pay and paid personal days, are other rewards employers offer to help employees maintain a balance between their personal and professional lives.

With bonuses and PTO being such a win-win scenario for both the company and the employee, why are there so many instances of employees bringing bonus and PTO related claims against their employers? The answer is simple – lack of communication.

When Does an Employee Become Eligible?

A significant portion of litigations in this area were initially spawned by the failure of both parties to clearly communicate the expectations each had of the other. Often times, employees sue their employers based on a belief (and it is often a sincere belief) that they are “entitled” to bonuses and PTO during their employment and payouts when their employment ends. Fortunately, employers can try to prevent these types of misunderstandings by drafting documents that clearly explain the conditions for receiving bonuses and PTO.

Many prudent employers use employment agreements to establish, in writing, employees' terms and conditions of employment, including the terms of the company's bonus plan and PTO policies.

For example, an employment agreement can establish (1) the period(s) when an employee becomes eligible to participate in the bonus plan, (2) the criteria the bonus is based on, (3) whether the employer has discretion to modify the bonus amount, and (4) the date the bonus is "earned" and payable. If a bonus is based on sales revenue, it is important to identify whether the bonus is calculated based on gross revenue, net revenue, company-wide performance or individual performance, and whether future offsets to revenue (such as the return of money to a customer) will affect future bonuses.

Can PTO Jump from One Year to Another?

As for PTO, a frequent source of contention is whether it carries over from year-to-year and/or is payable upon termination of employment. Again, an employer can help manage an employee's expectations by drafting a policy that establishes the parameters for utilizing PTO, such as whether (1) an employee can use PTO in hour, full-day or week long increments, (2) an employee needs prior approval before scheduling PTO, (3) the employer will apply PTO to unscheduled absences, and (4) whether PTO is paid out upon the individual's separation from the employer.

That said, many employers are hesitant to enter into employment agreements because they fear their ability to discipline and discharge an employee may be restricted.

However, in New York, there is a presumption of at-will employment – i.e., a presumption that an employee can be discharged for any reason, with or without cause or notice, so long as the reason is not unlawful. Therefore, as long as the employer reiterates that the at-will presumption in the agreement and does not engage in any act that undermines the presumption, an employee's at-will status should remain unchanged. While no contract can guarantee success in a litigation, a properly drafted agreement can help better your chances. Contact your legal counsel to discuss whether the agreements are lawful, and useful, for your business.