

Attendance Policy Best Practices for Employers

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Attendance policies are commonplace in many workplaces. A typical policy will provide employees with information about attendance expectations and procedures for requesting time off. Additionally, policies may provide negative or positive incentives for employees who adhere to the attendance rules. When written and enforced uniformly and correctly, attendance policies can be a valuable tool. However, there are many traps for the unwary and it is easy for an employer to inadvertently create or apply an attendance policy that violates an employee's rights.



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A common type of attendance policy utilizes a "point system" — where an employee receives a point for every absence. After an employee receives a specified number of points in a given period of time, the employer will typically discipline or terminate the employee for poor attendance. Employers that are using this type of attendance policy should exercise caution. If you are applying points for *all* absences, without exception, you may be in violation of state, federal, and/or local protected leave laws. For example, if your employee misses work for medical care or treatment, those absences may be protected by the federal Family and Medical Leave Act (FMLA), the Oregon Family Leave Act (OFLA) or the Oregon Sick Leave Law. Additionally, an employee who is not entitled to leave through one of those programs may be entitled to leave as a reasonable accommodation under the Americans with Disabilities Act (ADA) and/or Oregon disability law. When employees take leave pursuant to one of these laws, employers are prohibited from reprimanding or disciplining employees because their protected absence led to a violation of the employer's attendance policy.

Similarly, an attendance policy that rewards employees for taking limited time off or for giving advance notice before taking time off could also be in violation of various state and federal leave laws if an employee has utilized protected leave. In other words, an employer generally may not count protected leave against an employee when determining the employee's compliance with the attendance policy or eligibility for bonuses or rewards based on attendance. Consult with counsel to determine when protected leave can and cannot be

counted when determining attendance-based bonuses or rewards.

The simplest way to reduce your risk of violating the law is to determine *why* an employee is missing work, and whether that reason is protected. You might be surprised to learn some of the less talked about, but still very much protected, reasons that employees miss work. For example, Oregon law provides protected time off to eligible employees of covered employers for the following reasons:

- Leave for victims of domestic violence, harassment, sexual assault or stalking;
- Leave to attend criminal proceedings;
- Leave to donate bone marrow;
- Leave to testify before the legislature;
- Leave to serve as a volunteer firefighter or for search-and-rescue;
- Leave for Olympic athletes;
- Leave to attend jury duty; and
- Leave for eligible veterans on Veterans Day.

Attendance policies can be an important tool for employers and provide necessary guidance and incentives for employees to follow the policies. However, a well-intentioned attendance policy can become the focal point of litigation. It is important to carefully review your company's attendance policy and examine how it is enforced. Specifically, consider how and when employees are disciplined or rewarded with respect to attendance and be sure protected absences are not held against employees.

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