

PBPA Podcast Transcript
Episode 24 – Leave Policies in the Nonprofit Workplace
(29:12 minutes)



Sireesha ([00:01](#)):

An employee leave policy can help recruit new talent and allow staff to understand what lead benefits are available to them. In fact, this might be the part of an employee handbook that staff references most! often! In this episode of the PBPA Podcast, Bryan Stillwagon and Alyce Ogunsola talk to us about legal requirements and best practices for nonprofits to consider as they develop or review their employee leave policies.

Sireesha ([00:38](#)):

Hello and welcome to the PBPA Podcast. In each episode of the PBPA Podcast, we explore legal questions relevant to Georgia nonprofits. I'm your host Sireesha Ghanta, Counsel and Education Director at the Pro Bono Partnership of Atlanta. PBPA strengthens our community by engaging volunteer attorneys to provide nonprofits with free business legal services. We provide numerous free resources via our website, including articles and webcasts specific to Georgia nonprofits and their business legal concerns. We also provide direct legal services to our clients. For more information on client eligibility requirements, to apply to be a client or to access our vast learning center, visit our website at [pbpatl.org](#). Before we jump into this episode's topic, keep in mind that this podcast is general information, not legal counsel, contact your attorney for guidance on your nonprofits' specific situation.

Sireesha ([01:49](#)):

Alyce Ogunsola is a senior associate at Ford Harrison, where she represents employers on a broad range of labor and employment law matters. Bryan Stillwagon is Vice President and Associate General Counsel at Unifi Service and on the Advisory Committee of PBPA. Thank you both for being here today. So to start off, let's talk about what is a leave policy and why does a nonprofit employer need one?

Alyce ([02:20](#)):

So a leave policy essentially tells employees what time off they're allowed to have from their employer. There are some types of leave that are required by law, such as the Family Medical Leave Act, disability accommodation leave, and various other types of leave. If leave is not required by law, an employer can give additional leave and set that out in their employee handbook. But it's important to note that if an employer says that they give a type of leave in their employee handbook, they must provide it. That handbook can describe how much leave they will give their employees. Whether that leave is paid versus unpaid, how the employees will accrue that leave, including the rate. And this doesn't necessarily have to be uniform across all employee that can vary by the years of service, the position that the employee holds, it can be different for full-time versus part-time employees, or the employer can decide. I want to give all employees the same amount of leave and the employee handbook can also detail the procedures that employee must follow for requesting time off and set any restrictions on scheduling time off. Let's say you have a busy season, or you don't want employees to take leave right after a paid vacation or a holiday that can be set out in the employee handbook.

Alyce ([03:58](#)):

That's right, Alyce. And one thing, uh, to highlight there is that when employers put it in the handbook, that they then are gonna be legally obligated to provide it. So I'd always love to see an employee

handbook, not contain a policy, then have a policy that the nonprofit organization is not gonna be prepared to follow. But then the next question is, well, if the law doesn't require some of these types of leave, that we're all accustomed to seeing, then why should your organization think about having one? What's the benefit there? Well, as most people who have been around companies and organizations for a while, particularly over the past few years, we've seen that paid time off or vacation time is one of the most critical benefits to the workforce right now. Second, maybe only to compensation. So when companies and organizations are trying to compete for talent, when the labor pool is incredibly small, these PTO or vacation benefits are some of the first things that your new recruits are gonna ask about when they're exploring the job market.

Alyce (05:08):

So, so we have them to, to compete for talent, right? We're not legally obligated to, the law sets the baseline, the bare minimum. But then companies who wanna be some of the best places to work, try to offer, leave that goes above and beyond that. So, so what is paid time off or vacation time and how does sick time play into this? Well, many of the words are used interchangeably. It depends on the company's policies on how they, they use the different buckets of time. So, historically it would be vacation time and that's the time someone would take off to go on their own personal time to personal travels. And then they would take sick time if that was allotted, if he or she were sick. Now, though, you're seeing that many companies are putting this all into one bucket, it's just paid time off. They're not designating. Whether it's going to be for a personal vacation for a personal illness, for the illness of a child. They're simply putting PTO into a single bucket that can be used for vacation for illness or any other personal reasons. The benefit is that the employee has the time to manage as they desire. If they never have to take sick leave, then they have some additional days off that they can, that they can spend on personal reasons. But likewise, they have that available to them if they or their family members are sick. Uh, so it gives them a bit more flexibility.

Alyce (06:36):

On the employer side, for the nonprofits out there, there's less for them to manage, right? Because they don't have to worry about why the employee is taking off. They don't have to, to ask for a doctor's note. They don't have to have proof that the child was sick. They don't have to know that the person is taking a vacation day. They simply know that that's a day that they've budgeted for that and employee not to be there and for them to pay them for that time. So it's easier to, to administer from the employer's point of, uh, view when you do have sick leave, which is required in many states, but not necessarily in Georgia, we'll get into some of that later. Uh, then you do need to track the sick time a little bit differently. Uh, where you might have to ask for some sort of verification from a, from a doctor or physician or something, showing that the time off was spent on sick time in different states, there are requirements that you have to pay out sick time, or you don't have to pay out sick time. You might have to pay out PTO. Again, George is a little different where you're not required to offer that sick leave, but if the employee lawyer does offer the sick leave, then you need to give up to five days to care for the immediate family member, which includes the child, the spouse, the grandchild grandparent, or parent, or any dependent who's been on the employee's most recent tax return.

Alyce (07:55):

So once companies figure out whether they want to offer PTO and how much they want to offer, uh, they need to think about how that PTO is gonna be granted. Is it going to be given in a single block at the outset of the person's employment on the, the employee's anniversary date? Is it gonna be on a calendar basis or do you want to go with a slightly more complex, but maybe a more effective accrual

method where the employee is getting a certain amount of PTO, each pay period. That tends to, uh, result in the person having to earn the PTO. So they can't immediately take their week of vacation, right at the outset. They have to earn it over time. They have to manage the PTO little bit better. And if they leave early, then they don't necessarily leave with an allotment of PTO that you may have promised has to be paid out. So think about whether you want to do it as an upfront grant, or you want to do the accrual method.

Alyce ([08:55](#)):

The next factor to consider is what to do at the end of employment or at the end of that, uh, calendar year or the anniversary year. What happens with the unused PTO? Well, again, that's your choice in Georgia. Georgia does not have a state law that mandates what you do with the leftover time. So whatever you put in your employee handbook will govern your employees going forward. So again, your options are at the end of the year, if the employee has additional time left over, you can allow them to roll it over to the next year. So if the person has 40 hours, but has only used 20 hours, then you can decide to allow the 20 hours to roll over to the next year for them to start using at that point. But if you don't want to, you can make what is called a use it or lose a policy, which is you incentivize your employees to use the PTO that you give them during the year. And at the end of that year, whether it's their anniversary or the calendar year that leave goes away, it's exhausted. And they start the year fresh with zero or their upfront grant of PTO. So again, that's the employer's choice on whether to allow a rollover.

Alyce ([10:07](#)):

Some employers to, to manage this process a little bit better, do set a maximum rollover so that if you have an employee who is not taking leave year after year, you don't end up with a liability on your books of, you know, many, many weeks of accrued, but unused PTO. So commonly you'll see employers cap PTO at 150% of whatever they accrue. So for example, if your employee is getting two weeks a year, you would set your max rollover at three weeks a year. So that after a couple of years, uh, the person's only rolling over up to an additional, can only accrue up to a week, uh, sorry, 150% of whatever you have allotted them. So different ways to think about that. Um, the same thing comes into play at the end of employment. Again, Georgia doesn't have a requirement that you pay out the accrued, but unused PTO. So whatever you put in your employee handbook will be the law that you then need to follow. So you have the option of again, use it or lose it when the employment ends, uh, no additional compensation is needed for that PTO.

Alyce ([11:20](#)):

Or you can say that we do pay out the PTO at the end of employment, and you would pay that at the employee's regular rate of pay. I've also seen some organizations tie that to other, to incentivize other behavior, which is we pay out PTO. If you give advanced notice, if you comply with the two week notice, or if you sign a different waiver and release or different incentives on the back end of employment. So you have a lot of choices in Georgia. You have a lot of flexibility, but a lot to think through both from member a recruitment standpoint, um, an operational and administration standpoint, and then also a financial standpoint, because all of these decisions do have financial consequences

Sireesha ([12:04](#)):

Aside from PTO or vacation/ sick days, Alyce, what are other types of lead that a nonprofit should consider providing whether those leave options are as a benefit or because it's required by law?

Alyce ([12:21](#)):

That's a great question. One of the first types of leave that I would suggest that an employer specify in their employee handbook is voting leave. This leave is actually required by law in Georgia. Employers are allowed to take up to two hours of work, time to vote, but employers don't have to provide the two hours unless the employee's work hours start to, so they have to provide the leave. The employee's work hours are two hours after the the polls are opened and end two hours before the polls close. So essentially an employee has to have a two hour block of time either before or after the start of their work day. If they don't have that two hour block of time, the employee employer has to give them time to vote. Now, the Georgia law doesn't specify exactly when that time has to be given that's the employer's choice. They can say, well, I think you need to do this around noon because business operations are slower and it's, it's easier for our workforce for you to take this time. Then you can tell the employee when they can use the leave. Also the employee, can't just decide on the date of an election "I'm going to use my voting time today, and I'm going to use it at 4:00 PM", or "I'm going to come in late and, and not give you any sort of notice". The employee has to provide the employer with a reasonable amount of notice of their intention to take the voting time. Now in Georgia this type of leave does not have to be paid. The employer can decide to offer paid, leave for use in vote. And if the employer does that, that generally needs to be specified in employee handbook. And like we said before, if you specify a type of leave that you're providing, especially a type of paid leave, you need to stick to that.

Alyce ([14:30](#)):

Another type of leave that is required in Georgia is leave for jury duty. An employee has to be given, leave for jury duty or to comply with any sort of court subpoena or other court order. Here in Georgia, this type of leave does not have to be paid, and there's actually no limit on the amount of leave that an employee can use for this purpose in a given year. There's also leave for military service in Georgia that mimics some of the leave that's required under federal law. So if an employee has been called up military duty, that that employee has to be given time off for that.

Alyce ([15:17](#)):

Another optional type of leave is leave for bereavement. I often get questions about whether an employee has to be given time off to deal with the death of a loved one. And in Georgia, the answer is no, an employer does not have to give time off. And if an employer does give time off, it can be unpaid. But like we've said, this is another one of those employee morale issues. I think it's a best practice to offer time off for bereavement. I think it, it helps assist your employee in a difficult time and gives them an incentive to return to your place of employment. If you do provide bereavement leave, generally you should stick to certain categories of relatives. And generally that becomes the parent, the grandparent, the spouse, stepparent, children, aunts, uncles, generally first degree relatives. But whatever you decide that again needs to be spelled out in your employee handbook. And once you say it, you need to stick with it.

Alyce ([16:33](#)):

There's another type of leave that is required by law in Georgia. And this kind of flew under the radar for many employees, it was a type of leave that was passing to law in 2020 when everyone was focused on COVID. They implemented a leave for nursing mothers. And now in Georgia, an employer has to provide a reasonable amount of break time for employees to express breast milk at the work site during work. Reasonable is not defined in the law. I generally tell clients that if an employee is taking a break for

approximately around 30 minutes to an hour, three to four times a day, that generally would be considered reasonable. That's generally what the federal labor agency says is reasonable. But if you have an employee that is taking an excessive amount of time, it may be difficult by law to say that they're taking excessive amounts of breaks because the law unfortunately is just not defined. This leave is paid leave. So the employer has to pay for the time that the employee is taking these breaks to express breastmilk at the employee's regular rate, and they cannot make the employee use any sort of accrued leave, any sort of paid leave that they have in their leave bank to be paid for this time. This is leave that is completely separate from whatever PTO or vacation or sick time that they have accrued. And notably in our new world of increasing remote work. This [nursing leave] only applies to employees who are working physically at the employee's work site. So employees who are working remotely do not have to be provided this paid leave. And one additional caveat employers that employ less than 50 people could be exempt from having to provide this leave. If they can demonstrate that it causes an undue hardship that could be limited financial resources, the nature of the business, or any other expense that they would have to incur because they're giving these employees the pay time off.

Sireesha ([19:02](#)):

And my next question, Bryan has to do with remote work. As remote work is becoming more and more common how's should an employer monitor leave time.

Bryan ([19:14](#)):

Yeah, that's a great one. That's becoming extremely difficult and really requires thinking of solutions that involve technology, but also just some of the more soft people skills. So when your workforce is spread out, not only not in the office, but maybe in different states or in, or they work from home around the metropolitan Atlanta area or throughout the state of Georgia, it is much more difficult to know whether the person is working, how much time they have taken off. So it really requires the manager to manage the employees. It is much easier for a manager to get by when his or her direct reports are in the office. And you can see when your employees have shown up for work and you assume that they are doing their job. So if you do have a PTO policy where you're giving a certain number of hours or days per year and particularly if you are gonna allow employees to roll that time over, or if you're gonna pay out that time at the end of employment, you wanna be able to audit that time and know that it's accurate.

Bryan ([20:22](#)):

If you have employees who are consistently taking leave, but not recording that leave, then that's a financial liability. That's gonna sit on your books then at can hit your organization when that employee leaves, if, if you have agreed to pay for that time out. So it really requires the managers to manage their team. When that team is working remotely, there is, there are some software solutions that companies can look into to see how to manage some of that time and track that time that puts the burden on the employees to record and to request the time off that they have. Again, just because you, you grant PTO as an employee benefit does not mean that you can't craft rules and restrictions around that. So as Elise mentioned early on, there are certainly times in given industries where you do not want to allow PTO to be taking during your busy season. So if you're in an accounting firm, the first few months of the year is probably gonna be off limits for taking PTO. Likewise, if you're are in the travel industry, then around the holidays and the end of the year is gonna be a very, uh, restrictive time where you can't afford to have employees taking a lot of time off. So you can still craft rules around us. Another rule you can have is you have to request the time off simply because the employee has accrued time, does not guarantee them the right to take that time at any point in time that they wish, right? So it's common for in these

PTO policies to put in restrictions where the employee has to request the time off that the employer or the manager then has to approve before that person goes out on paid time off. So again, there is software that can help with this in managing it and tracking it.

Bryan ([22:12](#)):

And when an employee takes PTO, that does not go toward the minimum, uh, toward the overtime requirement for that given work week. Right? So we know that if employees in Georgia work over 40 hours and they are in a non-exempt role, then every additional hour, they are entitled to earn time and a half, um, 150% of their regular rate. But if an employee has taken PTO that week, that time does not count toward the 40 hour threshold. So you wanna make sure that your team either manually or via a software, has the ability to track what is working time versus what is paid time off so that you're not having an additional financial burden by paying time and half on paid time off.

Bryan ([22:59](#)):

As you get into the world of FMLA, which we'll talk about in a minute and you get into giving time off that's in, uh, length of time, less than one day that becomes more or administratively burdensome taking a full day of PTO is typically easier to track and monitor and process. But if you are faced with having to give intermittent FMLA or, uh, time off, less than a day, you just need to think about how your organization wants to track that. And when you make the decision on how you want to track it, that do so consistently many organizations I've seen require employees take time off in certain increments. It could be, they require full day. They require half day. Maybe they require one to two hour increments, but anything less than that becomes quite administratively burdensome. So you've heard a lot about many different types of leave.

Bryan ([23:52](#)):

We've thrown a lot at you. Some things that are required in Georgia, some things that are required by federal law, we've mentioned the Family and Medical Leave Act or FMLA. And I know that many of us have heard of that. So we'll cover that just, just briefly. So the family and medical leave act require, uh, requires to be eligible that the employee work at a site of employment that has 50 or more employees. So for many of the nonprofits that PBPA serves, you're not going to hit that 50 employee threshold that makes you, uh, bound by the FMLA's regulations to give the time off. That said, if you do work for one of our larger nonprofits that does have 50 employees at a single site of employment, or within 75 miles, uh, radius, then you would be covered by the Family and Medical Leave Act. There are many rules and restrictions and regulations that go with the FMLA, but from a high level, it provides up to 12 weeks of unpaid time off to take care of yourself in the event of a, a serious injury or a serious medical health condition, or that of a close family member, similar to the categories that Alyce mentioned earlier.

Bryan ([25:06](#)):

So take note of the FMLA. We know it will not apply to many of you, but for our smaller organizations, some have decided to, to implement something similar to the FMLA. So even though they're not required to, by law, they have decided to, to grant a certain number of weeks, either paid or unpaid to give their employees a bit of flexibility when they're dealing with these, when these unforeseen health conditions do arise. So, so keep that in mind, as well as separate policies that you can consider for parental leave, uh, or adoption leave. Again, things that many of the leading companies around the United States are starting to roll out as an important employee benefit. You're not required to here in

Georgia, but you can think about things like parental leave and adoption leave and how you create those policies.

Sireesha ([25:59](#)):

You guys have covered a lot of great information here, both in terms of legal requirements and generally, best practice, but what would you say are the most important takeaways for the listeners today in trying to develop or revise their leave policy?

Alyce ([26:18](#)):

I think that leave can easily turn into a large bin of alphabet soup. It can be extremely confusing and complicated. I think one of the, the biggest bits of advice that I try to give people is: you don't have to handle this yourself. If you have any questions, seek legal advice. Seek help from someone who deals with this type of thing on a daily basis. That's, that's my most important advice to anyone who's trying to navigate this very complicated and ever changing world. I think the next thing that I want to tell people is if there's a legal requirement to provide leave, you do not have a choice. You must provide that leave. If you have included additional voluntary types of leave in your employee handbook, then that has become the law for your company. You also must provide that type of leave. And just like Brian said earlier, the most important thing is to administer your leave policies, whether that's federally or state mandated leave or voluntary leave that you as a company has decided to offer as a benefit, make sure that you're following that policy consistently and fairly.

Bryan ([27:43](#)):

That's exactly right. And ley said, these are employee benefits. If you decide to roll these out at your company, especially the ones that are optional, you're gonna invest in these policies. Treat them as a benefit, make sure your employees can understand and take advantage of them and use them to their benefit. This is something that we know that our employees care about, and we are putting significant time and financial resources behind these benefits. So let's make sure that our employees have the resources and the know-how to use them.

Sireesha ([28:15](#)):

Alyce and Bryan. This has been a lot of really good, very practical information. Thank you both so much for being here today and for sharing your expertise with our listeners.

Bryan ([28:27](#)):

Absolutely. It was a pleasure.

Alyce ([28:27](#)):

Thanks for having us.

Sireesha ([28:30](#)):

We hope that you found this episode of the PBPA Podcast to be informative and helpful. We add new episodes every month with short conversations about general, yet important legal information for Georgia nonprofits. Remember that this is not legal counsel. Talk to your attorney about your organization's specific concerns. Thanks for tuning into the PBPA Podcast. And to all nonprofits listening out there, thank you for all the good work you continue to do in our community.

