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## What to know about ‘garden’ leave when you resign but remain on the payroll

Allowing employees to remain on the payroll may make it easier for them to find a new job, even though they are performing no work

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“Garden leave” refers to the time an employee who has resigned remains on the payroll but stays away from the workplace and performs no work.

About 75,000 federal employees accepted President Donald Trump’s offer of garden leave. Under the “fork in the road” program, the employees resigned, but will continue to receive their full salary and benefits through Sept. 30 without being expected to perform their government duties during the deferred resignation period.

Private sector employers also sometimes offer extended pay to employees excused from performing further work in conjunction with the employees’ immediate resignation. Allowing employees to remain on the payroll may make it easier for them to find a new job. Before offering garden leave, employers should consider these questions, among others:

### **Will the separating employee be asked to perform work during garden leave?**

In answers to [Frequently Asked Questions](#), the Office of Personnel Management (OPM) told employees considering the now-closed program that during the deferred resignation period they would be “most welcome to stay at home and relax or to travel to your dream destination.”

Private sector employers sometimes similarly excuse employees from performing their duties during the period of deferred resignation. Often, however, employers will reserve the right (rarely exercised) to call upon the employees as needed during this period.

Employees should be paid for work performed during garden leave, akin to paying an on-call employee called into work. A garden leave arrangement may implicitly require the employer to extend the paid garden leave a full day for every day any work is performed.

### **Should a garden leave arrangement require employees to release any claims they have against the employer?**

OPM issued a [template agreement](#) to federal agencies employees accepting the buyout must sign. In that agreement, the employee “forever waives, and will not pursue through any judicial, administrative, or other process, any action against (AGENCY) that is based on, arising from, or related to Employee’s employment at (AGENCY) or the deferred resignation offer.”

Where employees resign effective at a future date with the express understanding they will perform no further work, a private sector employer similarly should have the employees sign a release of all claims that can be released legally. If the release is signed when an employee

resigns, instead of at the end of garden leave, the employer may be liable to the employee for unlawful acts the employer commits during the leave period.

### **When should the value of unused vacation be paid out?**

OPM informed workers considering enrolling they would “continue to accrue annual leave and sick leave during the deferred resignation period until you separate. You will be paid a lump sum for accrued but unused annual leave upon separation.”

Garden leave, then, is not equivalent to an immediate, temporary, indefinite layoff. Under California law, employees temporarily laid off for an indefinite period must receive the value of their accrued and unused vacation time immediately, even if the employer maintains the employees’ benefits during a layoff expected to be temporary.

That was the holding of the U.S. Court of Appeals for the Ninth Circuit in a 2023 ruling. Hyatt indefinitely laid off much of its staff early in the pandemic, but maintained the employees’ benefits. Hyatt paid out the employees’ vacation only upon formal termination months later. The court held that was too late.

By contrast, when employees resign but continue to receive all pay and benefits during garden leave, the employment relationship is not terminated until garden leave expires. The employer should include the value of accrued and unused vacation, including the value of vacation time accrued during garden leave itself, in the employees’ final paycheck at the end of garden leave.

### **Will garden leave pay and benefits end if the employee finds another job?**

Addressing whether resigning employees would continue to receive full pay and benefits through September 30 even if they found new jobs before that date, OPM wrote: “Absolutely! We encourage you to find a job in the private sector as soon as you would like to do so.”

Private sector employers may consider including a provision discontinuing separating employees’ salary and benefits when they find comparable new employment. The agreement would make the effective date of separation either the future fixed date or the date the employee starts comparable new employment, whichever comes first.

Private sector employment relationships may be severed in numerous ways. Carefully administered garden leave arrangements may benefit both the employer and the departing employee.

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