

California Imposes Mandatory Sick Leave Law

Tuesday, December 2, 2014

On September 10, 2014, **California's Healthy Workplaces, Healthy Families Act of 2014** (California's sick leave law) **became law**. The new law requires most employers to allow employees to accrue up to three days of paid sick leave per year based on an accrual of at least one hour of paid sick leave for every 30 hours worked.

California's sick leave law does provide for various accrual caps, in deference to employers that already have a paid time off (PTO) policy meeting certain standards, as well as various other exceptions. Employees may use the paid sick leave to care for themselves or other family members. Notably, the new law imposes notice, posting and record-retention obligations with which employers must now comply.

Employers Must Act Prior to the Law's Effective Date of January 1, 2015

California's sick leave law requires mandatory paid sick leave accrual measured from July 1, 2015, forward; however, the notice, posting and other requirements are effective as of January 1, 2015. Because this deadline is fast approaching, employers with employees working in California should carefully review their sick and PTO policies, as well as payroll policies for reporting such time on wage statements. Every employer also should review its new-hire procedures and notices, and workplace posting and recordkeeping policies, because California's sick leave law affects each of these items.

Highlights of New Law

- Employees who, on or after July 1, 2015, work in California "for 30 or more days within a year" from the commencement of employment are entitled to accrue paid sick leave at the rate of "not less than one hour per every 30 hours worked." This means that, absent a cap on accrual, a full-time employee working 40 hours per week would accrue up to 8.67 days of paid sick time per year.
- An employee who is exempt from overtime requirements as an administrative, executive or professional employee under a wage order of the Industrial Welfare Commission is "deemed to work 40 hours per workweek" for purposes of sick leave accrual unless the employee's normal workweek is less than 40 hours, in which case the employee shall accrue sick days based upon that normal workweek.
- An employee is entitled to use accrued sick days beginning on the 90th day of employment. While an employee starts accruing paid sick time after working 30 days, the employee may not use it until the 90th day of employment. An employer may, at its discretion, lend paid sick leave to an employee in advance of accrual if "proper documentation" is maintained.
- An employer may cap an employee's annual use of paid sick leave to 24 hours per year. Similarly, an employer may choose to cap an employee's annual accrual of paid sick leave to 48 hours per year.
- Accrued sick leave shall carry over to the following year, although an employer may limit an employee's use of paid sick days to 24 hours or three days in each year of employment. No accrual or carry over is required if the full amount of leave is received at the beginning of each year.
- An employer may set a minimum increment for the use of paid sick leave of no more than two hours.



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- Employers are not required to pay out accrued but unused sick leave. However, if the employer uses a PTO policy, that PTO policy might be subject to payout under California law. If the employee is rehired within one year, the employee is entitled to reinstatement of the accrued but unused sick time.

Covered Employers and Employees

California's sick leave law applies to all employers that have at least one employee who works more than 30 days in a year in the state of California. All employees who work more than 30 days in a year in California are covered (including part-time and temporary employees), except for employees covered by certain collective bargaining agreements, certain providers of in-home support services and certain airline industry employees.

Timing and Rate of Pay for Paid Sick Leave

California's sick leave law provides for a rate of pay such that the employee "is compensated at the same wage as the employee normally earns during regular work hours." Such a standard can require additional calculations where the employee has been paid at differing rates or receives more than just an hourly wage (*i.e.*, commissions). Many employees have varying pay rates once all required amounts, such as commissions and piece rate, are taken into account. To properly calculate the rate of sick pay, the employer should divide the employee's total wages (including commissions but not including overtime premium pay) by the employee's total hours worked in the full pay periods for the prior 90 days of employment to determine the effective "hourly wage." The employer is required to provide payment for sick leave taken by an employee no later than the payday for the next regular payroll period after the sick leave was taken.

Employers with Existing Paid Sick Leave or PTO Policies

An employer is not required to provide additional paid sick leave if the employer already has a sick leave or PTO policy providing an amount of leave that may be used for the same purposes and under the same conditions of the new law, and that does either of the following:

- Satisfies the accrual, carry over and use requirements of the new law
- Provides no less than 24 hours or three days of paid sick leave (or equivalent time off) for employee use for each year of employment, or calendar year or 12-month basis

Permitted Uses of Paid Sick Leave

If the need for sick leave is foreseeable, the employee shall provide reasonable advance notification, or notice as soon as possible. An employer shall allow accrued sick leave to be used for diagnosis, care or treatment of an existing health condition of (or preventive care for) an employee or an employee's "family member" (which is very broadly defined), or where the employee is the victim of domestic violence, sexual assault or stalking.

Notice, Posting and Recordkeeping Requirements Imposed on Employers

California's sick leave law requires employers to comply with new notice, posting and recordkeeping requirements (including by amending the Wage Theft Prevention Act of 2011 - Labor Code §2810.5). At the time of hiring (and within seven calendar days "after the time of the changes"), an employer must provide to each employee a written notice with a wide array of information, including the following:

- The rate or rates of pay, including for overtime
- Information about the employer, such as names used, address, telephone number and information about the employer's workers' compensation insurance carrier
- The regular payday
- The fact that an employee has a right to accrue, request and use accrued sick leave without fear of termination or retaliation, and has the right to file a complaint against an employer that retaliates

The Labor Commissioner has prepared a template notice that may be used in compliance of the new-hire notice requirements. The notice requirements do not apply to certain employees, such as certain public employees, employees exempt from overtime laws and those covered by certain collective bargaining agreements.

Employers must provide each employee with written notice of the amounts of paid sick leave available on the employee's itemized wage statement (along with the other items set forth in Labor Code §226) or in a separate writing provided on the designated payday. Employers also must display a poster containing certain information

about California's sick leave law. The Labor Commissioner has created a template poster that may be used for this purpose.

Record Retention

Employers must keep records for three years documenting the hours worked and paid sick days accrued and used by an employee.

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