

California Amends Its Healthy Workplaces, Healthy Families Law

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As previously reported, ***California's Healthy Workplaces, Health Families Act of 2014*** (California's Sick Leave Law) took full effect on July 1, 2015, although some provisions were effective as of January 1, 2015. The new law generally requires most employers to allow employees to accrue paid sick leave. Our summary of that law's basic requirements are reported [here](#).

Among other requirements, employers must:

- Display a poster explaining California's Sick Leave Law. Notably, the California Department of Industrial Relations (DIR) has recently issued to employers a general reminder of this posting requirement—suggesting a stepped-up enforcement of this requirement.
- Provide written notice to employees of their sick leave rights at the time of hire.
- Provide for accrual of one hour for every 30 hours worked, and allow use of *at least* 24 hours or three days, or provide *at least* 24 hours or three days, at the beginning of a 12-month period of paid sick leave for each eligible employee to use per year. As noted below, this section was amended to provide for an alternative accrual method, as well.

- Allow eligible employees to use accrued paid sick leave upon reasonable request.
- Show the number of days of sick leave an employee has available. This notice must be displayed on a pay stub or a document issued the same day as a paycheck.
- Keep records for three years showing how many sick leave hours have been earned and used by each employee.
- Paid time off (PTO) policies meeting certain standards will satisfy the need for paid sick leave.

On July 13, 2015, Governor Jerry Brown signed Assembly Bill 304, amending California's Sick Leave law to make immediate changes. Those amendments include the following:

1. Employers may use different accrual methods.

California's Sick Leave Law, as originally enacted, provided for an accrual rate (for employers that chose an accrual method as opposed to awarding all sick leave at the beginning of each year) of no less than one hour for every 30 hours worked. The amendments provide that an employer may use an alternative accrual method if it is (a) on a regular basis, and (b) the employee has no less than 24 hours or three days paid sick leave or PTO by the 120th calendar day of employment, or each calendar year, or in each 12-month period (as determined by the employer).

2. Employers may limit employees' use of sick leave.

California's Sick Leave Law, as originally enacted, allowed employers to limit an employee's *use* (as opposed to accrual) of sick leave to three days or 24 hours in each year of employment. The amendments clarify that an employee's use of such sick leave may be limited to three days or 24 hours in (a) each year of employment, (b) each calendar year or (c) each 12-month period. The employer may determine which option to utilize.

3. If an employer pays out accrued PTO to an employee at the time of termination, the employer does not have to re-instate the previously accrued and un-used paid sick days.

The law requires that, if an employee separates from employment, but is re-hired within one year, the previously accrued and un-used paid sick leave must be re-instated. This amendment clarifies that, if the employer pays the accrued but un-used sick leave out at the time of separation (which is not required under the Sick Leave Law), then the employee is not entitled to re-instatement of the paid sick leave that was already paid out to them.

4. Employers have until 2016 to comply with sick leave balance notice requirements.

The amendments clarify that employers providing unlimited paid sick leave or unlimited PTO to an employee meets its reporting obligations by stating "unlimited" on the wage statement in place of listing hours. Further, for employers covered by Wage Orders 11 or 12 (motion picture and broadcasting

industries), they have until January 1, 2016, to comply with the notice requirements.

1. Employers have different options for calculating the amount of pay owed to employees while taking sick leave.

California's Sick Leave Law, as originally enacted, provides that employers had to pay sick leave based on the employee's hourly rate (however that could become confusing where the employee's wage rate fluctuated during the accrual period, received commissions or salaried employees). The amendment clarifies that the employer can use any of the following calculations when determining how much to pay employees while on paid sick leave.

- For non-exempt employees, the regular rate of pay can be calculated in the same manner as the regular rate of pay for overtime purposes in the workweek.

- For non-exempt employees, the regular rate of pay can be calculated by dividing the employee's total wages—not including overtime premium pay—by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

- For exempt employees, employers can calculate paid sick leave in the same manner as the employer calculates wages for other forms of paid leave time.

5. Employers need to document accrual and use of sick leave, but have no obligation to record or inquire into the reasons why an employee uses sick leave.

The amendments clarify that an employer need not record the reasons why employees use sick leave. The employer must only document and keep records of the hours worked and paid sick days accrued and used by an employee for at least three years.

6. Certain grandfathered paid sick leave or PTO plans.

The amendments provide that an employer need not provide additional paid sick leave if the employer already had in place as of January 1, 2015, paid sick leave or PTO plans that meet certain qualifications (the original law permitted PTO plans to satisfy the sick leave requirements if such PTO policies were at least as generous and could be used for the same purposes). However, if the employer modifies those grandfathered plans, the employer must then comply with the new requirements.

7. The employer is not required to re-instate accrued sick leave paid out at termination upon re-hire.

Although an employer is generally required to re-instate accrued sick leave for any employee re-hired within one year of termination, the amendments clarify that an employer need not re-instate any such sick leave that was paid out at termination (such as, by way of example, for those employees that utilize the PTO exemption to providing separation sick leave and which is paid out upon termination).

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