

Navigating the California Paid Sick Leave Law

WHAT EVERY CALIFORNIA EMPLOYER NEEDS TO KNOW



Agenda

1. Introduction to the California Sick Leave Law
2. Employer Requirements and Rules
3. Paying Out Sick Leave
4. Methods of Calculating Sick Leave Hours
5. Next Steps

About the Speaker

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- 25 years HR experience
- Doctorates in Law (JD) and Psychology (PsyD)
- Expert in federal and multi-state labor & employment laws (including California)
- Author of HR book, *Dirty Little Secrets: Declassifying the Employment Game*

Introduction

September 2014 Governor Brown signed into law AB 1522 containing the Healthy Workplaces, Healthy Families Act of 2014.

California became the 2nd state (Connecticut being the 1st) to impose a state-wide sick leave requirements.

Created the requirement to provide paid time off to employees in California.

Covered Employers

The Paid Sick Leave law applies to all employers (regardless of their size or status) who employ at least one employee who works in California for 30 or more days within a year.

Also applies to out of state employers who send an employee to work in California for 30+ days (even if on a temporary or limited time basis).

Covered Employees

The Paid Sick Leave law applies to any employee who works in California for 30 or more days within a year from commencement of employment including:

- Part-time,
- Temporary, and
- Seasonal employees

Exceptions to Covered Employees

The following are not subject to the Paid Sick Leave law:

- Employees whose employment is governed by a valid collective bargaining agreement (CBA) that provides for the payment of wages, hours of work, working conditions, overtime premiums, regular hourly rate of pay not less than 30 percent greater than the state minimum wage, paid sick or similar leave, and final and binding arbitration of disputes regarding the paid sick days provision;
- Construction employees covered by CBAs with specified provisions;
- In-home supportive services providers; and
- Certain air carrier and flight personnel.

Qualifying Reasons

Employers must, upon an employee's written or oral request, provide paid sick leave for:

- The employee's own or "family member's" diagnosis, care, or treatment of an existing health condition, or preventive care; and
- An employee who is a victim of domestic violence, sexual assault, or stalking to seek aid, treatment, or related assistance.

Covered Family Members

The Act defines “family member” broadly to include:

- **Child** (regardless of age or dependency status) – biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis;
- Biological, adoptive, or **foster parent or step parent, legal guardian of the employee or the employee’s spouse or registered domestic partner**, or a **person who stood in loco parentis to the employee when the employee was a minor child**;
- **Spouse or registered domestic partner**;
- **Grandparent**;
- **Grandchild**; and
- **Sibling**.

Employer Requirements & Rules

Posting Requirements

Effective January 1, 2015

Employers must display in a conspicuous place in each workplace a poster notifying employees of their paid sick leave rights.

Employers who willfully violate the posting requirement to a civil penalty of not more than \$100 per offense.

Effective January 1, 2015

CA Wage Theft Prevention Notice

Must include information about paid sick time including that employees:

- may accrue and use sick leave,
- have a right to request and use paid sick leave,
- may not be retaliated against or terminated for requesting or using accrued sick leave, and
- have the right to file a complaint against an employer who retaliates.

Pay Stub Requirements

Every pay day, employers must provide each covered employee with written notice that sets forth the amount of paid sick leave available, or the PTO that an employer provides in lieu of sick leave.

The notice must appear either on the employee's itemized wage statement or in a separate document provided to the employee on the designated pay date.

Violation of this provision subjects the employer to penalties under the Act, but not under California Labor Code section 226.

Interpretation

The Labor Commissioner has indicated that this information may be stored on documents available to employees electronically. There is a reasonable presumption that as long as provided to the employee on the same day as their paycheck, this would satisfy compliance.

Recordkeeping Requirements

Employers must keep records, for three years, documenting the hours worked and the sick leave accrued and earned.

These records must be available for inspection by the Labor Commissioner and the employee.

Medical Documentation

There is no direction provided related to whether an employer can require documentation or certification that the leave was taken for a qualifying reason.

Prohibitions

Employers may not deny employees the right to use accrued sick leave.

Employers may not discriminate or retaliate against an employee who:

- Uses or attempts to use paid sick leave
- Files a complaint with the Labor Commissioner
- Alleges a violation of the Act
- Participates in an investigation under the Act
- Opposes any policy or practice prohibited by the Act

Paying Out Sick Leave Hours

No Payout Required

Unlike vacation and PTO in California, the law expressly states that employers **are not required** to pay employees for accrued, unpaid sick leave upon employment separation.

However, the employer must restore to the employee any accrued, unused paid sick leave if the employee is **rehired within one year** of the separation.

The rehired employee is entitled to use the previously accrued but unused paid sick leave and to accrue additional paid sick leave upon rehire.

Rate of Pay

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."

Rate of Pay

Regular Rate of Pay includes all remuneration received by the employee during the workweek including:

- Commissions
- Non-Discretionary Bonuses
- Non-Cash Items (meals, lodging, etc.)
- Retroactive Pay Increases

The following are not used when calculating Regular Rate of Pay:

- Vacation
- Sick Leave
- Holiday Pay
- Expense Reimbursement
- Jury Duty
- Discretionary Gifts

Calculating Rate of Pay

Example

A sales associate earns \$10 per hour + commission

Over a 90 days period the employee works 100 hours and earns \$500 in commission.

$$100 \text{ hours} \times \$10/\text{hour} = \$1,000 \quad + \quad \$500 \text{ commission} \quad = \quad \$1,500$$

$$\$1,500 / 100 \text{ hours} = \$15.00 \text{ [this is the regular rate of pay]}$$

The employee uses 8 hours paid sick leave, thus $8 \times \$15 = \120

Timing of Payment

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.

Methods of Calculating Paid Time Off Hours

Accrual Method

Must accrue 1 hour of paid sick leave for every 30 hours worked.

Accrual rate for exempt employees is based upon a presumed 40 hour week unless their normal workweek is less than 40 hours per week.

Employees must be permitted to carry over all of their accrual, unused paid sick days to the following year.

Employers may cap the accrual of paid sick days at 48 hours or 6 days.

Accrual Method Scenarios

Employee works 40 hours per week

- 2,080 hours per year
- 69.33 hours or 8.67 days paid sick leave

Employee works 20 hours per week

- 1,040 hours per year
- 34.67 hours or 4.33 days paid sick leave

Lump Sum Grant Method

Grant the full amount of accrued leave

Must be at least 24 hours

Must be available at the beginning of a 12 month period

If electing this method:

1. Grant 3 days July 1, 2015, and
2. Either 3 days on 1/1 or 7/1 of each year

Lump Sum Grant Method

Thought

If electing this method:

1. Grant 24 hours July 1, 2015
2. Move to a January 1-December 31 year January 1, 2016 for ease of administration and use

Unlimited and PTO Plans

Per the Labor Commissioner, these plans do not satisfy the requirements and relieve the employer of the obligations as set forth in the law.

According to the Labor Commissioner the law requires that sick leave accrual and use is separately tracked.

Thoughts for Existing PTO and Sick Plans

Considerations

- Costs (including all employees, payout of PTO requirements, etc.)
- Administration (record keeping, tracking, notices)
- Employee Attitudes/Culture

Existing PTO Policies

- Distinguish vacation and sick leave policies
 - Retain vacation hours at the PTO level or reduce it by 24 hours for a sick leave carve out?
- Select accrual or grant method for sick leave

Existing Sick Leave Policies

- Grant the minimum 24 (or more) hours on January 1, or
- Set up the accrual with a cap of no less than 6 days/48 hours

Employer Options

Employers are permitted to:

1. Select the method of hours calculation they want to implement.
2. Impose a limit of 24 hours that an employee can take per year.
3. Cap accrual of hours at 48 hours
4. Require the completion of 90 days of employment before being able to use paid sick leave hours (although accruing from day 1)

Next Steps



Start Compliance Steps Now

Employers need to get started (and catch up for many) with the current requirements and those effective July 1, 2015.

- **Determine which method** you are going to select for the paid sick leave.
- **Update Employee Handbooks, policies and procedures** to reflect the new laws and practices.
- **Wage Theft Prevention Act Notice and Paid Sick Leave Poster.**
- Prepare for changes to **recordkeeping** policies and procedures.
- Prepare for the revisions to **itemized wage statements** or separate notice to be provided with each wage statements.

Checklist

Determine accrual or grant method

Post required notice

Draft Paid Sick Leave policy

Update Employee Handbook (including other new & revised laws)

Draft and distribute notice to employees

Coordinate with payroll to establish rules in system

- Accrual or grant method
 - ☐ 1 hour per 30 worked, caps, carry-over, reinstatement after 12 months, 90 days wait period for use, etc.
- Regular rate of pay calculations
 - ☐ Total compensation, 90 days period
- Tracking total, used and remaining sick leave hours
- Reflect required information on wage statements

Questions



Thank You!

For more information about the new CA Paid Sick Leave law, updating Employee Handbooks and policies, or other HR and compliance needs:

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