

The Who, What, When and How of Mandatory Paid Sick Leave in California: New Amendments Effective July 13, 2015

By: CalChamber Employment Law Counsel

On September 10, 2014, California became the second state in the nation, after Connecticut, to provide paid sick leave when Governor Edmund G. Brown Jr. signed AB 1522, the Healthy Workplaces, Healthy Families Act of 2014 (the Act).

The Legislature intended the Act to ensure “that workers in California can address their own health needs and the health needs of their families by requiring employers to provide a minimum level of paid sick days including time for family care.” The effective date for employers to begin providing the paid sick leave benefit was **July 1, 2015**. Other requirements, such as posting and notice obligations, took effect January 1, 2015.

Even though the law is already in effect, the Legislature passed additional amendments to the Act. These amendments become effective immediately upon being signed by the governor on July 13, 2015. The most significant amendments affected the various accrual provisions and how to pay employees when they use sick time.

The amended language is reflected throughout this document with this icon. 

Employers beware: There are many nuances to this particular piece of legislation, which are not covered in this white paper. Employers may want to consult their labor and employment counsel with any specific questions about how this law applies to their workforce.

Who Is Covered Under This Law?

- The Act applies to private and public employers regardless of size; there is no small employer carve out.
- Any employee who has worked in California *for the same employer* for 30 or more days within a year from the beginning of his/her employment will be entitled to paid sick days under the Act.
 - » The amendments clarified that the law applies to employees who work for the same employer for 30 or more days within one year.
- Part-time and full-time employees are covered, as well as exempt and nonexempt employees.
- Employees not covered by the new law are limited to the following five groups:
 - » Employees covered by a union contract that specifically provides for paid sick leave, has binding arbitration and meets other specified requirements;
 - » Construction employees covered by a valid union contract;
 - » Providers of in-home supportive services under certain sections of the Welfare and Institutions Code;
 - » Certain air carrier employees; and
 - » Specified retired annuitants.

How Much Paid Sick Leave Will Employees Get?

The answer to this question will depend on which approach the employer chooses.

- **Statutory Accrual Method:** Under the accrual method, an eligible employee earns one hour of sick pay for every 30 hours worked beginning either July 1, 2015, or, if hired after July 1, on the employee's first day of work. Both regular and overtime hours are counted toward the accrual rate of one hour for every 30 hours worked (Labor Code sec. 246(b)(1)).
- 🚩 • **Optional Accrual Method that Provides No Less than 24 Hours by the 120th Day:** An employer does not have to follow the statutory accrual method of one hour per every 30 hours worked provided that the accrual is on a regular basis so that an employee has no less than three days or 24 hours of accrued sick leave or paid time off (PTO) by the 120th calendar day of employment or each calendar year or in each 12-month period. The employer can determine the accrual method so long as it meets the above requirements (Labor Code sec. 246(b)(3)).
- 🚩 • **Alternative Accrual for New Hires:** A third option is available under the statute. Labor Code section 246(b)(4) states that "an employer may satisfy the accrual requirements ... by providing not less than 24 hours or three days of paid sick leave that is available to the employee to use by the completion of his or her 120th calendar day of employment." This option applies only to paid sick leave; not to PTO (Labor Code sec. 246(b)(4)).
- 🚩 • **A Pre-Existing Employer Policy (Policy in Effect Prior to January 1, 2015):** If your organization already had a paid sick leave or paid time off policy in place prior to January 1, 2015, you have the flexibility to use your existing accrual method and not provide an additional three days/24 hours of paid sick leave or PTO as long as your pre-existing policy accrues on a regular basis and meets both of the following requirements:
 - » Employees have no less than one day or eight hours of accrued sick leave or paid time off within three months of employment, each calendar year, or each 12-month period; and
 - » Employees were eligible to earn at least three days or 24 hours of sick leave or paid time off within nine months of employment (Labor Code sec. 246(e)).
- **Lump-Sum Method:** An employer can avoid the administrative and other burdens of having to calculate the accrual and the carryover amounts by using a "lump-sum" method. Here, the full amount of leave (24 hours or three days) is provided to the employee at the beginning of each year of employment, calendar year or 12-month period. In this "lump-sum" situation, an employee won't be able to carry over unused sick days but will get three new sick days at the beginning of the following year. An employer will need to make sure that any lump-sum policy allows employees to use the leave for all the same purposes and conditions specified under the Act (Labor Code sec. 246(d)).

An employer can, of course, choose to offer a more generous plan, allowing the employee to use and accrue more than the minimum amounts required under the Act.

What If I Already Have A Sick Leave Or Paid Time Off Policy?

- 🚩 As described above, an employer with a paid sick leave or PTO policy that was in effect prior to January 1, 2015, is not required to provide an additional three paid sick days pursuant to the Act if the policy meets the accrual method described above (employees accrue no less than one day or eight hours of accrued sick leave or paid time off within three months and employees were eligible to earn at least three days or 24 hours within nine months of employment).

Can I Limit the Amount of Paid Sick Leave Accrued?

If an employer chooses to use one of the accrual options, accrued paid sick days must carry over to the following year of employment, but an employer can cap the employee's total accrual amount at 48 hours/six days. Without a cap, a full-time employee would accrue nearly nine days of paid sick leave using the statutory accrual method.

The lump-sum approach does not require a cap because paid sick time does not accrue or carry over from year-to-year. Instead, the employer places the full amount of leave (three days/24 hours) in the employee's leave bank at the beginning of each year of employment, calendar year or 12-month period.

An employer can also limit the use of paid sick leave in any one year to three days or 24 hours. For more information, see "What Limits Can an Employer Put on Use of Paid Sick Leave?" below.

How Can An Employee Use Paid Sick Leave?

- Employees cannot start using accrued sick days until the 90th day of employment, after which the employee can use paid sick leave as it is accrued.
- An employee can use paid sick time for an existing health condition or preventive care for themselves or a "family member." Under the Act, family member is defined as a child, parent (including parent-in-law), spouse or registered domestic partner, grandparent, grandchild or sibling.
- Paid sick leave may be used for an employee who is a victim of domestic violence, sexual assault or stalking.
- Paid sick leave must be provided when the employee makes an oral or written request.
- If the need for paid sick leave is foreseeable, an employee must provide "reasonable" advance notice. If not, the employee must provide notice as soon as practicable.
- The employee can decide how much paid sick leave he/she needs to use.
- An employer cannot require an employee to search for or find a replacement worker for the days off.

What Limits Can An Employer Put On Use Of Paid Sick Leave?

- An employer can require the employee to wait until the 90th day of employment before using paid sick days.
- An employer can limit the amount of paid sick days an employee can **use** in each year of employment to three days or 24 hours. In other words, regardless of the amount of paid sick leave an employee has on the books, an employer can set a limit on the amount that the employee can actually use.
- An employer can set a "reasonable minimum increment," not to exceed two hours, for the use of paid sick leave. In other words, you can't require that employees take half of a day off for a doctor's appointment, but you could require that they take two hours off.
- Although the law is silent about whether the employer can require a doctor's note to validate the need for the leave, the California Labor Commissioner has taken the position that a doctor's note cannot be required to use paid sick leave. According to the Labor Commissioner, denying leave because an employee failed to provide a doctor's note or other details about the leave may lead to a claim against the employer for violation of the Act. Unless the certification is required pursuant to another leave law, there is no provision in the Act allowing an employer to require certification for paid sick leave.

How Do I Pay The Employee For The Sick Day?

Paid sick leave must be paid no later than the payday for the next regular payroll period after the sick leave was taken.

- ▶ • Employers can use any one of the following three methods to calculate how to pay employees who take paid sick time:
 - » Calculate paid sick time for nonexempt employees in the same manner as the “regular rate of pay” for the workweek in which the employee uses paid sick time, regardless of whether the employee actually works overtime in that workweek.
 - » Calculate paid sick time for nonexempt employees by “dividing the employees 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.”
 - » Calculate paid sick time for exempt employees in the same manner as wages are calculated for other forms of paid leave time.

What Happens When An Employee Leaves?

- Employees who leave employment are not entitled to a payout on any accrued but unused paid sick leave:
 - » However, if you combine the sick leave and vacation into a PTO policy, you will have to follow the rules relating to vacation and PTO, including paying out accrued but unused PTO upon termination.
 - » Remember, accrued PTO and vacation are treated like wages in California.
- Previously accrued and unused paid sick days must be reinstated if an employee leaves employment and then is rehired within one year.
- The rehired employee must be allowed to use those previously accrued sick days and begin accruing additional paid sick days from the date of rehire.
- ▶ • An employer is not required to reinstate accrued paid time off to an employee who was paid out at the time of termination, resignation or separation of employment.

What Are The Documentation/Notice Requirements?

The Act contains several notice, posting and recordkeeping requirements:

- Pay-Stub Notice: An employer must provide an employee with a written notice setting forth the amount of paid sick leave available to the employee each pay period. An employer can either provide this notice to the employee on the already required itemized wage statement or in a separate written document provided to the employee with the payment of wages.
 - ▶ » If an employer provides unlimited paid sick leave or unlimited paid time off to an employee, the employer may satisfy this section by indicating on the notice or the employee’s itemized wage statement “unlimited.”
 - ▶ » In addition, these provisions have a delayed implementation — until January 21, 2016 — for employers covered by Wage Orders 11 or 12 (broadcasting and motion picture).

- Wage Theft Notice: The Wage and Employment Notice (Labor Code section 2810.5), which employers have been required to provide to nonexempt employees since 2012, has been updated by the Labor Commissioner to contain information about an employee's right to accrue and use paid sick leave and about employee protections under the Act. The updated [Wage Theft Notice](#) is available on the Labor Commissioner's [website](#) and also on HRCalifornia.
- Poster: There is a required poster advising employees of their sick leave rights. The Labor Commissioner has released the poster, and it's available on the Labor Commissioner's [website](#). It's also included in CalChamber's *2015 California and Federal Employment Notices Poster*.
- Recordkeeping Requirements: Employers will need to keep records for at least three years that document the number of hours that each employee worked and paid sick days accrued and used by each employee.
 - » However, an employer is not obligated to inquire into or record the purposes for which an employee uses paid leave or paid time off.



How Are Employees Protected?

- Employers cannot deny employees the right to use accrued paid sick days.
- Employers cannot discharge, threaten to discharge, demote, suspend or in any manner discriminate against an employee for:
 - » Using accrued sick days;
 - » Attempting to use accrued sick days;
 - » Filing a complaint with the Labor Commissioner or alleging a violation of the Act;
 - » Cooperating in an investigation; or
 - » Opposing any policy or practices prohibited by the Act.

What Happens If I Don't Comply?

- The Act contains various stiff fines and penalties for not providing sick days, ranging from \$50 to \$4,000 aggregate.
- The employer can also be required to compensate the state up to \$50 for each day or portion of a day where a violation occurs or continues. This sum can be assessed for each employee, and there is no maximum aggregate.
- There is a fine of up to \$100 for each willful violation of the posting requirement.
- The Act authorizes the Labor Commissioner or the Attorney General to bring a civil action to enforce the law and obtain relief on behalf of any employee, including back pay, payment of sick days unlawfully withheld, penalties, liquidated damages, attorneys' fees and costs.
- Isolated, unintentional payroll errors or notice errors that are clerical or inadvertent mistakes will not be considered violations of the Act. The determination as to whether an employer committed a violation may include an examination of whether the employer has compliant policies and practices in place.

What About City Ordinances Or Laws In Other States?

Employers in cities or states with paid sick leave laws will need to review them carefully. The employee will be allowed to use whichever law provides the most benefit or protection to him or her.

What Steps Should I Take?

This new law is not simple. Even if you currently offer a generous sick or PTO policy, adjustments to your policies and practices are likely necessary. CalChamber will continue to provide updated information regarding implementation of the new law.

You should:

- Implement your chosen method of providing the paid sick leave benefit.
- Review existing sick or PTO policies and make any necessary revisions. CalChamber provides several resources for employers:
 - » The [Employee Handbook Creator](#) can help you convey the mandatory paid sick leave benefit to your employees.
 - » CalChamber also offers a [Paid Sick Leave Policy Template](#) (\$124.99 value, free to members).
- Assess recordkeeping, timekeeping and payroll practices.
- Post the paid sick leave poster and use the updated Wage Theft Notice from the Labor Commissioner's office. CalChamber's convenient [California and Federal Employment Notices Poster](#) and [California Required Notices Kit](#) contain the new paid sick leave posting. The updated [Wage Theft Notice](#) is available on the Labor Commissioner's [website](#) and also on HRCalifornia.
- Let managers know about the law and its prohibitions against denying the right to take leave and against discrimination.

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