

# The Who, What, When and How of Mandatory Paid Sick Leave in California

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 then-Governor Edmund G. Brown Jr. signed AB 1522, the Healthy Workplaces, Healthy Families (HWHF) Act of 2014, which became effective in 2015.

The Legislature intended HWHF 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 Healthy Workplaces, Healthy Families Act has been in effect since 2015 ...

This white paper covers the HWHF's general components, but employers beware: There are many nuances to this particular law, which are not covered.

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?

- HWHF 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 their employment will be entitled to paid sick days under the Act.
- 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 (but the full amount of leave that must be provided to these employees is different from the rate for other employees);
  - » 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 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 doesn't 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;
  - » 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 under 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)).

### Without a cap, a full-time employee would accrue nearly nine days of paid sick leave using the statutory accrual method ...

- **A Pre-Existing Employer Policy:** If your organization had a paid sick leave or PTO policy in place prior to January 1, 2015, you may 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 PTO 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 PTO 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 HWHF.

## 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.

The lump-sum approach doesn’t 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.

### **Employers that offer accrual options may cap the employee’s total accrual amount.**

An employer also can 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 HWHF, family member is defined as a child, parent (including parent-in-law), spouse or registered domestic partner, grandparent, grandchild, sibling or a “designated person.” Under the law, a “designated person” is “any person identified by the employee at the time the employee requests paid sick leave,” (i.e., doesn’t need to be a close family member) though an employer may limit an employee to one “designated person” per 12-month period for purposes of paid sick leave.
- 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 they need 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.

## Employees who leave are not entitled to a payout on accrued but unused paid sick leave.

- 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 a HWHF violation. Unless the certification is required pursuant to another leave law, no provision in HWHF allows 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 methods to calculate how to pay employees who take paid sick time:

- For nonexempt employees, calculate paid sick time either:
  - » 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; or
  - » 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, calculate paid sick time in the same manner as wages are calculated for other forms of paid leave time.

## What Happens When an Employee Leaves?

Generally speaking, 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.

## Employers must comply with several notice, posting and recordkeeping requirements under HWHF ...

Also important to note is that:

- If an employee leaves employment and is rehired within one year, previously accrued and unused paid sick days must be reinstated.
- 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?

HWHF 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."
- **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, contains information about an employee's right to accrue and use paid sick leave and about employee protections under HWHF. The [Wage Theft Notice](#) is available on the Labor Commissioner's [website](#) and also on HRCalifornia.
- **Poster:** There's a required poster advising employees of their sick leave rights available on the Labor Commissioner's [website](#). It's also included in CalChamber's *California and Federal Employment Notices Poster*. In addition to posting the notice in the workplace, California law

allows employers to send electronic versions of the notice to remote employees who don't come into the workplace. California law expressly states that an employer's ability to send electronic notices does *not* alter employers' obligation to *physically display* required posters. For an employee who works remotely full time, their remote location is their workplace, and they must post the notice there.

- Recordkeeping Requirements: Employers must keep records for at least three years that document the number of hours 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 PTO.

## 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 HWHF;
  - » Cooperating in an investigation; or
  - » Opposing any policy or practices prohibited by HWHF.

**Stiff fines and penalties exist for employers who don't provide sick days to employees.**

## What Happens if I Don't Comply?

- HWHF 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.
- HWHF 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; notice errors that are clerical; or inadvertent mistakes won't be considered violations of HWHF. 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 must review these laws carefully, as the employee may use whichever law provides the most benefit or protection to them.

## What Steps Should I Take?

This law is not simple, but since it's been in effect since 2015, most employers are relatively familiar with it. Still, as you periodically review your employee handbook and policies for necessary updates or changes, it doesn't hurt to ensure that your current policy complies with the HWHF Act. To do this, you should:

- Verify your chosen method of providing the paid sick leave benefit.
- Review existing sick or PTO policies and make any necessary revisions.
  - » CalChamber's [Employee Handbook Creator](#)® can help you convey the mandatory paid sick leave benefit to your employees.
- Assess recordkeeping, timekeeping and payroll practices.
- Post the paid sick leave poster. CalChamber's convenient [California and Federal Employment Notices Poster](#) and [California Required Notices Kit](#) contain the paid sick leave posting.
- Continue to train/educate supervisors on the law and its prohibitions against denying the right to take leave and against discrimination.

v11282022

## CalChamber Can Help ...

Did you find this white paper helpful? Sign up for a [free 7-day trial of HRCalifornia](#), which includes the website's HR library, compliance tools, and select forms and checklists that help California employers with HR compliance. Limited access with a free trial.

To learn more about CalChamber resources, just call our Customer Service Representatives at (800) 331-8877, Monday through Thursday from 8 a.m. to 5 p.m. PT., and Friday from 8 a.m. to 4 p.m. PT.

SHARE THIS WHITE PAPER:

