

California Becomes Second State to Mandate Paid Sick Leave

When Governor Jerry Brown signed the Healthy Workplaces, Healthy Families Act of 2014 into law on September 10, California became the second state to require employers to provide paid sick leave. Both public and private employers should begin to review their existing sick leave policies and practices, and consider whether changes will be needed to ensure compliance when the new law takes effect on July 1, 2015.

Background

Paid sick leave laws are increasingly being adopted — or considered — by cities and states across the country. (See our [September 5, 2014 For Your Information](#).) San Francisco, New York City, Washington DC, Portland, Seattle, Philadelphia, San Diego, and Eugene have enacted paid sick leave laws. In New Jersey, Newark and Jersey City already have paid sick leave laws in effect, and East Orange, Passaic, Paterson, and Irvington have passed laws that are expected to take effect soon. However, only one state — Connecticut — has a statewide mandate in place. (See our [June 29, 2011 For Your Information](#).)



The California Paid Sick Leave Law

When the [Healthy Workplaces, Healthy Families Act of 2014](#) (AB1522) takes effect on July 1, 2015, nearly all California employers will be required to provide a minimum number of sick days per year to every employee who works in-state for 30 or more days in a year (counted beginning on July 1, 2015). The mandate will apply to all employers with at least one employee, including state and municipal government employers, and will be enforced by the California Labor Commissioner.

Comment. Unlike the federal Family and Medical Leave Act, which applies only to employees who work at a location where the employer has at least 50 employees within 75 miles, the California law will apply regardless of the number of employees the employer has in a particular location or workplace.

Employees who satisfy the minimum in-state work threshold will be eligible for paid sick time under the new law with the following exceptions:

- Employees covered by a valid collective bargaining agreement that expressly provides paid sick leave, final and binding arbitration of disputes about paid sick days, a regular hourly rate of pay that is at least 30% more than the state minimum wage, and premium wage rates for overtime
- Construction industry employees covered by a valid collective bargaining agreement
- In-home supportive service providers
- Employees of an air carrier as flight deck or cabin crew members, as long as they are provided with compensated time off equal to or exceeding the amount under the new law

Accrual, Use, and Carryover

Beginning on the later of their first date of employment or July 1, 2015, employees will be eligible to accrue paid sick leave at the rate of one hour per every 30 hours worked. Accrual will be capped at 24 hours (three days) per year. For these purposes, the workweek for exempt employees is considered to be 40 hours.

Employees will be entitled to use accrued sick time beginning on the 90th day of employment. In its discretion, an employer may opt to lend paid sick days to an employee in advance of their accrual. Paid sick days are to be paid at the employee's regular hourly wage. The law provides guidance on determining the applicable rate if the employee had different hourly pay rates, was paid on commission or by piece rate, or was a nonexempt salaried employee in the 90 days of employment before taking accrued leave. In such circumstances, the applicable rate of pay is determined by dividing the employee's total wages (excluding overtime premium pay) by the total hours worked in the pay periods of the prior 90 days. Payment for covered sick leave must be made no later than the payday for the next regular pay period following the sick leave.

Employees will be able to use the paid sick time for the diagnosis, care, or treatment of their own or a family member's existing health condition or preventive care. Sick leave may also be used if the employee is a victim of domestic violence, sexual assault, or stalking. Although the employee can determine how much covered sick leave to use, the employer may set a reasonable minimum increment — not to exceed two hours — for its use. Sick leave must be provided upon oral or written request. If the need for leave is foreseeable, the employee is to provide reasonable advance notice. If not foreseeable, notice should be given as soon as practicable.

Comment. Employers that already have a paid sick leave policy or paid time off (PTO) policy in place will not be required to provide additional sick time as long as their current policies provide at least three paid sick days annually and satisfy the minimum accrual, carryover, and use requirements of the new law.

San Francisco, Long Beach, and San Diego have different requirements.

Paid sick leave ordinances in effect in San Francisco and Long Beach, and slated to take effect in San Diego next April, differ from the new state law.

Employers in these cities will have to integrate their policies to ensure compliance at both the state and local level.

PTO Banks

California employers that combine vacation and sick time into a PTO bank will still have to comply with state law requiring payout of accrued but unused time at termination.

Employees will be entitled to carryover accrued but unused sick time to the following year, up to a maximum of 48 hours (six days) of paid sick time. An employer can, however, limit the amount of sick time that can be used to 24 hours or three days per year. Although employers will not be required to cash out any accrued but unused sick leave at the time of termination, they will be required to reinstate previously accrued and unused paid sick days to an employee who is rehired within one year after separation. The employee will be able to use those days and begin to accrue additional paid sick days upon rehire.

Employer Notice and Recordkeeping Obligations

Employers will be required to provide new hires at the time of hire with a written notice of their rights under the new law. Employers must also provide written notice of available paid sick time each time wages are paid — either on the employee's itemized wage statement or on a separate notice provided along with the employee's wage payment. In addition, employers will be required to display a poster in a conspicuous place that informs employees of their rights under the new law. A poster containing the required information will be created by and available from the Labor Commissioner. Finally, employers will be required to maintain for a three year period records of the hours worked and the paid sick days accrued and used by each employee.

Nondiscrimination and Anti-retaliation Provisions

The new law will prohibit employers from denying an eligible employee the right to use accrued sick days, or to discharge or threaten to discharge, demote, suspend, or discriminate against an employee for using such time. It also prohibits requiring an employee, as a condition of taking sick time, to find a replacement to cover his or her absence.

Penalties for Noncompliance

Under the new law, an employer that willfully violates the posting requirements will be subject to a civil penalty of not more than \$100 per offense. Employees will be entitled to three times the dollar amount equivalent of paid sick days withheld or \$250, whichever is greater, up to a maximum of \$4,000. For other violations, including failure to provide notice each time wages are paid, employers will face a maximum penalty of \$50 per day, up to a maximum of \$4,000. The law will also allow the Labor Commissioner to assess a fine of \$50 for each employee whose rights were violated for each day a violation occurs or continues.

Interaction with Other California Laws

Because the new law will interact with a number of other state laws, employers will have to factor them into an overall compliance strategy. Among those are the following.

Wage Theft Prevention Act. Labor Code section [2810.5](#) requires employers to provide each employee at the time of hiring a written notice containing certain wage and other information. These notices will have to be amended to include a statement about employee rights under the new paid sick leave law.

Itemized Wage Statements. Labor Code section [226](#) requires employers to provide an itemized wage statement showing gross/net wages earned, hours worked, hourly/piece rates, deductions, dates of pay period, employee name, and employer information. Under new Labor Code section 246(h) added by the paid sick leave law,

employers will also have to provide the amount of paid sick leave (or PTO) available either on the itemized wage statement required under section 226 or in a separate writing accompanying the employee's wage payment.

Domestic Violence, Sexual Assault, and Stalking Leave. Employers are prohibited under Labor Code sections [230](#) and [230.1](#) from discharging, discriminating, or retaliating against an employee who is a victim of domestic violence, sexual assault, or stalking for taking time off from work to obtain or try to obtain legal relief (such as a restraining order or injunction) to help ensure the health, safety, or welfare of the victim or his or her child. Employers with 25 or more employees are also obligated under section 230.1 not to discharge or in any manner discriminate or retaliate against victims for taking time off from work to attend to: seek medical attention for related injuries; obtain services from a domestic violence shelter, program, or rape crisis center; obtain psychological counseling; participate in safety planning and take other preventive actions, including relocation. The paid sick leave law would allow employees to use paid sick days for these purposes, and would prohibit discharge, discrimination, or retaliation against employees for doing so.

Sick Leave to Care for a Child, Parent, Spouse, or Domestic Partner. Labor Code section [233](#), the state's "kin care" law, requires employers that provide paid or unpaid sick leave to permit employees to use at least one-half of the employee's annual sick leave entitlement in any calendar year to care for the illness of the employee's child, parent, spouse, or domestic partner on the same terms and conditions that would apply to the employee's own illness. Because the new law expands the types of family members for which employees will be able to take paid leave to include parents-in-law, grandparents, grandchildren, or siblings, sick leave policies that currently satisfy section 233 requirements likely have to be revised.

Comment. The California Paid Family Leave (PFL) program also provides benefits to employees who take time off to care for seriously ill grandparents, grandchildren, siblings, and parents-in-law. (See our [November 18, 2013 For Your Information.](#)) However, grandparents, grandchildren, and siblings are not considered "family members" under the California Family Rights Act.

In Closing

The paid sick leave law does not go into effect until July 1, 2015. Employers that currently have sick leave policies may have to expand them to cover all employees who may be eligible to accrue and entitled to use paid sick leave under the new law. Every employer should review existing policies and procedures to make sure they will meet the new law's minimum requirements and identify any changes that will be needed to ensure compliance when the new requirements take effect.

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