

Feel Better? California Amends Paid Sick Leave Law

California's Healthy Workplaces, Healthy Families Act of 2014 required nearly all private- and public-sector employers to provide paid sick leave, beginning July 1. Since then, California enacted legislation to clarify and amend certain aspects of the new statewide mandate. California employers will want to review and update their sick leave policies and practices in light of these changes.

Background

California's [Healthy Workplaces, Healthy Families Act of 2014](#) generally took effect on January 1, 2015, and eligible employees began to accrue paid sick leave under that law on July 1. Now, nearly all private- and public-sector employers must provide paid sick time to full-time, part-time, temporary and seasonal employees who work in-state at least 30 days within a year of beginning employment. The mandate extends to California employers with at least one employee, including state and municipal governments. (See our [July 1, 2015 FYI In-Depth](#).) On July 13, California enacted legislation ([AB 304](#)) amending the paid sick leave law, effective immediately.

The Amendments

The amended law allows employers greater flexibility in satisfying the accrual requirements, simplifies how employers are to calculate the payment of accrued sick time under the new law, and provides other important clarifications highlighted below.

Covered Employees

Most employees who satisfy the minimum in-state work threshold (even if headquartered elsewhere) will be entitled to paid sick time under the new law. AB 304 clarified that an employee must work in California *for the same employer* for 30 or more days within a year from beginning employment to be eligible to accrue sick leave with that employer.



While the paid sick leave law applies to almost every employee who satisfies the 30-day requirement, it contains limited exceptions for employees covered by collective bargaining agreements (CBAs) that provide for paid sick leave and industry-specific exemptions for certain CBA-covered construction employees, in-home support service

workers, and flight crew employees. AB 304 creates an additional exception for retired annuitants from a public entity who return to work while still receiving their pension annuity.

Accrual

The new law permitted employers to provide paid sick time either by: (1) accruing one hour of paid sick leave per every 30 hours worked; or (2) granting a lump sum of 24 hours or three days of paid sick leave at the beginning of each year. Employers with sick leave or PTO policies that provided as much paid time off usable for the same purposes and under the same conditions as the new law were not required to provide additional paid sick time.

AB 304 allows an employer to use a different accrual method, as long as it satisfies the following criteria. The accrual must be on a regular basis, and provide an employee with no less than 24 hours of accrued sick leave or paid time off by the 120th day of employment each calendar year (or other 12-month basis). An employer may also satisfy the accrual requirement by providing no less than 24 hours (or three days) of paid sick leave that is available for the employee's use by the completion of his or her 120th calendar day of employment.

Pre-Existing Paid Sick Leave or PTO Plans

AB 304 effectively grandfathers paid sick leave or PTO plans in place as of January 1, 2015 that use an accrual rate other than one hour of paid sick leave per every 30 hours worked as long as: (1) the accrual is on a regular basis; (2) existing employees and new hires have no less than one day or eight hours of accrued sick leave or PTO within three months of employment of each calendar year, or each 12-month period; and (3) employees are eligible to earn at least three days or 24 hours of sick leave or PTO within nine months of employment. If, however, the employer modifies the accrual rate, the plan will lose its grandfathered status. In that case, the employer will have to comply with the new law's accrual methods or frontload the full amount of leave.

Carryover and Use

While the new law entitles employees to carry over accrued but unused sick time to the following year, the employer may limit the amount of sick time that can be used to 24 hours or three days per year. AB 304 does not change the carryover provisions, but clarifies that an employer may limit an employee's use of accrued paid sick days to 24 hours (or three days) in each year of employment, calendar year, or 12-month period. No carryover is required if the employer frontloads the full amount of leave at the beginning of each year of employment, calendar year, or 12-month period.

Applicable Pay Rate

AB 304 clarifies that an employer may choose one of two methods to calculate paid sick time for non-exempt employees: (1) use the same regular rate of pay for the workweek in which the employee uses paid sick time (whether or not the employee works overtime in that week); or (2) divide the employee's total wages (not including overtime premium pay) by the employee's total hours worked during the full pay periods of the prior 90 days. For exempt employees, employers are to use the same rate used for other paid leave, such as vacation.

Rehires

AB 304 clarifies that an employer will not be required to reinstate accrued sick leave for rehires if, even though not required, it paid out the employee's unused balance on separation. Otherwise, previously accrued but unused paid sick days would have to be reinstated if the employee is rehired within one year.

Recordkeeping

Currently, employers are required to maintain for a three-year period records of the hours worked and paid sick days accrued and used by each employee. AB 304 makes clear that employers are not required to inquire into or record the purposes for which such leave is used.

Unlimited Sick Leave

Employers are required to provide employees with written notice of the amount of paid sick time accrued and available each time wages are paid — either on the employee's itemized wage statement or on a separate notice accompanying the employee's paycheck. Under AB 304, employers that provide unlimited paid sick leave or unlimited time off can simply indicate "unlimited" on the employee's pay statement or other notice. AB 304 also delays the application of the notice requirement until January 21, 2016 for employers in the broadcasting and motion picture industries, taking into account the common industry practice of using different third-party payroll companies for each production.

In Closing

The amendments to California's new paid sick leave law took effect on July 13. California employers should make sure to review and update their sick leave policies and practices in light of these changes.

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