

Employers' Guide to California's New Paid Sick Leave Law

Employers' Guide to California's New Paid Sick Leave Law

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Agenda

- National status of paid sick leave
- Basic obligations of California's Healthy Workplaces, Healthy Families Act of 2014
- Penalties/enforcement
- Compliance issues
- Email questions at any time!

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Paid Sick Leave Sweeping the Nation!

- Connecticut!
- Jersey City!
- New York City!
- Newark!
- Portland!
- Seattle!
- D.C.!!!

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Still Sweeping the Nation!

- On ballot in Trenton!
- Federal law has been introduced in each session of Congress since 2004!!!

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Healthy Workplaces, Healthy Families Act of 2014

- Governor Brown signed the HWHFA in September 2014
- Takes effect on July 1, 2015
- Although publicized as paid sick leave, also applies to leave for domestic violence, sexual assault, and stalking

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Law's Purpose

- To provide lower paid employees with paid sick leave
- Aim of the law is the smaller, less sophisticated employer
- Examples: restaurants, nonunion janitors
- Larger employers already provide the leave the law requires



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Which Employers Must Provide the Leave?

- Employer = "any person employing another under any appointment or contract of hire"
- No exclusion for small employers



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Which Employees Are Entitled to Leave?

- Applies to employees who after July 1, 2015:
 - work in CA;
 - 30 days or more;
 - within a year from commencement of employment.



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Does the Law Exempt Anyone?

- Some employees covered by CBAs
- Construction industry + CBA
- In-home supportive service providers
- Flight deck or cabin crew members



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For What Reasons Can An Employee Take Paid Sick Leave?

- Employee's own qualifying need
- Family member's qualifying need for diagnosis, care, or treatment of an existing health condition; or preventive care.



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Reasons an Employee Can Take Paid Leave?

- Not limited to sick leave
- Employee also can use leave if the employee is a victim of domestic violence, sexual assault, or stalking.



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Who Is a Family Member?

- Child (regardless of age or dependent status)
- Parent
- Spouse/registered domestic partner
- Grandparents/grandchild
- Sibling



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When Can Employees Start Taking Paid Leave?

- Employers may require that employees wait until the 90th day of employment to start using paid sick leave.



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Accrual Method

- Under the law, employees accrue one hour of sick time for every 30 hours worked (including overtime hours).



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Accruals for Exempt Employees

- Accrual is based on a 40-hour week.
- If normal workweek is less than 40 hours, accrual based upon that employee's normal workweek.
- Does not matter if employee works more than 40 hours a week



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Cap on Usage

- Employers can cap use (but not accrual) of paid sick leave at 24 hours (or three days) in each year of employment.



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Carry Over Required

- Employees can carry over all accrued paid sick days to the following year of employment (up to six-day cap).
- Employer still can limit use to 24 hours a year.



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Cap on Accrual

- Employer may limit or cap accrual to a maximum bank of 48 hours or six days of paid sick time.



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Upon Termination



- Not required to pay out accrued leave unless employer has a PTO policy that allows PTO to be used for sick leave.



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Retaliation Prohibited



Employers cannot:

- Deny an employee the right to use accrued sick time.
- Require an employee to find a "replacement" for his or her time off.
- Discriminate/retaliate against an employee for exercising his or her rights under the Act.



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Rebuttable Presumption



- Rebuttable presumption of unlawful retaliation if negative action taken within 30 days of:
 - Filing a complaint with Labor Commissioner
 - Cooperating with an investigation
 - Opposing a policy, practice, or act prohibited by the Act

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Record Keeping

- Employers must keep records of hours worked, sick leave accrued, and sick leave used for a period of three years.



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Wage Statements, Notices, & Posting

- Wage statements must show the hours of sick leave available.
- Wage Theft Prevention Act notice must include sick leave rights.
- Labor Commissioner will create a poster for employers to post.



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Enforcement

- Employee must go through DLSE
- No private right of action (so far)
- DLSE/AG can go to court for the employee (and get attorneys' fees)



Remedies

- Reinstatement
- Back pay


Administrative Penalties for Unlawful Withholding

- Three times the dollar amount of paid sick time withheld from the employee or \$250 (whichever is greater)
- Not to exceed \$4,000




Penalties for "Other Harm" to Employee

- An administrative penalty of \$50 per day for each day
- Not to exceed \$4,000



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Improper Recordkeeping



- If an employer fails to maintain adequate records, the employee will be entitled to the maximum number of hours accrual, unless the employer can show otherwise by clear and convincing evidence.

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Penalties for Lack of Prompt Compliance

- Penalty of \$50 per day paid to the state for each day, or portion thereof, for which a violation occurs or continues for each employee whose rights were violated.
- No cap on \$50 per person, per day sum



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Compliance Issues

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Do I Have to Give Employees Even MORE Paid Leave?

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PTO Policies

- Employers are NOT required to provide additional paid sick days if PTO policy makes available:
 - same amount of leave
 - that may be used for same purposes and
 - under same conditions as the law requires.

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How Can I Avoid Tracking Accrual?

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Lump Sum Method

- An employer may avoid calculating accrual and carry-over by frontloading the full amount of leave that could be used at the beginning of each year, i.e., 24 hours or three days.



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Can I Require Employees to Give Me Medical Documentation?

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Do I Still Have to Comply with CA City Paid Sick Leave Ordinances?



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Integration with Other Laws

- Act does not preempt local ordinances that provide greater rights.
 - San Francisco Paid Sick Leave Ordinance
 - Designated person
 - Caps of up to 72 hours
 - No cap on use
 - San Diego
 - Cap of 40 hours accrual/year



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What Specific Language Should My PTO/Sick Leave Policy Include?



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Policy Should Include

- May use sick leave for reasons explained in statute
- No retaliation for using sick leave

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What If I Have an Unlimited Sick Leave/PTO Policy?

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Is One National Policy Feasible?

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Pre-July 1 Compliance Steps

1. Elect accrual or lump sum method.
2. Revise policies to include statutory reasons for leave and anti-retaliation
3. Educate managers
4. Make sure wage statements include sick leave
5. Distribute postings



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Thank You

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