

A photograph of three business professionals in a hallway. A woman in a dark suit is smiling and looking towards two men in suits. One man is holding a smartphone. The background is a modern office hallway with recessed lighting.

Today's webinar will begin shortly. We are waiting for attendees to log on.

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California Paid Sick Leave Coming: July 1, 2015

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Preparing for Mandatory Paid Sick Leave



Who is Covered?

- Employer
 - “Any person employing another under any appointment or contact of hire”
 - No exemption for small employers

Who is Covered?

- Employee
 - Most employees who work 30 or more days within a year *in California*
 - Includes part-time and temporary employees
 - Limited exclusions for:
 - Employees under collective bargaining agreements meeting specific requirements
 - On-site construction workers covered by a valid collective bargaining agreement
 - Certain state-funded in-home healthcare providers
 - Airline flight deck or cabin crew members subject to federal labor law

Accrual of Paid Sick Leave

- Accrue 1 hour of paid sick leave for every 30 hours worked (including overtime)
- Employers may limit use of paid sick leave to 24 hours/3 days each year
- Accrual Cap/Carryover: must allow carryover, subject to 48-hour/6-day accrual cap

Compliance without Formally Implementing the New Law

- No requirement that employers with an existing paid leave policy (which meets the requirements of the Act) provide additional paid sick leave
- May satisfy accrual and carryover requirements by providing full amount of leave at beginning of each year

When Can Employees Begin to Take Paid Sick Leave?

- Employees who have been employed for more than 90 days on July 1, 2015: immediately upon accrual
- Otherwise, beginning on the 90th day of employment
- Employers may impose a reasonable minimum increment for use (≤ 2 hours)

Permissible Uses

- Diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member
 - Covered family members: spouse, registered domestic partner, children (regardless of the child's age or dependency status), parents (incl. step-parents and parents-in-law), grandparents, grandchildren, and siblings
 - Expansion of Kin Care
- For an employee who is a victim of domestic violence, sexual assault or stalking to seek aid, medical attention, obtain services or counseling, or participate in safety planning

Payment of Sick Leave

- Rate of Pay for Sick Leave:
 - “[T]ime that is compensated at the same wage as the employee normally earns during the regular work hours”
 - Hourly rate of pay, **unless** fluctuating hourly rate, paid commission or piece-rate, or nonexempt salaried
 - Total wages earned (excl. OT) ÷ total hours worked in full pay periods of prior 90 days
- No requirement to pay out accrued, unused sick days upon separation
 - Reinstatement of accrued/unused sick leave

Wage Theft Prevention Act

- AB 1522 amends the Wage Theft Prevention Act
- Notice must state
 - EEs may accrue & use paid sick leave
 - Right to request sick leave
 - May not be terminated or retaliated for requesting/using sick leave
 - Right to file a complaint

Workplace Posting

- Must display a poster containing all of the following:
 - Employee entitlement to accrual, use, & requests for sick leave
 - Minimum amount of sick days provided by law
 - Terms of Use
 - Redress for retaliation & discrimination
- Poster must be displayed
 - In a conspicuous place
 - In “each workplace of the employer”
- Willful violations of the posting requirements carry a \$100 fine for each offense

Changes to Pay Stubs

- Must provide “written notice” of “available” sick hours or PTO on each pay date
- Written notice must appear either
 - On the itemized wage statement; or
 - In “a separate writing” at the time of pay with the employee’s payment of wages
 - Pay Stub Insert?
 - Posting on an Electronic Portal?

Record Retention & Inspection

- Employers must keep a record of:
 - Hours employee worked
 - Accrued sick days
 - Amount of used sick days
- Minimum retention period: 3 years
- DLSE §1174 inspection & investigations
- Employee may inspect under §226 demand

Record Retention & Inspection (cont'd)

- Inadequate records - presumption that employee is entitled to 48 accrued hours (or 6 days) **UNLESS** employer can prove to the contrary by “clear and convincing evidence”



Enforcement and Penalties

Enforcement & Penalties

- Labor Commissioner
 - Investigations (Lab. Code §1174)
 - Conduct administrative hearings
- DLSE Administrative Hearing
 - Reinstatement, backpay, payment of sick days plus fines (up to \$4,000), administrative penalty
- Class Actions
 - New breed of class actions?

Enforcement & Penalties (cont'd)

- Civil Actions
 - Labor Commissioner & Attorney General
 - Legal and Equitable relief
 - Penalties (up to \$4,000)
 - Liquidated damages (\$50/per employee for each day of the violation)
 - Reasonable attorney fees and costs
 - PAGA enforcement
- Delay in compliance
 - Lab. Commissioner can take “any appropriate action” including filing a civil action
 - \$50/day for length of violation
- Remedies, penalties and procedures are cumulative

Rebuttable Presumption of Retaliation

- Rebuttable presumption of retaliation exists if an employer does any of the following within 30 days of the employee engaging in protected activity
 - Denies the employee the right to use accrued sick days
 - Discharge/threaten to discharge
 - Demote, suspend, or “in any manner discriminate”



Tackling Some of the Questions Left Unanswered by the Act

Considerations in Implementing a PTO Policy to Meet Paid Sick Leave Requirements

Pros	Cons
Existing policy: “We don’t have to do anything because we already have a more generous PTO policy in place.”	Given the accrual, usage, and reinstatement provisions of the new law, an employer with an existing PTO policy (even one more generous than what is required under the Act) will likely need to update its policy, as well as its documentation and recordkeeping practices.
Frontloaded policy: avoids administrative hassle of calculating accrual and carryover	Does the company want to extend an existing policy to all employees? Separate policies for part-time/temporary employees? Result in employers moving away from PTO?
	Must cash out PTO upon separation
	Must reinstate accrued paid sick leave for rehired employees—no credit for the amount previously cashed out at time of separation

Notification and Verification Considerations

- Reasonable advance notification for foreseeable need for paid sick leave
- “As soon as practicable” for unforeseeable need for paid sick leave
 - Defining “as soon as practicable”
 - Discipline for failing to comply with employer’s notification policy?
- Reasonable to require employees to provide a doctor’s note for every use of paid sick leave?

Unlimited Paid Leave/PTO Policies

- Can you keep an unlimited leave policy for employees?
 - Such a policy clearly exceeds the accrual, carryover, and use requirements of the Act
- **But...**
 - Recordkeeping nightmare for employers who don't currently track how much time employees take off and for what reason
 - Consider: separate, static paid sick leave bank that gets reported on wage statements?

Thank You

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