

The who what where how of California's new mandatory sick leave law

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First, questions, a note & a disclaimer

- ▶ Intros
 - ▶ What is your knowledge of this new law already?
 - ▶ None/very little?
 - ▶ Quite a bit?
 - ▶ Expert here to see how much we get wrong?
- ▶ Do you have workers covered by a collective bargaining agreement?
- ▶ Slides will be posted on our website/blog for a month (www.sequoiapersonnel.com/blog)
- ▶ We are pretty knowledgeable, but we are not experts or attorneys

Agenda for this hour

- ▶ Basics of the law
- ▶ How employees earn sick leave & the two methods you have for offering it (accrual & lump sum)
- ▶ Allowed uses of this sick time
- ▶ How this works with existing time off/sick time policies
- ▶ Payment of sick leave benefits
- ▶ Important legal eagle details: enforcement, retaliation, separation, record retention, posting requirements
- ▶ Plenty of time for your questions
- ▶ Our agenda: provide a solid introduction and let you know we're available for consultation if you need help

Basics of the law

- ▶ Law introduced last January, signed in September, some parts effective January 1, 2015; big date is July 1, 2015
- ▶ Applies to all employers
- ▶ Applies to almost all employees: full-time, part-time, seasonal, temp, out of state working in CA, exempt & non-exempt, if they work 30 days in a calendar year in California
- ▶ Exceptions are
 - ▶ Those covered by a collective bargaining agreement that meets certain standards such as providing sick leave and arbitration
 - ▶ Construction employees covered by a CBA
 - ▶ A few other minor exceptions

Earning paid sick leave, method 1: **accrual**

- ▶ Existing employees begin to accrue on 7/1/15.
- ▶ New employees hired after 7/1 begin accruing on their hire date (no exemption for “probationary” period)
- ▶ 1 hour for every 30 hours worked, including overtime hours worked (e.g., someone working 40 hours/wk would earn 1.33 hours/wk)
- ▶ Exempt employees assumed to be based on 40 hour week. If not 40-hours, base on actual schedule
- ▶ Employees can start using paid sick time after 90 days

Accrual, cont.

- ▶ Accrued sick time cannot be use-it or lose-it
- ▶ But employers may cap the accrual at 48 hours or 6 days AND
- ▶ This does not have to be paid out at separation.
- ▶ The accrual method is advantageous if you have higher than average turnover in your workforce, if you employ people for short periods, etc., AND you have admin/system capability to track it.
- ▶ May sure your payroll people/service are on top of this!
- ▶ We can help

Paid sick leave, method 2:

lump sum

- ▶ Offered at beginning of year for immediate use (7/1 this year only)
- ▶ Minimum of 3 days or 24 hours per year
- ▶ Advantages:
 - ▶ less administrative burden, especially if your systems don't handle accruals and carryovers well.
 - ▶ You don't have to roll over sick time from year to year
- ▶ Disadvantage: obvious...someone can take this immediately and leave you
- ▶ And remember that you still need to track usage/remaining leave available on your pay stub

Use of sick time



- ▶ Available to employee at 90 days
- ▶ Employees are encouraged to give employers notice, if possible
- ▶ That said, employees are “in the driver’s seat” on how they use it
- ▶ Employers are prohibited from requiring employees to find a replacement
- ▶ Law itself is silent on doctor’s notes, etc. However, the state government folks said that asking for details or doctor’s notes could be interpreted as interfering with the right to use leave

Appropriate uses of the time

- ▶ Employees may use time for diagnosis &/or treatment of an existing health condition or preventative care for themselves or a family member
- ▶ A “family member” under this law is child, parent, spouse or registered domestic partner...
- ▶ ...as well as grandparent, grandchild or sibling
 - ▶ This is outside of kin care/FMLA/CMRA law. It's broader → admin burden that you'll need to be able to track separately
- ▶ Victims of sexual assault, domestic violence & stalking specifically called out

Some allowed limitations

- ▶ Reasonable increments: you can require an employee to take at least 2 hours at a time
- ▶ You can limit employees to taking only 3 days/24 hours per year

Paid time off v. existing plans

- ▶ If you have an existing policy that does at least as much as this new law requires (ALL OF IT), you don't need to change it
- ▶ Specifics: legal counsel

Payment of sick leave benefit

- ▶ Needs to be paid out no later than the next payday after the leave was taken
- ▶ Same rate as hourly pay for hourly workers
- ▶ Employees with variable rates have this formula: wages over the previous 90 days/hours worked (exempting overtime premium) in the previous 90 days x sick leave hours taken
- ▶ Exempt is unclear...My 2 cents: make AND document a good faith effort
- ▶ We can help

Separation

- ▶ If an employee is rehired within one year of separation, they must receive any remaining sick leave from their previous time...so keep it on the books
- ▶ AND, they immediately begin accruing new leave up to the cap (remember: at least 48 hours)
- ▶ Remember that PTO must be paid out, so smart money is that you don't have to reinstate that.

Don't retaliate!

- ▶ Same as other labor code
- ▶ “Rebuttable presumption of retaliation” if an employee is let go/demoted/etc. within 30 days of requesting or inquiring about paid sick leave

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Record retention (3 years)

- ▶ Hours each employee worked
- ▶ Paid days of sick leave accrued
- ▶ Paid days of sick leave taken
- ▶ Advancement of sick leave, if you do this
- ▶ Must be available for inspection by labor commissioner, employee
- ▶ Presumption, without records, is the employee has a right to maximum

Posting requirements



- ▶ Effective July 2015, hours accrued and available to employee, either on currently required wage statement or in writing with the wage statement
- ▶ You should already have (as of 1/1):
 - ▶ updated wage theft notice (non-exempt/hourly only)
 - ▶ required poster
- ▶ Keep abreast of changing rules at www.dir.ca.gov

Enforcement



- ▶ There are lots of penalties, etc., for not posting, for withholding the sick leave, etc.
- ▶ Labor Commissioner, Attorney General charged with enforcement; private attorneys can also sue.
- ▶ No liability for “isolated and unintentional errors” ...clerical mistakes, etc. BUT your policies and procedures need to be tight.
- ▶ Our take: pay stub is crucial.

Miscellaneous

- ▶ You can be more generous if you like
- ▶ This does not change your obligations under existing CBA, contracts, etc.
- ▶ Similarly, it does not reduce obligations if you have employees that work in a city with a required sick leave law (e.g., San Francisco)
- ▶ Cal Chamber: “Mandate does not impact existing leave laws or locally adopted leave laws. However, conflicts exist, which raises compliance questions.”
- ▶ If you have an unlimited PTO policy, talk to legal counsel on what you need to do to satisfy this law.

Recap: 6 keys to successful compliance

1. Display poster on paid sick leave where employees can read it easily. Document policy and share with staff.
2. Provide written notice to individual employee at the time of hire with paid sick leave information.
3. Either provide for accrual of one hour of sick leave for 30 hours of work for each eligible employee to use or grant 3 days on 7/1/15 and then on 1/1 after that.
4. Allow eligible employees to use accrued paid sick leave upon request or notification.
5. Show how many hours of sick leave an employee has available. This must be on a pay stub or a document issued the same day as a paycheck.
6. Keep records showing how many hours have been earned and used for three years.

Resources

- ▶ Paid Sick Leave website: www.dir.ca.gov/DLSE/ab1522.html
 - ▶ Workplace posting in English, Spanish and Vietnamese
 - ▶ Notice to employee in English, Spanish and Vietnamese
 - ▶ FAQ
- ▶ Email comments / questions to AB1522@dir.ca.gov
- ▶ Labor Commissioner's District Offices
- ▶ Contact information available
<http://www.dir.ca.gov/dlse/DistrictOffices.htm>
- ▶ **Shameless plug: we are happy to help!**

Sources

- ▶ Cal Chamber resources, webinar
- ▶ Littler Mendelson - An Update on the Epidemic: California's Statewide Paid Sick Leave Law
- ▶ REPMA (Dave Turner presentation)
- ▶ Go Biz/Department of Industrial Relations webinar
- ▶ Jennifer Shaw's labor law update on 2015 NEAC conference

Questions? Need some help?

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- ▶ Michael Kraft & Debi Callahan
- ▶ Sequoia Personnel Services
- ▶ 707-445-9641

