



## **UPDATE - NEW PAID SICK LEAVE IN CALIFORNIA**

California's new law requiring that employers provide paid sick leave is outlined below. The law is effective January 1, 2015. While employers don't need to start accruing or providing sick days until **July 1, 2015**, many employers are modifying their policies before July 1, 2015 to begin with the calendar year. In any case, employee-qualifying periods begin as of January 1, as do new poster and notification requirements.

This law is groundbreaking and requires changes to virtually every employer's written policies, employee handbooks, and payroll check stubs.

Action items for employers (best if done prior to January 1, 2015):

- Check all existing leave policies (vacation, sick and PTO) to ensure they comply with the new law;
- Decide whether to use the "accrual" or "lump sum" method described below;
- Check with payroll service providers to determine if they can adequately report your new system on employee paystubs;
- Begin using the Labor Commissioner's new "wage theft notice" attached [here](#); and
- Display the new sick leave poster in your workplace, attached [here](#).

The full text of the law is here: [AB 1522](#). The highlights are:

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### **Applicability**

1. The law applies to all public and private employers, regardless of size.
2. The law applies to exempt and non-exempt employees, including full-time, part-time, seasonal and temporary employees. However, to be eligible for paid sick leave, an employee must work for you in California for at least 30 days within a year of commencing employment.
3. There are a few exceptions. Employees covered by certain collective bargaining agreements are not covered by the new law. The law does not apply to certain employees who provide publicly-funded in-home supportive services under various sections of the Welfare & Institutions Code. Nor does the law apply to certain persons employed by an air carrier as a flight deck or cabin crew member.

## **Sick Leave Benefits**

1. Employees must accrue at least one hour of paid sick leave for every 30 hours worked. (For accrual purposes, exempt employees are treated as working the lesser of 40 hours per week or their normal schedule.) Accrual can be capped at six days or 48 hours. Unused sick leave carries over from year-to-year.
2. As an alternative to the above “accrual method,” employers can use the “lump sum” method and provide just three days, or 24 hours, of sick leave that can be taken immediately at the start of each benefit year (using a rolling, calendar, or anniversary year basis). This is a “use it or lose it” method, so there is no carryover and no tracking of accrual.
3. The tradeoff for the “lump sum” method’s relative simplicity and fewer days off than the accrual method is that it is subject to abuse. For example, an employee could take sick days on January 2, 3 and 4, then quit on January 5.
4. Employers can use a 90-day probation period, in which accrual begins on the first day of employment but the right to use paid sick leave begins when the employee completes 90 days of employment.
5. Sick leave can be used for the employee’s own condition, including preventive care, or to care for a family member. “Family member” is defined to include children, parents, grandparents, grandchildren, siblings, spouse and registered domestic partner. Be careful: children and parents have expansive definitions under the new law.
6. Sick leave can also be used for the employee’s treatment or otherwise to get help as a victim of domestic violence, sexual assault or stalking.
7. If an employee separates from employment then is rehired within one year, previously accrued/unused paid sick days must be restored.
8. Existing PTO (i.e., policies combining sick and vacation time) and sick leave policies may be sufficient. If a PTO or sick leave policy is at least as generous as the new law, the employer won’t have to provide additional sick leave. Accrual and use of sick leave must be tracked and reported to employees each pay date; therefore, “unlimited time-off” or so-called “no vacation” policies will not satisfy the new law.
9. Unused sick leave does not need to be paid out at termination (unlike PTO and vacation).

## **Employee’s Notification Requirements**

1. Employees only have to give advance notice of the need for sick leave if the need is foreseeable; if not foreseeable, then notice has to be given as soon as practicable.
2. Employee notifications of the need for sick leave can be verbal or written.

## **Complying with the New Law**

1. Employee handbooks and offer letters having contrary or less-generous policies will need to be changed.
2. A new form of the notice required by Labor Code Section 2810.5 (the “Wage Theft Protection Act”) needs to be given to most employees, advising them of their rights under the new law. The Labor Commissioner has updated the standard form.
3. Payroll stubs need to include the employee’s available balance of sick pay on each wage statement; otherwise this information needs to be provided on a separate document each pay date.
4. A new poster is required, advising employees of their sick leave rights.
5. The DLSE (Division of Labor Standards Enforcement) will likely be the main enforcer. Possible remedies for violations include: the withheld sick pay (up to 3x), penalties, interest, attorneys’ fees, reinstatement and back pay.
6. The law includes strong anti-retaliation provisions to protect employees who file a complaint, participate in an investigation, or oppose their employer’s unlawful practice relating to paid sick leave.

If you have any questions about the new sick leave law, or any other employment law issues, please contact us:

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