California Paid Sick Leave Law – FAQs

In 2014, California enacted the Healthy Workplaces, Healthy Families Act of 2014. The law, which is more commonly referred to as California’s Paid Sick Leave law, requires all California employers, regardless of size, to provide employees who work **30 or more days** in a calendar year with **at least 24 hours** of paid sick leave per year. The law took effect on Jan. 1, 2015, but an employee’s right to accrue and take paid sick leave under the law does not take effect until **July 1, 2015**.

The California Division of Labor Standards Enforcement (DLSE) has published FAQs to assist employers in implementing California’s new Paid Sick Leave law.

**ELIGIBILITY FOR PAID SICK LEAVE UNDER THE NEW LAW**

**When does the new law take effect?**

The state’s new sick leave law takes effect Jan. 1, 2015. However, the right to accrue and take sick leave under this law does not take effect until July 1, 2015.

**How do employees qualify for paid sick leave?**

An employee qualifies for paid sick leave by working for an employer on or after Jan. 1, 2015, for at least 30 days within a year in California and by satisfying a 90-day employment period (which works like a probationary period) before the employee can actually take any sick leave.

**What if an employee works less than 30 days in California within a year?**

If an employee works less than 30 days in California within a year, then they are not entitled to paid sick leave under this new law.

**What if an employee works more than 30 days but less than 90 days in California within a year?**

The 90-day period works like a probationary period. Although an employee begins to accrue paid sick leave on July 1, 2015, or their first day of employment if they are hired after July 1, 2015, if an employee works less than 90 days for their employer, they are not entitled to take paid sick leave.

**When is an employee entitled to take paid sick leave?**

A qualifying employee begins to accrue paid sick leave beginning on July 1, 2015, or if hired after that date on the first day of employment. An employee is entitled to use (take) paid sick leave only after meeting the qualifications for paid sick leave and accruing enough paid sick leave time to use for one of the stated purposes of the law.

**Why does the law take effect Jan. 1, 2015, if employees don’t begin accruing until July 1, 2015?**

The different dates are a result of the general effective dates of new legislation (on Jan. 1 following enactment of the law) and the way the law was drafted, making some of its provisions operative on a specified date (July 1, 2015). Both the qualifying periods that determine which employees are eligible for paid sick leave and the employee notice required by Labor Code 2810.5 became effective on Jan. 1, 2015, but the law provides that entitlement does not begin until July 1, 2015.
Does paid sick leave apply to all employees who work in California?

An employee who works at least 30 days within a year in California, including part-time, per diem and temporary employees, are covered by this new law with some specific exceptions. Providers of publicly funded In-Home Supportive Services (IHSS) are exempt. Employees covered by collective bargaining agreements with specified provisions are exempt, as are individuals employed by an air carrier as a flight deck or cabin crew member, if they receive compensated time off that is at least equivalent to the requirements of the new law.

What if an individual is employed by a staffing agency?

Temporary employees of a staffing agency are covered by the new law. Therefore, whoever is the employer or joint employer is required to provide paid sick leave to qualifying employees.

HOW DO QUALIFYING EMPLOYEES ACCRUE AND TAKE PAID SICK LEAVE

If an employee qualifies, how much paid sick leave are they entitled to take and be paid for?

Starting July 1, 2015, employees will earn at least one hour of paid leave for every 30 hours worked. That works out to a little more than eight days per year for someone who works full time. But employers can limit the amount of paid sick leave an employee can take in one year to 24 hours (three days).

How is a year measured?

Because paid sick leave accrues beginning on July 1, 2015, or the first day of employment if hired after July 1, 2015, the 12-month period will vary by hire date for those employees hired after July 1, 2015. Therefore, the measurement will mostly be tracked by an employee’s anniversary date.

Can employers provide paid sick leave to employees prior to July 1, 2015?

Yes. An employer may elect to advance sick leave to an employee before it is accrued, but there is no requirement for an employer to do so under this law.

Why does the law let employees accrue more time than they can use in a year?

Accrual, carryover and use are all distinct concepts. Accrual is based on the number of hours an employee works; the amount carried over to the next year may be subject to a cap if the employer establishes a cap by policy; and, finally, use may be limited to three days per year.

What happens if an employee returns to work for the same employer after more than one year?

The paid sick leave law does not require that an employee’s accrued sick leave be restored. Whether an employee has to re-establish eligibility by working another 30 days within a year and 90 days before use, is a question that is not addressed in the new law and will depend on the particular facts of the situation to answer.

If an employee works part time, six hours per day, and he or she has accrued 24 hours of paid sick leave and he or she takes three paid sick days, can his or her employer refuse to allow the employee to take any more sick leave in that same year?

No. Because the statute provides that an employer may limit the amount of sick leave to 24 hours or three days, and because the employee works six hours per day, he or she has only used 18 of the 24 hours. For enforcement purposes, DLSE interprets the reference to “three days” to state an equivalent of 24 hours (based on an eight-hour workday) and is not a limitation that can be used to prohibit a part-time employees from using at least 24 hours of accrued leave in a year. Therefore, the minimum amount that an employee has to be allowed to take cannot fall below 24 hours. In this situation, the employee still has six hours of accrued leave remaining to take and be paid for, during the year.
EMPLOYER POLICIES CAN PROVIDE MORE PAID SICK LEAVE BUT NOT LESS

What happens when an employer has its own Paid Time Off (PTO) plan?

The new law establishes a minimum requirement, but an employer can provide sick leave through its own plan or establish different plans for different categories of workers. However, each plan must satisfy the accrual, carryover and use requirements of the law or put the full amount of leave into their employees’ leave banks at the beginning of each year in accordance with the PTO policy. If an employer provides a policy that exceeds the minimum requirements, including providing a specific cap, the policy must be clear as to the additional terms that apply to its employees.

How does an employer satisfy the provision for putting the full amount of leave into an employee’s leave bank under the alternative “up-front” (or advance) method for providing paid sick leave?

An employer must have a paid leave policy that satisfies the same purposes required by the new law and must provide no less than 24 hours or three days of paid sick leave for employees to use each year. Therefore, the full amount of accrued leave must be available to an employee at the beginning of the 12-month period. For initial hires, however, employees must still meet the 90-day employment requirement prior to taking any paid sick leave.

Under the accrual method, can an employee carry over unused sick leave from one year to the next?

Yes, but an employer can limit or cap the amount of sick leave an employee may carryover to six days or 48 hours.

If an employer provides paid time off that employees can use for vacation or illness, does the employer have to provide additional sick leave?

No, as long as the employer provides at least 24 hours per year of paid leave that can be used for health care and meets other requirements in the law.

If an employer offers unlimited time off, how are they affected by the new law?

Most employers with this new but growing policy do not track how much time employees take off or for what reason. However, the new law requires that employers separately track sick leave accrual and use.

FOR WHAT PURPOSES CAN AN EMPLOYEE TAKE PAID SICK LEAVE

What can an employee use paid sick leave for?

Employees can take their paid sick leave for their own or a family member’s preventive care, existing health condition care or for specified purposes if they are a victim of domestic violence, sexual assault or stalking. Family members include the employee’s parent, child, spouse, registered domestic partner, grandparent, grandchild and sibling. Preventive care would include annual physicals or flu shots. For partial days, employers can require an employee to take at least two hours of leave, but otherwise the determination of how much time is needed is left to the employee.

Do employees have to provide notice when they need to take their paid leave?

Employers must permit the employee to use the paid sick leave upon an oral or written request, and the law forbids requiring an employee to find a replacement as a condition for using leave. If the need is foreseeable, the employee must give reasonable advance notice, but where the need is unforeseeable the employee need only give notice as soon as practicable.
PAYMENT AND TRACKING OF EARNED AND TAKEN LEAVE

When an employee takes paid sick leave, how are they paid for the applicable pay period?

The new law requires that an employer provide payment for sick leave taken by an employee no later than the payday for the next regular payroll period after the sick leave was taken. This does not prevent an employer from making the adjustment in the pay for the same payroll period in which the leave was taken, but it permits an employer to delay the adjustment until the next payroll. For example, if an employee did not clock in for a shift and therefore was not paid for it but utilized their paid sick leave, the employer would have to pay the employee no later than the following pay period and account for it in the wage stub or separate itemized wage statement for that following regular pay period.

How much must employers pay employees when they use paid sick leave?

Employees must be paid at their regular hourly rate. If an employee’s pay fluctuates—for example, if the employee gets a commission or piece rate—the employer must divide the employee’s total compensation for the previous 90 days by the number of hours worked and pay the employee at that rate.

How will employees know how much sick leave they have accrued?

Employers must show, on an employee’s pay stub or a document issued the same day as their paycheck, how many days of sick leave they have available. Employers also must keep records showing how many hours an employee has earned and used for three years. This information may be stored on documents available to employees electronically.

How does the new law interact with local sick leave ordinances?

For employees subject to local sick leave ordinances, the employer will have to comply with both the local and California laws, which may differ in some respects. For each provision or benefit, the employer will have to provide whichever is more generous to the employee.

If an employee works an alternative work schedule of four 10-hour days and takes paid sick leave, how much should the employee be paid?

The paid sick leave law allows the employee to decide how much paid leave time to take, subject to the employer’s ability to set a two-hour minimum. Therefore, if the employee has ten hours in their bank, they can request to be paid for 10 hours. If the employee decides to take less time than that in paid sick leave, then they will not receive their full pay but will instead pay for the number of hours that they chose to take. If an employee is sick for three days and has accrued 24 hours, then the employer will have to pay the employee for 24 hours. However, if the employee has accrued 30 hours, then, because the minimum requirements of the statute are three days or 24 hours, they will have to be paid for 30 hours.

If an employee leaves his or her job, can they cash out unused sick days?

No, not unless his or her employer’s policy provides for a payout. However, if an employee leaves his or her job and gets rehired by the same employer within 12 months, the employee can reclaim the paid sick leave he or she had in his or her leave bank.

REQUIRED INFORMATION TO BE PROVIDED TO EMPLOYEES

Are employers required to inform employees of their paid sick leave rights?

Yes. Beginning Jan. 1, 2015, employers are required to place a poster in a conspicuous location at the workplace containing the following information: (1) that an employee is entitled to accrue, request and use paid sick days; (2) the amount of sick days provided for and the terms of use of paid sick days; (3) that retaliation or discrimination against an employee who requests paid sick days or uses paid sick days or both is prohibited; and (4) that an
employee has the right under this law to file a complaint with the Labor Commissioner against an employer who retaliates or discriminates against an employee. The new law required the Labor Commissioner to develop such a poster, and it is now available on the Labor Commissioner’s website.

Second, after Jan. 1, 2015, employers are required to provide most employees with an individualized Notice to Employee (required under Labor Code section 2810.5) that includes paid sick leave information. A revised Notice to Employee form (available to employers for download at DLSE’s website) must be used for employees hired after Jan. 1, 2015. Use of the revised form prior to Jan. 1, 2015, will be deemed compliant with the new requirement as of Jan. 1, 2015; otherwise, for employees hired prior to Jan. 1, 2015, the employer is required to provide a revised Notice to Employee or otherwise inform each employee of the information regarding paid sick leave within seven days of the change, using any of the alternative methods specified in Labor Code section 2810.5(b).

What if an employer’s policy has different terms from the paid sick leave law?

The state law providing for paid sick leave creates minimum standards for paid sick leave. Employers may use their existing policies so long as the specific policy complies with the minimum requirements of the law. Where the employer provides additional terms (e.g., creates caps on maximum use or accruals above the minimums), they must inform employees of those additional terms. The revised Notice to Employee form has a check box to inform an employee of an employer’s own policy that meets or exceeds the requirements of the new law. To avoid misinformation or misunderstanding regarding an employer’s specific paid leave policy, employers are encouraged to ensure that employees are made fully aware of the terms and conditions of their specific policy that provides any additional paid sick leave terms. Although the notice requirements of Labor Code section 2810.5 do not apply to employees who are exempt from the payment of overtime, employees who are exempt from the payment of overtime are covered by this new paid sick leave law.

Do employers have to issue new notices to employees who were hired prior to Jan. 1, 2015?

Yes. An employer must individually notify all employees hired prior to Jan. 1, 2015, of changes to terms and conditions of employment that relate to paid sick leave within seven days of the actual change. Information concerning any new or previously existing paid sick leave program that includes information required to be given to each employee by Labor Code section 2810.5(a), must be provided to all employees. A revised DLSE notice form, available on the DLSE website, may be used for providing individual notice to these existing employees unless the employer chooses an authorized alternative method.

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