

[New Mandatory Sick Leave Law Effective July 1, 2015... Be Prepared to Avoid Liability](#)



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Employers in California will have another paid leave law to tackle next year.

Accrual, Usage and Carryover Requirements

Beginning on July 1, 2015, an employer in California must provide paid sick leave to employees who have worked 30 or more days for the employer, regardless of full-time or part-time status. The leave must accrue at a rate of no less than one hour of sick leave for every 30 hours worked (including overtime hours). An exempt employee is entitled to accrue sick leave based on the employee's normal work week or a 40-hour work week, whichever is less.

Employees must provide "reasonable advance notification" orally or in writing of their desire to use the leave when the need for sick leave is foreseeable. Employees may decide the amount of leave to use at one time, although employers may reasonably limit leave increments to a minimum of two hours and may limit employees to **using** 24 hours (or three days) of paid sick leave per year of employment.

Similar to California's requirements related to vacation accrual, employers must allow employees to carry over all accrued, unused paid sick days to the following year of employment. An employer may limit or cap accrual at 48 hours (or six days). Unlike accrued vacation leave, however, employers are not required to cash out an employee's accrued, but unused sick leave at the end of employment. However, if the employee is rehired by the employer within one year from the date of separation, the employee is entitled to have previously accrued and unused paid sick leave reinstated.

Employers with existing sick leave or paid time off (PTO) policies do not have to provide additional leave under AB 1522, provided their current policies: (1) satisfy the law's accrual, usage, and carry over requirements; or (2) provide no less than 24 hours of paid sick leave for each year of employment or calendar year or 12-month basis.

Sick Leave Defined

Employees may use paid sick leave for the diagnosis, care or treatment of an existing health condition, or the preventive care of an employee, or an employee's personal family member (including spouses, registered domestic partners, children, parents, grandparents, and siblings). Paid sick leave is also available for employees who are victims of domestic violence, sexual assault, or stalking.

Notice and Recordkeeping

Employers must provide written notice to employees about their rights under the new law. For example, employers must provide written notice to employees of their paid leave rights at the time of hire and employers are required to display a poster containing information about the new law, including the mechanics of accrual, requests, and use, the number of sick days provided, terms of use of paid sick leave, and the prohibition against retaliation and discrimination against employees who request paid sick leave. The Labor Commissioner is required to create this poster and make it available to employers. In addition, employers must provide notice of the amount of paid sick leave available to an employee on the employee's itemized wage statement or in a separate writing provided on the employee's pay date.

Employee usage and accrual must be documented and retained for at least three years, and these records must be made available for employee inspection within 21 days of a written or oral request. An employer's failure to maintain or retain adequate records creates a rebuttable presumption the employer violated the law.

Prohibitions and Penalties

Under the new law, employers cannot require an employee to find a replacement worker to cover the employee's shift when the employee wishes to use paid sick leave. An employer also cannot deny an employee the right to use accrued sick days or discharge, threaten to discharge, or take an adverse employment action against an employee for using or attempting to use accrued sick leave. Notably, the law establishes a rebuttable presumption of unlawful retaliation for any adverse employment action occurring within 30 days of an employee engaging in certain protected activity, such as filing a complaint with the Labor Commissioner related to this law, cooperating in an investigation or prosecution of a violation of this law, or opposing an employer's policy or practice that violates this law.

The new law provides for numerous penalties stemming from any violations of the law, including but not limited to: withholding sick pay, failing to comply with posting requirements, and failing to provide written notice each time wages are paid.

Recommendations

- Employers should review and revise their paid sick leave and/or PTO policies and procedures to ensure they comply with the accrual, usage, and carry over requirements of AB 1522.
- Employers who do not already have a sick leave policy in place should implement one that complies with AB 1522 by the time the law takes effect on July 1, 2015.
- Employers should ensure that their timekeeping, payroll and benefits systems are updated to properly calculate, track and detail accrued and used sick leave.
- Employers should train supervisors and managerial staff on the requirements of the new law and their related responsibilities.

Employers who have additional questions about the nuances of the law should contact their labor and employment law counsel.

Legal Disclaimer:

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