



UPDATE - PAID SICK LEAVE IN CALIFORNIA

California's law requiring employers to provide paid sick leave is outlined below. The law was effective January 1, 2015 and amended via emergency legislation signed by California's governor on July 13, 2015 (just 12 days after sick leave had to be implemented!).

The law required changes to virtually every employer's written policies, employee handbooks, and payroll check stubs. Sick leave benefits had to be offered beginning July 1, 2015.

Action items for employers to comply with the law's current requirements:

- Check all existing leave policies (vacation, sick and PTO);
- Decide whether to use an "accrual" or "lump sum" method (described below);
- Check with payroll service providers to determine if accruals are being accurately recorded on employee paystubs;
- Be sure to use the Labor Commissioner's "wage theft notice" attached [here](#); and
- Display the sick leave poster in your workplace, attached [here](#).

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

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.

Amendment: the amended law clarified that the employee must work for the same employer for 30 days within one year of the hire date to receive paid sick days. Under the original law, it was unclear whether the 30 days could be any 30 days worked in California, and whether those days could be for multiple employers. The amendment did not clarify whether the 30 days are work days or calendar days, so conservative employers will use the 30 calendar day approach.

3. Employees covered by certain collective bargaining agreements are not covered by the 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 people 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.

Amendment: the amended law allows employers to use an alternative accrual method, so long as under that method: the accrual is on a regular basis; and the accrual rate results in employees having no less than 24 hours of accrued sick leave (or paid time off) by the 120th day of employment. So employers may use a method that allows accrual on a weekly or monthly basis, and that is permitted as long as the accrual rate is no less than 1.4 hours per week.

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.

Amendment: It was unclear under the original law whether the lump sum could be given in any 12 month period, and whether employers who used the lump sum method could prohibit use of the leave during the employee’s initial employment. As amended, the lump sum method can officially be used on a calendar year, date of hire anniversary, or other 12 month period, and employers can prohibit use of sick leave during the first 90 days of employment. As an example, if an employer gives all new employees 24 hours of sick leave on the date of hire, the employer can still tell employees that no sick leave can be used until the 90th day of employment.

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. To calculate sick pay, employers can use a 90 day “look back” method for exempt and non-exempt employees. The rate of pay for non-exempt employees is determined by dividing the employee’s total wages (including commissions, piece rate payments, or the non-exempt employee’s pay, but not including overtime pay) by the total non-overtime hours worked in the full pay periods of the prior 90 days of employment.

Amendment: the amended law provides an alternative way to calculate sick pay, called the “weighted average” method. This method determines the rate of pay by using the same method the employer uses to calculate the regular rate of pay for overtime purposes for the workweek in which the employee uses the sick leave. For exempt employees, simply pay at the same rate as for other time off, such as PTO.



5. 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.
6. 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 law.
7. 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.
8. Unused sick leave does not need to be paid out at termination (unlike PTO and vacation).
9. Existing PTO (i.e., policies combining sick and vacation time) and sick leave policies may be sufficient. If an existing 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.

Amendment: "unlimited time-off" or so-called "no vacation" policies will satisfy the new law as long as such time can be used for the purposes mentioned in 6 and 7 above. Employers who offer unlimited time off should add the notation "unlimited" to the wage statement.

10. If an employee separates from employment then is rehired within one year, previously accrued/unused paid sick days must be restored.

Amendment: if paid sick leave was paid out at termination, it does not have to be restored if the employee is rehired.

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 Law

1. Employee handbooks and offer letters having contrary or less-generous policies must be changed.
2. The notice required by Labor Code Section 2810.5 (the "Wage Theft Protection Act") must be given to most employees, advising them of their rights under the law.
3. Payroll stubs must include the employee's available balance of sick time on each wage statement; otherwise this information must be provided on a separate document each pay date.



4. A poster advising employees of their sick leave rights must be displayed in the workplace.
5. The DLSE (Division of Labor Standards Enforcement) is the main enforcer of the law. Remedies for violations may 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 regarding sick leave.

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

Shuman Snyder LLP

525 Middlefield Road, Suite 140, Menlo Park, CA 94025, 650.443.5100

www.shusny.com

Bob Shuman / shu@shusny.com
650.443.5102

Jeff Snyder / jeff@shusny.com
650.443.5101

Erin McDermit / erin@shusny.com
650.443.5103

Kristen McMichael / kristi@shusny.com
650.443.5106