

# Feeling Sick?

## California Employers Must Provide Paid Sick Leave to Employees in 2015

By Karen L. Gabler, Esq.

To fully protect the workplace from costly employment disputes, California employers and human resource professionals must stay abreast of the ever-changing landscape of employment laws implemented each year by our state legislature. By far, the most significant change in the law for 2015 is the implementation of mandatory paid sick leave.

The “Healthy Workplace, Healthy Family Act of 2014” takes effect on January 1, 2015. This bill applies to all employees regardless of status (full-time, part-time, per diem, and temporary or agency employees). It also applies to non-exempt and exempt employees, and to businesses of any size (with the exception of 4 limited statutory exceptions: (1) employees covered by a valid collective bargaining agreement that provides paid leave and other required provisions; (2) employees in the "construction industry" covered by a valid collective bargaining agreement; (3) providers of publicly-funded in-home supportive services; and (4) individuals employed by an air carrier as a flight deck or cabin crew member who receive other compensated time off.

As of January 1, 2015, employers must post the new sick leave poster in a conspicuous place (along with other mandatory workplace postings). A copy of the poster may be found at: <http://www.dir.ca.gov/Publications>. Employers also must provide new hires with a notice regarding sick leave; this should be added to the Wage Theft Prevention form handed out at the beginning of employment. The Labor Commission has provided a revised Wage Theft Prevention form that includes this language: <http://www.dir.ca.gov>.

The right to accrue and take paid sick leave under this new law does not take effect until July 1, 2015. As of this date, employees who work in California for 30 or more days within a year will be entitled to earn paid sick days, accrued at a rate of not less than one (1) hour for every 30 hours worked (including overtime hours). Assuming an employee works full time (40 hours per week), that works out to a little more than eight (8) sick leave days in a year. An employer may limit the use of accrued paid sick days to 24 hours or three days in each year of employment, and can restrict an employee’s right to take accrued sick days (but not hold their accrual) until the employee’s 90th day of employment.

Accrued sick leave can carry over from year-to-year, but “[a]n employer has no obligation . . . to allow an employee’s total accrual of paid sick leave to exceed 48 hours or six days.” Conversely, the new law provides that “no accrual or carry over is required if the full amount of leave is received at the beginning of each year.” This means that employers have two options: (1) give employees 24 hours (three days) of paid sick leave on the first day of each year, in which case no accrual or carry-over is required; or (2) permit employees to accrue one hour of paid sick time for every 30 hours worked, in which case the accrued but unused sick time must be carried over in the following year up to a cap of no less than 48 hours (six days).

Sick leave must be paid at the employee’s regular straight time hourly rate in effect at the time the sick leave is taken. If an employee’s regular pay rate fluctuates, the employee’s sick leave pay rate is calculated by dividing the employee’s total compensation for the previous 90 days by the total number of hours the employee worked during that same period. Exempt employees are deemed to work 40 hours per week, unless they have a designated part-time schedule.

The employee must receive pay for sick leave by no later than the payday after the leave was taken. Employers may choose to advance sick leave to employees, but should clearly document the decision to do so. Employers must provide employees with a written notice that sets forth the amount of accrued paid leave; this can be done on the wage statement or in a separate writing, but it must be given to the employees on their designated paydays.

The amount of sick time used is determined by the employee, although the employer can set a reasonable minimum increment of no more than two hours. Sick leave can be taken for the following reasons: (1) diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee’s family member (broadly defined to include categories such as the employee’s parent, child, spouse, registered domestic partner, grandparent, grandchild, and sibling; or (2) for an employee who is a victim of domestic violence, sexual assault, or stalking, for the purposes set forth in the California Labor Code.

Employees must provide reasonable verbal or written notice of their intent to use sick time. If the need for sick leave is unforeseeable, notice must be given as soon as practicable. Employers cannot require sick employees to find coverage or a replacement worker as a condition of using paid sick days.

Notably, the new law does not expressly allow employers to request or demand documentation substantiating an employee’s need to take sick leave. Furthermore, the new law clearly prohibits employers from discriminating or retaliating against employees for using available sick time. To avoid a claim, sick time policies should note that employers

“may” request a doctor’s note after an illness or injury, rather than stating that they will “require” it.

The question remains whether employers can discipline employees for the misuse of sick time. Although it would be improper to discipline an employee merely because the employee has asked to use available sick time, employers presumably would retain the right to implement discipline for violations of their notice of absence requirements (i.e., the employee who doesn’t appear for his shift and fails to call in), or patterns of abuse (i.e., the employee who becomes ill at 3:00 pm every Friday afternoon). Employers should ensure that disciplinary documentation notes these specific infractions, rather than implying that the mere use of sick time was problematic in any way.

Employers must keep documentation of the hours worked and paid sick days accrued and used by an employee for at least three (3) years; the failure to do so leads to a presumption that the employee is entitled to the maximum number of hours accruable under the law. If an employee separates from employment, and is later rehired within one year from the date of separation, the rehired employee’s prior unused paid sick days must be reinstated.

Employers with existing paid sick leave or paid time off (“PTO”) policies that comply with the mandates of this new law need do nothing further. Employers who already offer vacation policies and prefer not to add a paid sick leave benefit can simply convert their existing vacation policies into PTO policies, permitting employees to use available time off for illness and injury as well as vacation. Note that unlike PTO or vacation, the law does not require an employer to pay out unused sick time at the time of departure from employment. Employers who incorporate paid sick time into a PTO policy, however, will have to pay out all accrued but unused PTO at separation, just as they would for accrued vacation time.

If a host employer uses temporary employees, the staffing agency (as the legal employer) is most likely the entity responsible for providing paid sick leave to the temporary employees. Employers should confirm responsibility for this benefit in their agency relationships.

The provisions of the new law are detailed and complicated, and numerous questions remain about the implementation of paid sick time. There are steep penalties for the failure to comply and for a willful violation of these laws. To ensure compliance, employers should work with their employment law counsel to create compliant paid sick leave policies well in advance of July 1, 2015.



For questions regarding paid sick leave, or other questions related to employment law issues, contact Karen Gabler at LightGabler LLP, [www.lightgablerlaw.com](http://www.lightgablerlaw.com).