

# Employment Law Update

## July 2015

---

### California's Paid Sick Leave Law: Effective July 1 – And Already Amended!

California's new paid sick leave law, the "Healthy Workplaces, Healthy Families Act of 2014" (Paid Sick Leave Law) just recently went into effect, on July 1, 2015. Less than two weeks later, the law already has been amended! (We previously wrote about the Paid Sick Leave Law in our [September](#) and [December](#) 2014 E-Alerts.)

On July 13, 2015, the California legislature passed [AB 304](#), amending the Paid Sick Leave Law (now, the Amended Paid Sick Leave Law). Governor Jerry Brown signed the bill into law the same day. Because the law contains an urgency clause, the changes became effective immediately. Below is a description of the most important changes.

#### **Changes to the Paid Sick Leave Law**

##### Methods of Calculating an Employee's Sick Leave Pay

While the "old" law provided only one way of calculating the accrual of sick leave pay, the Amended Paid Sick Leave Law allows three permissible methods of calculation.

Now, an employer can calculate sick leave pay for non-exempt employees either by (1) using the same calculation used to determine the employee's regular hourly rate for overtime purposes, or (2) dividing the employee's total wages (excluding overtime premiums) by the employee's total hours worked in the full pay periods of the prior 90 days of employment. For exempt employees, an employer can use (3) the same method of calculating wages as it uses for other forms of paid leave (e.g., vacation).

##### Alternative Accrual Methods

The Amended Paid Sick Leave Law clarifies that employers may use methods of accruing sick leave other than the one hour of sick leave for every 30 hours worked method ("1-in-30 method") used in the "old" law. Alternative accrual methods, such as accrual by pay period or by months of employment, are also valid, as long as the employee receives at least 24 hours (3 days) of sick leave by the 120th calendar day of employment or the employer's sick leave year (calendar year or otherwise).

(Note the unstated subtlety: under these alternative accrual methods, paid sick leave accrues at a rate that slightly exceeds the accrual rate under the 1-in-30 method. Why? Because the accrual of

24 hours per 120 days per year produces slightly more than 72 hours of paid sick leave accrual each year, whereas the 1-in-30 method, on a full-year, full-time basis, produces approximately 69.33 hours of paid sick leave. Of course, this distinction would become essentially a moot point if an employer imposes the still-permissible cap of 48 hours or six days on paid sick leave accrual.)

### Grandfathering of Old Policies

Under the Amended Paid Sick Leave Law, sick leave policies that existed before January 1, 2015, and that use an accrual method that differed from the 1-in-30 method, have been grandfathered if they meet the following three conditions: (1) accrual occurs on a regular basis; (2) employees receive not less than eight hours (one day) of sick leave within the first three months of employment or sick leave year; and (3) employees receive at least 24 hours of sick leave within the first nine months.

### Other Changes

The Amended Paid Sick Leave Law makes a few other minor changes and clarifications.

- First, employers with unlimited sick leave policies now can simply state "unlimited" on employees' pay stubs, rather than having to list a specific number of days or hours.
- Second, employers have no obligation to reinstate an employee's sick leave upon rehire within one year, if the employer paid the employee for the accrued sick leave upon termination.
- Third, employers have no obligation to ask employees about the reason for taking leave.
- Fourth (assuming this even needed fixing), "a year" now does indeed mean a year of employment, a calendar year, or any other employer-designated 12-month period (such as July 1, for the many employers who chose to implement paid sick leave accruals on that date, under the "old" law).
- Fifth, employers covered by Wage Orders 11 and 12 (the broadcasting and motion picture industries) have a delay until January 21, 2016 to comply with the requirement to display the amount of available paid sick leave on itemized wage statements or other equivalent documents furnished to employees on their designated pay dates.
- Finally, the Amended Paid Sick Law clarifies that employees have to work for 30 days *for the same employer* before becoming eligible for sick leave.

### **Employer Action Necessary?**

If an employer instituted a new sick leave policy, or revised its previous sick leave or paid time off (PTO) policy within the last six months, to comply with the requirements of the Paid Sick Leave Law, most likely no immediate action is required. For the most part, the Amended Paid Sick Leave Law merely provides employers with additional options. However, an employer who revised its policy to comply with the Paid Sick Leave Law by increasing its existing accrual rate under a pay-period-based or months-of-employment based accrual method (under the assumption that doing so would be

valid as long as the rate of accrual equaled the 1-in-30 method) should do a math check and may need to increase its accrual rate to comply with the Amended Paid Sick Leave Law. An employer with an unlimited sick leave policy also could choose to change the information on the employees' pay stubs to reflect that policy. Last, an employer now has the opportunity to choose the method of calculating sick leave pay that suits the employer best.

If an employer failed to revise its existing policy prior to July 1, the employer should immediately review the newly-amended law to ensure that its sick leave policy complies with the Amended Paid Sick Leave Law. Such an employer may find that its existing policy meets the grandfathering requirements, thus requiring no change. Even if the employer's policy is not grandfathered, the employer now has the option to choose an accrual method that may better meet its business needs.

### **Final Observations**

We will resist lengthy comment on the dysfunctionality of a legislative system responsible for enacting a law so ambiguous and poorly-structured that it needed to be amended immediately upon implementation. Instead, we simply observe that it would have saved countless employers huge confusion and expense if the legislature had cleaned up this mess *before* the Paid Sick Leave Law took effect. The legislature obviously failed to heed the timeless carpentry aphorism, "Measure twice; cut once." What's worse, in attempting to fix some of the problems, the legislature still has not made the statute a model of clarity, and arguably has introduced new ambiguities into the law.

---

Clients with questions about this E-Alert or related issues are welcome to contact the article authors, or the Rutan & Tucker attorney with whom you are regularly in contact.

This E-Alert is published periodically by Rutan & Tucker, LLP and should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only.



[Jim Morris](#)

[Peter Hering](#)