

LEGAL UPDATE

January 2015 By: Alice B. Stock and Jesse Oppenheim

CALIFORNIA'S PAID SICK LEAVE LAW TAKES EFFECT

Starting July 1, 2015, California employers must provide employees with at least 24 hours, or 3 days, of paid sick leave annually under the Healthy Workplaces, Healthy Families Act of 2014. Beginning on January 1, 2015, employers must post notices in the workplace¹ about the new sick leave law and provide individualized notices to employees concerning paid sick leave under California's Wage Theft Prevention Act.² Employers will need to review their sick leave and paid time off policies and update them to comply with the new law.

EMPLOYERS AND EMPLOYEES COVERED BY THE SICK LEAVE LAW

The law applies to all employers that have at least one employee who works more than 30 days in a year in the state of California. All employees, whether they are full-time, part-time, per-diem or temporary employees, who work in California for at least 30 days per year are eligible for paid sick leave. Certain exemptions from the law apply for employees who are covered by a collective bargaining agreement that provides paid leave and individuals employed by air carriers as flight deck or cabin crew members, provided they receive compensated time off.

ACCRUAL AND USE OF PAID SICK LEAVE

Sick leave will accrue at a rate of one hour of sick time for every 30 hours worked (including overtime

hours). Employees exempt from the overtime laws, such as administrative, executive, or professional employees, will be deemed to have worked the lesser of 40 hours per week or the number of hours in their normal workweek.

Accrual of sick leave begins after an employee has worked for 30 days in California starting on July 1, 2015. However, employees may not begin to use sick leave until they have worked for an employer for 90 days. Those who have worked for an employer for at least 90 days by July 1, 2015 may start using paid sick leave upon accrual.

Over the course of a year, a full-time employee working 40 hours per week, at the rate of one hour for every 30 hours worked, could accrue over 65 hours, or about 8 days, of paid sick leave. However, the law permits employers to cap the total number of hours accrued annually at 48 hours, or 6 days, provided the employee is permitted to carry over any accrued unused sick leave into the next calendar year.

In addition to limiting accrual of paid sick leave, an employer may also limit the amount of paid sick leave time an employee may take annually to 24 hours, or 3 days. By allowing employees to accrue more paid sick leave than they can take ensures that employees will have accrued sick leave available at the beginning of each calendar year. To avoid the administrative burden of tracking annual accrual and carry over hours from year-to-year, instead of providing for an accrual system, employers may comply with the law by providing each employee with a lump-sum sick leave bank of 24 hours, or 3 days, at the beginning of each year.

Employers who provide at least 3 days of paid time off that can be used for any reason will also be in compliance with the law. While employers are free to provide additional paid time off, employers offering unlimited time off are required to separately track sick leave accrual and use.

¹ The California Division of Labor Standards Enforcement (DLSE) has a sample poster, which is available at:

[http://www.dir.ca.gov/dlse/Publications/Paid_Sick_Days_Poster_Template_\(11_2014\).pdf](http://www.dir.ca.gov/dlse/Publications/Paid_Sick_Days_Poster_Template_(11_2014).pdf)

² The DLSE has a sample notice, which is available at: [www.dir.ca.gov/dlse/Publications/LC_2810.5_Notice_\(Revised-11_2014\).pdf](http://www.dir.ca.gov/dlse/Publications/LC_2810.5_Notice_(Revised-11_2014).pdf)

USE OF PAID SICK LEAVE

Paid sick leave may be taken by an employee for the following reasons:

- for his or her own or a family member's preventive care (including annual physicals or flu shots), diagnosis, care or treatment of an existing health condition, or
- if the employee is a victim of domestic violence, sexual assault or stalking.

"Family members" includes the employee's spouse, registered domestic partner, grandparent, grandchild, and sibling as well as the employee's or the employee's spouse's or registered domestic partner's biological, adopted or foster child or parent, step parent, or legal guardian.

Employees may be required to take sick leave in minimum increments of up to two 2 hours.

Employees are permitted to use accrued paid sick leave upon an oral or written request. The law forbids any requirement that an employee find a replacement as a condition for using leave. But if the need for leave is foreseeable, the employee must provide reasonable advance notice, and, if unforeseeable, as soon as is practicable.

The law is silent on whether employers may require that an employee provide documentation that sick time was used for a covered purpose. Employers should thus be cautious about requesting such documentation, unless they are permitted to do so under some other law, such as the federal family and medical leave laws.

PAYMENT OF SICK LEAVE

Sick leave is paid at an employee's regular hourly rate. If the rate varies - for example, a commission or piece rate - the employer must divide the total compensation for the previous 90 days by the number of hours worked and pay that rate. Sick leave must be paid no later than the payday for the regular payroll period following the period in which the sick leave was taken.

The law does not require that employees be paid their accrued, but unused sick time when they separate from employment for whatever reason. This is in contrast to the California vacation pay and paid time off ("PTO") laws, which require that employees be paid for accrued but unused vacation

or PTO at the time of separation. Thus, if an employer chooses to use its existing PTO policy to comply with this law, instead of providing for separate sick days, it must continue to pay accrued, but unused PTO at employment termination.

If an employee is rehired by the same employer within a year of separation, the employer is required to reinstate the previously accrued and unused paid sick leave and allow the employee to use such accrued sick time upon rehiring.

NOTICES AND RECORD-KEEPING

Employers must ensure that employees have notice of the new law by placing posters in conspicuous locations at the workplace and providing individualized notices under the California Wage Theft Prevention Act.

Thus, under the Wage Theft Prevention Action, employers must provide a notice of wages and sick leave entitlement at the time of hire, when there is a change in wages, and in each wage statement each time an employee is paid. Thus, the wage statement or pay stub, issued the same day as the employee's paycheck, must record the number of hours of sick leave the employee has available.

Employers must keep records pertaining to paid sick leave, such as worked hours, accrual, and utilization of paid sick leave for at least 3 years. Failure to maintain compliant records will result in a presumption that an employee has accrued the maximum number of hours, unless the employer proves by clear and convincing evidence that the employee accrued a lower number of hours.

VIOLATIONS AND PENALTIES

Employers may not deny employees the right to use accrued sick days or discharge, threaten to discharge or discriminate or otherwise retaliate against employees for using accrued sick days, attempting to use accrued sick days, filing a complaint alleging a violation of the law, cooperating in an investigation or prosecution of an alleged violation, or opposing any policy or practice that is prohibited.

There will be a presumption, albeit rebuttable, of unlawful retaliation by an employer, if an adverse action occurs within thirty (30) days of an employee's: (1) filing of a complaint with the Labor Commissioner or alleges a violation of the law; (2)

cooperation with an investigation or prosecution of an alleged violation of the law; or (3) opposition to any policy, practice, or act that is unlawful under the law.

Penalties for violation of the law are as follows:

- An employer found to have withheld sick leave is liable to the employee for the greater of \$250 or three times the amount of paid sick time withheld, not to exceed an aggregate penalty of \$4,000.
- An employer found to have retaliated against an employee will be liable for damages of \$50 per day up to an aggregate penalty of \$4,000.
- For other violations, such as failure to provide notice of available sick time on pay stubs, employers are liable for penalties of \$50 per day, per employee not to exceed an aggregate penalty of \$4,000.
- An employer found to have willfully violated the posting requirement is subject to a civil penalty of not more than \$100 per each offense.
- The California Labor Commissioner (to compensate the state for investigating and remedying a violation) may order an employer to pay the state \$50 per person for each day a violation occurs or continues.

CONCLUSION

California employers should review their existing sick leave and PTO policies well before July 1, 2015 to determine whether such policies need to be updated or changed to comply with the Healthy Workplaces, Healthy Families Act. In addition, employers should ensure that wage statements and pay stubs are updated and re-formatted to track accrual of sick leave in compliance with the individual notice directives. It is therefore recommended that employers consult with counsel to ensure that they are compliant with the new law.

The foregoing is merely a discussion of the California Healthy Workplaces, Healthy Families Act of 2014. If you would like to learn more about this topic or how Pryor Cashman LLP can serve your legal needs, please contact Alice B. Stock at (212) 326-0480, astock@pryorcashman.com or Joshua Zuckerberg at (212) 326-0885, jzuckerberg@pryorcashman.com.

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Recognized by *Super Lawyers* for her work in Employment and Labor Law, Alice B. Stock is a member of Pryor Cashman's Employment Law Group and Immigration Law Group. Ms. Stock represents domestic and multinational employers in virtually all aspects of labor and employment law and litigation and business immigration law. She represents clients in both areas of law in various industries, including the airline, manufacturing, financial services, education, entertainment, technology, biotech, pharmaceutical, luxury goods, and food and beverages industries. Ms. Stock regularly speaks and publishes articles on U.S. business immigration and employment law matters.

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- Employment-at-will, wrongful discharge, and workplace torts
- Labor relations, union organizing, collective bargaining, labor arbitrations, unfair labor practices, strikes, picketing, boycotts, and labor injunctions
- Human resources administration, personnel forms and policies, and employee handbooks
- Wage and hour laws, family and medical leave, employee theft and drug testing
- Independent contractor issues
- Plant closings and mass layoffs
- Labor and employment law issues in mergers, acquisitions, sales, corporate reorganizations, and bankruptcies

Ms. Stock is a graduate of Harvard Law School, where she held various editorial positions on the *Harvard Civil Rights-Civil Liberties Law Review*.



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