



Guide to California's New **Paid** **Sick Leave Law (AB 1522)**

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CALIFORNIA EMPLOYMENT LAW FOR BUSINESS

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I. The Paid Sick Leave Trend

- a. Numerous new paid sick leave laws across the nation, after San Francisco lead the way with the first law in 2007
- b. **States with paid sick leave laws as of April 2015:**
 - i. Connecticut – adopted in 2011
 - ii. California – effective January 1, 2015 *and* July 1, 2015
 - iii. Massachusetts – effective July 1, 2015
- c. **Cities/Jurisdictions with paid sick leave laws as of April 2015 (varying effective dates):**
 - i. San Francisco, CA
 - ii. Oakland, CA
 - iii. Portland, OR
 - iv. New York City
 - v. East Orange, NJ
 - vi. Irvington, NJ
 - vii. Jersey City, NJ
 - viii. Montclair, NJ
 - ix. Newark, NJ
 - x. Passaic, NJ
 - xi. Patterson, NJ
 - xii. Trenton, NJ
 - xiii. Eugene, OR
 - xiv. Philadelphia, PA
 - xv. Seattle, WA
 - xvi. Tacoma, WA
 - xvii. District of Columbia

II. Overview of California Healthy Workplaces, Healthy Families Act - Labor Code §§ 245-249

- a. "Paid sick days" are time that is compensated at the same wage as the employee normally earns during regular work hours and is provided by an employer to an employee for the purposes described in AB 1522 [Labor Code § 245(e)]

- b. All employees must accrue paid sick days as of July 1, 2015 – one hour per 30 hours worked, up to cap of 48 hours/6 days [Labor Code § 246(b)(1); Labor Code § 246(i)]
- c. Accruals roll over but employer can limit use to 24 hours/3 days in a year **OR** 24 hours/3 days granted at beginning of each year, with no rollover or accrual [Labor Code § 246(d)]
- d. PTO policies may satisfy paid sick leave requirements [Labor Code § 245.5(a)(1); Labor Code § 246(e)]
- e. Balances must be reported on paystubs [Labor Code § 246(h)]
- f. New paid sick leave poster [Labor Code § 247]
- g. Revised Labor Code 2810.5 Notice
- h. DLSE FAQs - http://www.dir.ca.gov/dlse/Paid_Sick_Leave.htm

III. Coverage and Eligibility

a. Employer Coverage – Labor Code § 245.5(b)

- i. Applies to all employers in California
 - 1. No minimum number of employees
 - 2. Can be headquartered anywhere, inside or outside California
- ii. Who's an "employer"?
 - 1. Any person employing another under any appointment or contract of hire
 - 2. Includes the state, political subdivisions of the state, and municipalities

b. Employee Eligibility

- i. Covers all employees (with specific exceptions) [See Labor Code § 245.5(a)]
 - 1. No minimum number of hours
 - 2. Part-time or full-time
 - 3. Regular, temporary, or per diem
 - 4. Exempt or non-exempt
 - 5. No length of service with the employer – except that:
 - a. An employee cannot **use** paid accrued sick days until 90 days of employment [Labor Code § 246(c)]
 - b. On or after Jan. 1, 2015, an employee must work in California for at least 30 days in a year from the commencement of employment — intended to ensure coverage for employees from other states who visit California [Labor Code § 246(a)]

c. Employee Exclusions – Labor Code § 245.5(a)

- i. "Employee" does **NOT** include:
 - 1. An employee covered by a valid collective bargaining agreement that expressly provides for paid sick days or paid time off [Labor Code § 245.5(a)(1)]

2. An employee in the construction industry covered by a valid collective bargaining agreement if the agreement was either (A) was entered into before January 1, 2015, or (B) expressly waives the requirements of the paid sick leave law clear and unambiguous terms [Labor Code § 245.5(a)(2)]
3. A provider of in-home supportive services [Labor Code § 245.5(a)(3)]
4. An individual employed by an air carrier as a flight deck or cabin crew member, provided the individual is provided with compensated time off equal to or exceeding the amount established in the paid sick leave law [Labor Code § 245.5(a)(4)]

IV. Accrual and Amounts

a. Accrual Requirements

- i. Accruals begin on the later of July 1, 2015 or an employee's first day of work [Labor Code § 246(a)–(b)(1)]
- ii. Employees must accrue paid sick days at a rate of at least **one hour per 30 hours** worked [Labor Code § 246(b)(1)]
 1. Accrues on regular and overtime hours [See Labor Code § 246(a)-(b)]
 2. Exempt employees are deemed to work 40 hours/week, unless normal workweek is shorter [Labor Code § 246(b)(2)]
 3. Works out to approximately 8 days (uncapped) per year for full-time employees
- iii. Employers can choose to provide MORE paid sick leave, but not less

b. Caps and Carryover

- i. Accrued paid sick days **carry over** to the following year [Labor Code § 246(d)]
 1. No “use it or lose it”
- ii. Employers may set an accrual cap of no less than 48 hours/6 days [Labor Code § 246(i)]
- iii. Employers can limit use to 24 hours/3 days in “each year of employment” [Labor Code § 246(d)]
- iv. Employees must be notified of caps on accrual and use [Labor Code § 246(h)]
- v. Employers, at their discretion, may advance or lend paid sick days in advance of accrual – but documentation of this is required [Labor Code § 246(g)]

c. Accrual and Cap Conundrums

- i. What if employee works shifts shorter (or longer) than 8 hours? Is the employee entitled only to 3 days, or to a full 24 hours?
 1. The DLSE takes the position that the more generous measure must be used. For example, a part-time employee who works six-hour shifts and takes three days of sick leave (18 hours) would still be entitled to 6 more hours of leave that year (total of 24 hours).
- ii. Why does the law permit an employee to accrue more than can be used in a year?

1. Accrual – how many hours the employee works
2. Carryover – how much unused leave can be carried over, and up to what cap
3. Use – how many hours can be used in a year

d. The “Up-Front” Method

- i. The law provides employers with an alternative to the “accrual” method...
- ii. An employer can use the “advance” or “up-front” method, providing/granting the full amount of leave at the beginning of each year [Labor Code § 246(d)]
 1. 24 hours/3 days must be granted
 2. No accrual necessary
 3. No carryover necessary
 4. Calendar year or other 12-month period (such as employee’s anniversary date)
- iii. Can the grant be pro-rated for employees hired mid-year? No, but they still can be required to meet the 90-day employment requirement prior to use
- iv. Can the grant be pro-rated for part-time employees? No

e. PTO Policies

- i. An employer can provide PTO or other “paid time off” to employees, in place of paid sick days [Labor Code § 246(e)]
- ii. The PTO policy must:
 1. Satisfy all paid sick leave requirements (accrual, use, carryover)
 2. Specify any additional terms
 3. Best practice: consider specifying that the PTO may be used for any reason, including for any reason covered by AB 1522
- iii. An employer may have different plans for different categories of employees (e.g. PTO for full-time and paid sick days for part-time)
- iv. With a compliant PTO plan, the employer does not have to separately designate or grant paid sick days

f. “Unlimited” Policies

- i. Recent trend toward “unlimited” PTO or vacation policies — what are they?
 1. No PTO or vacation “accrues”
 2. No (specified) limit on how much can be used
 3. Use may or may not be tracked
- ii. Does an “unlimited” PTO/vacation policy satisfy the paid sick leave law?
 1. DLSE requires that employers separately track paid sick leave accrual and use
 2. Must report balances on pay stubs

g. “Kin Care”

- i. California’s existing “Kin Care” law (Labor Code §§ 233-234) requires employers to permit employees to use at least one half of accrued sick leave for purposes of caring for a parent, child, spouse, or domestic partner
- ii. How does kin care interact with AB 1522?
 1. All of the 24 hour/3 days of paid sick leave provided under AB 1522 may be used for “kin care” purposes or for other family members (as defined in AB 1522)
 2. However, any additional amounts of sick leave provided, in excess of AB 1522 requirements, would be subject to the kin care law

V. Use of Paid Sick Leave

a. How to Use

- i. The employee may determine how much paid sick leave to use [Labor Code § 246(j)]
- ii. An employer may set a “reasonable” minimum increment for the use of leave, not to exceed two hours [Labor Code § 246(j)]
- iii. An employee can use paid sick leave as it accrues (after 90 days of employment) [Labor Code § 246(c)]
- iv. An employer cannot require that an employee search for or find a replacement worker to cover days when an employee is using paid sick leave [Labor Code § 246.5(b)]

b. Reasons for Use

- i. For diagnosis, care, or treatment of an existing health condition of the employee or a family member [Labor Code § 246.5(a)(1)]
- ii. For preventive care (physicals, flu shots, etc.) of the employee or a family member [Labor Code § 246.5(a)(1)]
- iii. For an employee who is a victim of domestic violence, sexual assault or stalking to obtain relief, including medical attention and psychological counseling [Labor Code § 246.5(a)(2)]
- iv. Who’s a “Family Member”? – Labor Code § 245.5(c)
 1. Child — a biological, adopted, foster, step, legal ward, or child to whom employee stands *in loco parentis*; no age or dependency status restrictions
 2. Parent — biological, adoptive, foster parent, stepparent, legal guardian or a person who was *in loco parentis* when the employee was a minor
 3. Parent-in-law — through a spouse or domestic partner
 4. Spouse
 5. Domestic partner
 6. Grandparent
 7. Grandchild

8. Sibling

c. Notice and Requests – Labor Code § 246(l)

- i. An employee must make an oral or written request to use paid sick days, for a qualifying reason
- ii. If the need for leave is foreseeable, the employee must provide reasonable advance notice
 1. The law does not define “reasonable”
- iii. If the need for leave is unforeseeable, the employee must provide notice as soon as practicable
- iv. Can the employer require a doctor’s note or other documentation to verify the use of paid sick leave?
 1. The law is silent on the issue of verification!
 2. The DLSE has indicated its interpretation that a verification requirement would amount to interference with an employee’s paid sick leave rights
 3. Any limitations on the right to verify likely would not apply after the 24 hours or 3 days of paid sick leave are used
 4. Labor Code §§ 230 and 230.1, regarding leave for victims of domestic violence, stalking and sexual assault, provides a separate employer right to obtain certification for the absence
 5. Similarly, when leave is requested under the California Family Rights Act (CFRA) and Family and Medical Leave Act (FMLA) the employer may request a certification

VI. Pay for Sick Days

a. Pay for Sick Days

- i. An employer must pay for sick days taken no later than the payday for the next regular payroll period after the sick leave was taken [Labor Code § 246(m)]
- ii. At what rate? See Labor Code § 246(k) The employee’s hourly wage
 1. But, if in the 90 days prior to the time off, the employee 1) had more than one hourly rate or more than one rate was in effect, or 2) the employee was paid by commission/piece rate, or 3) was salaried non-exempt: *Divide the employee’s total wages, not including overtime premium pay, by total hours worked in the full pay periods of the prior 90 days*
 2. And how is that figured for salaried exempt? Law is silent, but likely would divide the weekly salary by 40 hours

b. Pay on Termination? – Labor Code § 246(f)

- i. Accrued and unused paid sick leave does NOT have to be paid out on termination, resignation, retirement, or other employment separation
- ii. However, if an employee separates and is rehired within one year, the paid sick leave balance at termination must be reinstated
- iii. Upon rehire, the employee will also be entitled to accrue additional paid sick days

- iv. The employee will not have to re-satisfy the 90-day period to use the accrued sick days
- v. How are PTO/vacation policies impacted, based on California law that requires payout at termination? Does that balance have to be reinstated upon rehire?
 - 1. The law is silent on this point
 - 2. The DLSE takes the position that PTO that has been paid out does not have to be reinstated upon rehire

VII. Notice, Posting and Recordkeeping

a. Notice of Sick Leave Available – Labor Code § 246(h)

- i. The employee must be provided with *written notice each payday*, with the employee's payment of wages, that indicates how much paid sick leave (or PTO) the employee has available
 - 1. May be provided on the itemized wage statement or another writing
 - 2. Penalties for a violation of this requirement are the same as for other itemized wage statement/payroll records violations
 - 3. This requirement goes into effect as of July 1, 2015

b. Workplace Poster – Labor Code § 247

- i. [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)
- ii. Employers must post a new paid sick leave poster in the workplace, in a conspicuous place
- iii. Posting deadline was January 1, 2015!

c. Labor Code § 2810.5 Notice

- i. [http://www.dir.ca.gov/dlse/Publications/LC_2810.5_Notify_Employee_\(Revised-11-2014\).pdf](http://www.dir.ca.gov/dlse/Publications/LC_2810.5_Notify_Employee_(Revised-11-2014).pdf)
- ii. The DLSE has updated the Labor Code 2810.5 Notice to Employee, which must be provided to non-exempt new hires, and to a non-exempt employee when any information in the form changes (within 7 days of the change)
- iii. The revised version with paid sick leave information must be used as of January 1, 2015
- iv. For existing non-exempt employees, the DLSE has indicated that the revised notice must be provided within seven days of the employer's implementation or change in its paid sick leave policy, or no later than July 8, 2015

d. Recordkeeping – Labor Code § 247.5

- i. An employer must keep records for three years documenting:
 - 1. Hours worked
 - 2. Paid sick days accrued
 - 3. Paid sick days used

- ii. Failure to retain records raises presumption that the employee is entitled to the maximum number of hours accruable, unless the employer can show otherwise by clear and convincing evidence

VIII. Violations and Enforcement

a. Prohibited Acts – Labor Code § 246.5(c)

- i. An employer shall not deny the right to use accrued sick days
- ii. An employer shall not discharge, threaten to discharge, demote, suspend or otherwise discriminate based on the use of paid sick days, for attempting to exercise the right to use paid sick days, or for filing a complaint or opposing any policy or practice prohibited by AB 1522
- iii. The law creates a rebuttable presumption of unlawful retaliation if the employer denies an employee the right to use sick days or discharges/discriminates against an employee within 30 days of the employee filing a complaint regarding paid sick leave, cooperating in a paid sick leave investigation, or opposing a policy or practice that is unlawful under the paid sick leave law

b. Violations and Enforcement – Labor Code § 248.5

- i. An employee may file a claim with the Labor Commissioner, which may order reinstatement, back pay, payment for sick days, and an administrative penalty
 - 1. If the employer failed to provide sick days, the penalty includes the dollar amount of the withheld days multiplied by three, or \$250, whichever is greater up to a maximum of \$4,000
 - 2. The Labor Commissioner may also order the employer to pay up to \$50 for each day (or portion) that a violation occurs or continues, for each employee whose rights were violated – without any dollar limit
- ii. Alternatively, the Labor Commissioner may file a civil action
- iii. An employee may seek PAGA penalties for violations

IX. Interaction with Other Laws

a. Minimum Requirements Only

- i. “This article establishes minimum requirements pertaining to paid sick days and does not preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for greater accrual or use by employees of sick days, whether paid or unpaid, or that extends other protections to an employee.” [Labor Code § 249(d)]

b. San Francisco – Key Differences

- i. No accruals until 90 days of employment and then can be used as it accrues
- ii. Accruals can be capped at no less than 72 hours
- iii. Employer may not limit amount used within a year
- iv. Employer can require use in increments of no more than one hour
- v. No provision for “up-front” grants of paid sick days

- vi. Use of paid sick leave can be verified
- vii. Fewer excluded employees (working under a collective bargaining agreement, or work in SF fewer than 56 hours/year)
- viii. Permits use for “designated person”

c. Oakland – Key Differences

- i. Effective March 2, 2015
- ii. Employees eligible if perform two or more hours of work per week in Oakland and are entitled to minimum wage under state law
- iii. Accruals can be capped at no less than 72 hours (40 hours for small employers with fewer than 10 employees)
- iv. Doesn’t address minimum increments or limits on use within a year
- v. No provision for “up-front” grants of paid sick days
- vi. Permits use for “designated person”
- vii. Permits reasonable measures to verify use of paid sick leave

d. Massachusetts

- i. Effective July 1, 2015
- ii. All employers must provide sick leave – only employers with 11 or more employees must provide *paid* sick leave
- iii. One hour per 30 hours worked, up to cap of 40 hours
- iv. Annual use may be limited to 40 hours
- v. Verification permitted for absences of more than 24 consecutively scheduled work hours
- vi. No provision for “up-front” grants of paid sick days

e. New York City

- i. Effective April 1, 2014
- ii. All employers must provide sick leave – only employers with 5 or more must provide paid sick leave
- iii. One hour per 30 hours worked, up to cap of 40 hours – or employer may do “up front” grant of 40 hours each year
- iv. Annual use may be limited to 40 hours
- v. 120 day “probation period” before sick leave can be used
- vi. Verification permitted for absences of more than three consecutive work days

X. Compliance and Policy Drafting Tips

a. Compliance Tips

- i. Ensure workplace poster is in place
- ii. Begin using revised Labor Code 2810.5 Notice to Employee

- iii. Plan for how to notify employees of sick leave or PTO balances on paydays, beginning July 1, 2015
- iv. Review which paid sick leave laws apply to your company
- v. Ensure that managers understand the paid sick leave rules, no retaliation, prohibition on requiring employee to find their replacement, etc.
- vi. Create accrual, tracking, and recordkeeping plans

b. Policy Drafting Tips

- i. If employer is multi-state or has employees in San Francisco or Oakland, consider how to structure policy – one policy for all employees, or separate policies based on location
- ii. If single policy, carefully evaluate applicable sick leave laws to ensure that policy incorporates the most employee-protective provisions – e.g. if employees in San Francisco, ensure that policy uses a 72-hour cap, rather than the 48-hour cap under AB 1522
- iii. Evaluate existing sick leave and PTO/vacation policies
 - 1. Are there categories of employees who are not already covered?
 - 2. Are there provisions that need revision to ensure compliance with:
 - a. California law
 - b. Other state or local laws?
- iv. Carefully review PTO policies:
 - 1. Which employees are excluded?
 - 2. Will you expand PTO or create a separate sick leave policy?
 - 3. Will you “carve out” protect paid sick leave days?
 - 4. Are accruals sufficient?
 - 5. Can employees accrue upon hire?
 - 6. Include language confirming that PTO policy satisfies employer’s obligation to provide paid sick leave and can be used for any California paid sick leave reason