

California Paid Sick Leave Law Amended, Effective Immediately

Article By:

Lisa M. Harris

Limore Torbati

On July 13, 2015, Governor Jerry Brown approved AB 304 Sick Leave: Accrual and Limitations, which amends the Healthy Workplaces, Healthy Families Act of 2014 (*i.e.*, Sections 245.5, 246, and 247.5 of the California Labor Code). These amendments took effect immediately upon signature. The following is a summary of the key amendments to the law, most of which clarify what is required by the law.

Same Employer Standard

Under the original version of the law, an employee who worked in California for 30 or more days within a year from the commencement of employment, was entitled to paid sick days to be accrued at a rate of no less than one hour for every 30 hours worked. Pursuant to the amended provisions, an employee who works in California for 30 or more days within a year from the commencement of employment is entitled to paid sick days so long as the employee works for at least 30 days within the previous 12 months with the *same employer*.

Accrual Methods

Under the amended law, employers may provide for employee sick leave on a basis *other than one hour for each 30 hours worked*, provided that the accrual is (1) on a regular basis and (2) the employee will have 24 hours of accrued sick leave available by the 120th calendar day of employment.

Limiting Sick Day Use

Under the original statute, an employee was entitled to use accrued paid sick days beginning on the 90th day of employment, but an employer could limit the employee's use of paid sick days to 24 hours or 3 days in each year of employment. Under the amended law, employers may limit an employee's use of paid sick days to 24 hours or 3 days in (1) *each year of employment*, (2) *calendar year*, or (3) *12-month period*.

Notice Requirement

Under the original statute, an employer was required to provide employees with written notice of the amount of paid sick leave available, or the amount of paid time off the employer provided in lieu of sick leave as specified. This requirement confused employers who provide unlimited sick time or paid time off. Under the amended law, employers who provide *unlimited* sick leave to their employees may satisfy the notice requirements by simply indicating “unlimited” on employees’ itemized wage statements.

Additional Paid Sick Days

Under the original statute, an employer was not required to provide additional paid sick days if:

- (1) the employer had a paid leave policy or paid time off policy, *and*
- (2) the employer made available an amount of leave for specified uses, *and*
- (3) the policy either:
 - (a) satisfied specified accrual, carry over, and use requirements, *or*
 - (b) provided no less than 24 hours or 3 days of paid sick leave for each year of employment or calendar year or 12-month basis.

Under the amended law, the requirements under prong three have changed and an employer is not required to provide additional paid sick days if:

- (1) the employer has a paid leave policy or paid time off policy, *and*
- (2) the employer made available an amount of leave for specified uses, *and*
- (3) the policy either:
 - (a) satisfies specified accrual, carry over, and use requirements, *or*
 - (b) provided paid sick leave or paid time off to a class of employees before January 1, 2015, pursuant to a sick leave policy or paid time off policy that used an accrual method different than providing one hour per 30 hours worked, provided that the accrual is on a regular basis so that an employee, including an employee hired into that class after January 1, 2015, has no less than one day or eight hours of accrued sick leave or paid time off within three months of employment, calendar year or 12-month period, and the employee was eligible to earn at least three days or 24 hours of sick leave or paid time off within nine months of employment, *or*
 - (c) is provided pursuant to specified provisions of law or of a memorandum of understanding that meet the requirements of these provisions.

The change described in 3(b) above is significant because it essentially grandfathers in employer policies that have a slower accrual rate than one hour for every 30 hours worked, provided the policy existed prior to January 1, 2015 and the other requirements are met. However, employers should be aware that the law also provides that, if an employer modifies the accrual method used in the policy it

had in place prior to January 1, 2015, the employer must then comply with the minimum accrual methods described in the Accrual Methods section above.

Pay Rates When Sick

Under the original law, the rate of pay for sick leave was calculated based on the employee's hourly wage. However, if the employee, in the 90 days of employment before taking accrued sick leave, had different hourly pay rates, was paid by commission or piece rate, or was a non-exempt salaried employee, then the rate of pay was calculated by dividing the employee's total wages (not including overtime premium pay), by the employee's total hours worked in the full pay periods of the prior 90 days of employment. This provision created significant confusion regarding the correct rate of pay for exempt and non-exempt employees who received some form of incentive pay in addition to their regular hourly wage.

Under the amended law, employers are required to calculate paid sick leave for non-exempt employees based upon the employees': (1) regular rate of pay for the week in which the employee uses sick leave (*i.e.*, the rate used when calculating the overtime premium rate); or (2) total wages, excluding overtime premiums, divided by total hours worked in the full pay periods of the prior 90 days of employment. Paid sick leave for exempt employees may be calculated in the same manner as the employer calculates wages for other forms of paid leave time.

Reinstatement and Sick Time Balances

The amended law clarifies that an employer is *not* required to reinstate accrued paid time off to an employee who is rehired within one year of separation from employment, if the accrued time was paid out to the employee at the time of termination, resignation, or separation.

Recordkeeping

Under the original law, employers were required to maintain for three years records that documented the hours worked and paid sick days accrued and used by employees. Employers were required to make those records available to the Labor Commissioner upon request. These requirements still apply. However, the amendments make it clear that employers do not have an obligation to ask about or record the *purposes* for which an employee uses paid leave or paid time off. Employers should be mindful of the distinction between the rate used to pay sick leave and other types of time off. Because sick leave for non-exempt employees may have to be paid at a higher rate than other paid time off, employers should consider implementing a method for employees to designate leave taken as sick leave and track when the three days or 24 hours have been exhausted.

In light of the above amendments, employers are strongly encouraged to review their paid sick leave and paid time off policies once again to ensure compliance with the law.

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