

# Both City of San Diego and State of California “Clarify” Their Sick Leave FAQs

Article By:

Susan E. Groff

Ellen Bandel

John P. Nordlund

---

As we recently reported regarding [the City of Los Angeles](#), both the City of San Diego and the *California Department of Labor Standards Enforcement* (“DLSE”) have updated their “Frequently Asked Questions” (“FAQs”) related to the respective local and state sick leave requirements. Below are some of the more salient points from each.

## San Diego Earned Sick Leave

Similar to the City of Los Angeles’ recent changes, the City of San Diego updated its FAQs related to the City’s earned sick leave ordinance as applied to employees who are “salaried” and not “entitled to payment of minimum wage” by stating that they are not entitled to earned sick leave under the ordinance. Presumably, such employees may include those who are exempt “white collar” employees.

Regardless of coverage under the San Diego ordinance, employers still must comply with state law, which mandates provision of sick leave to nearly all employees.

## California State Paid Sick Leave

The DLSE issued additional [FAQs](#) regarding the state law. Specifically, these updated FAQs address questions regarding “grandfathered” paid time off policies (or PTO plans in effect prior to January 1, 2015), rates of pay, and the impact of state law on employer attendance policies.

## Grandfathered Plans

The FAQs elaborate on how a “grandfathered” PTO plan will comply with state law. These further criteria include:

(1) the existing policy or plan makes an amount of paid leave available that could be used for at least

as many paid sick days as required under state law; and

(2) that satisfies one of the following criteria: (a) the time off may be used under the same or more favorable conditions as specified under state law; or (b) that the plan contains more favorable conditions to employees than required under state law (e.g., provides more sick days or a more favorable accrual rate, etc.).

Please note these criteria are **in addition** to other accrual requirements set forth in the statute and earlier FAQs.

## Rate of Pay

The FAQs confirm that the state law does not impact how employers must compensate employees under existing PTO plans for time that is taken off for purposes other than paid sick leave, e.g., vacation, etc.

## Attendance Policies

The FAQs address the impact of state paid sick leave on employer attendance policies. According to the FAQs, if an employee has accrued or available sick leave, an employer's attendance policy cannot assign an "occurrence" or apply "points" for an absence covered under state law.

Moreover, if an employee does not have any accrued or available paid sick leave and if the employee has an unscheduled absence for a reason covered under state law and which otherwise violates the employer's attendance policy, state law does not prohibit the employer from giving the employee an "occurrence" for such absence. Importantly, the FAQs provide that state law, "does not 'protect' all time off taken by an employee for illness or related purposes; it 'protects' only an employee's accrued and available paid sick leave as specified in the statute."

Jackson Lewis P.C. © 2025

---

National Law Review, Volume VII, Number 116

Source URL: <https://natlawreview.com/article/both-city-san-diego-and-state-california-clarify-their-sick-leave-faqs>