

# The Issue

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## Bulletin: California's New Paid Sick Leave

*The Law applies to all employers, public or private, regardless of size*

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California's new law requiring that employers provide paid sick leave is outlined below. The law is effective January 1, 2015. While employers don't need to start accruing or providing sick days until July 1, 2015, many employers are modifying their policies before July 1, to begin with the calendar year. In any case, employee-qualifying periods begin as of January 1, as do new poster and notification requirements.

This law is groundbreaking and requires changes to virtually every employer's written policies, employee handbooks, and payroll check stubs.

### Action items for employers (best if done prior to January 1, 2015):

- Check all existing leave policies (vacation, sick and PTO) to ensure they comply with the new law;
- Decide whether to use the "accrual" or "lump sum" method described below;
- Check with payroll service providers to determine if they can adequately report your new system on employee paystubs;
- Begin using the Labor Commissioner's new "wage theft notice," attached; and
- Display the new sick leave poster in your workplace, attached.

The full text of the law is here: [AB 1522](#).

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The highlights are:

### **Applicability**

1. The law applies to all public and private employers, regardless of size.
2. The law applies to exempt and non-exempt employees, including full-time, part-time, seasonal and temporary employees. However, to be eligible for paid sick leave, an employee must work for you in California for at least 30 days within a year of commencing employment.
3. There are a few exceptions. Employees covered by certain collective bargaining agreements are not covered by the new law. The law does not apply to certain employees who provide publicly-funded in-home supportive services under various sections of the Welfare & Institutions Code. Nor does the law apply to certain persons employed by an air carrier as a flight deck or cabin crew member.

### **Sick Leave Benefits**

1. Employees must accrue at least one hour of paid sick leave for every 30 hours worked. (For accrual purposes, exempt employees are treated as working the lesser of 40 hours per week or their normal schedule.) Accrual can be capped at six days or 48 hours. Unused sick leave carries over from year-to-year.
2. As an alternative to the above “accrual method,” employers can use the “lump sum” method and provide just three days, or 24 hours, of sick leave that can be taken immediately at the start of each benefit year (using a rolling, calendar, or anniversary year basis). This is a “use it or lose it” method, so there is no carryover and no tracking of accrual.
3. The tradeoff for the “lump sum” method’s relative simplicity and fewer days off than the accrual method is that it is subject to abuse. For example, an employee could take sick days on January 2, 3 and 4, then quit on January 5.
4. Employers can use a 90-day probation period, in which accrual begins on the first day of employment but the right to use paid sick leave begins when the employee completes 90 days of employment.
5. Sick leave can be used for the employee’s own condition, including preventive care, or to care for a family member. “Family member” is defined to include children, parents, grandparents, grandchildren, siblings, spouse and registered domestic partner. Be careful: children and parents have expansive definitions under the new law.
6. Sick leave can also be used for the employee’s treatment or otherwise to get help as a victim of domestic violence, sexual assault or stalking.
7. If an employee separates from employment then is rehired within one year, previously accrued/unused paid sick days must be restored.

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8. Existing PTO (i.e., policies combining sick and vacation time) and sick leave policies may be sufficient. If a PTO or sick leave policy is at least as generous as the new law, the employer won't have to provide additional sick leave. Accrual and use of sick leave must be tracked and reported to employees each pay date; therefore, "unlimited time-off" or so-called "no vacation" policies will not satisfy the new law.

9. Unused sick leave does not need to be paid out at termination (unlike PTO and vacation).

### **Employee's Notification Requirements**

1. Employees only have to give advance notice of the need for sick leave if the need is foreseeable; if not foreseeable, then notice has to be given as soon as practicable.

2. Employee notifications of the need for sick leave can be verbal or written.

### **Complying with the New Law**

1. Employee handbooks and offer letters having contrary or less-generous policies will need to be changed.

2. A new form of the notice required by Labor Code Section 2810.5 (the "Wage Theft Protection Act") needs to be given to most employees, advising them of their rights under the new law. The Labor Commissioner has updated the standard form.

3. Payroll stubs need to include the employee's available balance of sick pay on each wage statement; otherwise this information needs to be provided on a separate document each pay date.

4. A new poster is required, advising employees of their sick leave rights.

5. The DLSE (Division of Labor Standards Enforcement) will likely be the main enforcer. Possible remedies for violations include: the withheld sick pay (up to 3x), penalties, interest, attorneys' fees, reinstatement and back pay.

6. The law includes strong anti-retaliation provisions to protect employees who file a complaint, participate in an investigation, or oppose their employer's unlawful practice relating to paid sick leave.

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## Summary

This law requiring that California employers provide paid sick leave applies to all employers, public or private regardless of size, and became effective Jan 1, 2015. The steps required to be taken by all California employers are outlined above and on the accompanying attachments.

If you have any questions about the new sick leave law please contact CFOs2Go or Jeff at Shuman Snyder directly.



*Jeff has been advising companies on employment law matters, and representing them in employment litigation, for nearly 25 years. He and Bob Shuman co-founded Shuman Snyder LLP in Menlo Park, CA, after long careers at bigger firms. Jeff's practice involves a heavy dose of counseling and litigation avoidance strategy, emphasizing practical solutions whenever possible.*

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**NOTICE TO EMPLOYEE**

*Labor Code section 2810.5*

**EMPLOYEE**

Employee Name: \_\_\_\_\_

Start Date: \_\_\_\_\_

**EMPLOYER**

Legal Name of Hiring Employer: \_\_\_\_\_

Is hiring employer a staffing agency/business (e.g., Temporary Services Agency; Employee Leasing Company; or Professional Employer Organization [PEO])?  Yes  No

Other Names Hiring Employer is "doing business as" (if applicable):  
\_\_\_\_\_

Physical Address of Hiring Employer's Main Office:  
\_\_\_\_\_

Hiring Employer's Mailing Address (if different than above):  
\_\_\_\_\_

Hiring Employer's Telephone Number: \_\_\_\_\_

If the hiring employer is a staffing agency/business (above box checked "Yes"), the following is the other entity for whom this employee will perform work:

Name: \_\_\_\_\_

Physical Address of Main Office: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

**WAGE INFORMATION**

Rate(s) of Pay: \_\_\_\_\_ Overtime Rate(s) of Pay: \_\_\_\_\_

Rate by (check box):  Hour  Shift  Day  Week  Salary  Piece rate  Commission

Other (provide specifics): \_\_\_\_\_

Does a written agreement exist providing the rate(s) of pay? (check box)  Yes  No

If yes, are all rate(s) of pay and bases thereof contained in that written agreement?  Yes  No

Allowances, if any, claimed as part of minimum wage (including meal or lodging allowances):  
\_\_\_\_\_

(If the employee has signed the acknowledgment of receipt below, it does not constitute a "voluntary written agreement" as required under the law between the employer and employee in order to credit any meals or lodging against the minimum wage. Any such voluntary written agreement must be evidenced by a separate document.)

Regular Payday: \_\_\_\_\_

**WORKER'S COMPENSATION**

Insurance Carrier's Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Policy No.: \_\_\_\_\_

Self-Insured (Labor Code 3700) and Certificate Number for Consent to Self-Insure: \_\_\_\_\_

**PAID SICK LEAVE**

Unless exempt, the employee identified on this notice is entitled to minimum requirements for paid sick leave under state law which provides that an employee:

- a. May accrue paid sick leave and may request and use up to 3 days or 24 hours of accrued paid sick leave per year;
- b. May not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and
- c. Has the right to file a complaint against an employer who retaliates or discriminates against an employee for
  - 1. requesting or using accrued sick days;
  - 2. attempting to exercise the right to use accrued paid sick days;
  - 3. filing a complaint or alleging a violation of Article 1.5 section 245 et seq. of the California Labor Code;
  - 4. cooperating in an investigation or prosecution of an alleged violation of this Article or opposing any policy or practice or act that is prohibited by Article 1.5 section 245 et seq. of the California Labor Code.

The following applies to the employee identified on this notice: (Check one box)

- 1. Accrues paid sick leave only pursuant to the minimum requirements stated in Labor Code §245 et seq. with no other employer policy providing additional or different terms for accrual and use of paid sick leave.
- 2. Accrues paid sick leave pursuant to the employer's policy which satisfies or exceeds the accrual, carryover, and use requirements of Labor Code §246.
- 3. Employer provides no less than 24 hours (or 3 days) of paid sick leave at the beginning of each 12-month period.
- 4. The employee is exempt from paid sick leave protection by Labor Code §245.5. (State exemption and specific subsection for exemption): \_\_\_\_\_

**ACKNOWLEDGEMENT OF RECEIPT**

(Optional)

\_\_\_\_\_  
(PRINT NAME of Employer representative)

\_\_\_\_\_  
(PRINT NAME of Employee)

\_\_\_\_\_  
(SIGNATURE of Employer Representative)

\_\_\_\_\_  
(SIGNATURE of Employee)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)

The employee's signature on this notice merely constitutes acknowledgement of receipt.

Labor Code section 2810.5(b) requires that the employer notify you in writing of any changes to the information set forth in this Notice within seven calendar days after the time of the changes, unless one of the following applies: (a) All changes are reflected on a timely wage statement furnished in accordance with Labor Code section 226; (b) Notice of all changes is provided in another writing required by law within seven days of the changes.

**THIS POSTER MUST BE DISPLAYED WHERE EMPLOYEES CAN EASILY READ IT**

*(Poster may be printed on 8 ½" x 11" letter size paper)*

**HEALTHY WORKPLACES/HEALTHY FAMILIES ACT OF 2014  
PAID SICK LEAVE**

**Entitlement:**

- An employee who, on or after July 1, 2015, works in California for 30 or more days within a year from the beginning of employment is entitled to paid sick leave.
- Paid sick leave accrues at the rate of one hour per every 30 hours worked, paid at the employee's regular wage rate. Accrual shall begin on the first day of employment or July 1, 2015, whichever is later.
- Accrued paid sick leave shall carry over to the following year of employment and may be capped at 48 hours or 6 days. However, subject to specified conditions, if an employer has a paid sick leave, paid leave or paid time off policy (PTO) that provides no less than 24 hours or three days of paid leave or paid time off, no accrual or carry over is required if the full amount of leave is received at the beginning of each year in accordance with the policy.

**Usage:**

- An employee may use accrued paid sick days beginning on the 90<sup>th</sup> day of employment.
- An employer shall provide paid sick days upon the oral or written request of an employee for themselves or a family member for the diagnosis, care or treatment of an existing health condition or preventive care, or specified purposes for an employee who is a victim of domestic violence, sexual assault, or stalking.
- An employer may limit the use of paid sick days to 24 hours or three days in each year of employment.

Retaliation or discrimination against an employee who requests paid sick days or uses paid sick days or both is prohibited. An employee can file a complaint with the Labor Commissioner against an employer who retaliates or discriminates against the employee.

For additional information you may contact your employer or the local office of the Labor Commissioner. Locate the office by looking at the list of offices on our website <http://www.dir.ca.gov/dlse/DistrictOffices.htm> using the alphabetical listing of cities, locations, and communities. Staff is available in person and by telephone.