

EMPLOYMENT

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New Law Requires California Employers to Provide Paid Sick Leave

California Governor Jerry Brown has signed into law the Healthy Workplaces, Healthy Families Act of 2014. The new law requires almost all California employers to provide paid sick time to most full-time and part-time employees, or face fines and other penalties. Employers must begin complying with the law by July 1, 2015. California is the second state (after Connecticut) to require paid sick leave.

Sick Time Requirement

Effective July 1, 2015, California employers will be required to provide paid time off for:

1. Diagnosis, care, or treatment of an existing health condition of an employee or an employee's family member (including grandparent, sibling, registered domestic partner, and foster or adopted child/parent); and
2. An employee who is the victim of domestic violence, sexual assault, or stalking.

This law applies to public and private employers of all sizes in California. Unlike other medical-leave laws and ordinances, it does not exempt small businesses from its coverage. Importantly, employees may be entitled to paid sick leave in circumstances not covered by their existing family leave entitlements since the covered medical conditions and definition of "family member" are more expansive than those in the federal and state family leave laws.

The sick time requirement does not apply to workers subject to collective bargaining agreements that provide specified minimum pay and benefit levels, in-home supportive

services providers, and certain airline employees.

Accrual and Use of Sick Time

The law requires the accrual of paid sick leave at a rate of at least one hour for every 30 hours worked. The sick time must be provided to all employees who work over 30 days per year, regardless of whether they are full-time or part-time, exempt or non-exempt. Exempt employees are presumed to have a 40-hour workweek for accrual purposes unless the employees' normal workweek is less than 40 hours, in which case the employees will accrue paid sick leave based on their normal workweek.

Employees will be entitled to use accrued paid sick leave beginning after their 90th day of employment.

Unused sick time must carry over from year to year; however, employers may cap (1) employees' use of sick time at 24 hours/3 days per year; and (2) accrual of sick time at 48 hours/6 days.

Instead of tracking accruals and carryover, however, the statute permits employers to provide the full allotment of sick leave at the beginning of each year. Also, an employer may elect to "lend" sick leave to an employee before it is accrued.

Payment

Sick time is generally paid at the employees' hourly rate. However, if the employee had varied hourly rates during the 90 days before taking the sick leave, or is paid commissions,

piece rates, or salary, the sick time must be paid at a rate calculated by dividing the employees' total wages over the past 90 days (excluding overtime pay) by the total hours worked over those same 90 days.

Unlike paid vacation time, unused sick time does not need to be paid when the employee separates from employment, whether by termination, resignation, or retirement. But, if an employee is rehired within a year, previously accrued sick time must be reinstated.

Information Requirements

Information about accrued and used sick time must be included as part of each employee's itemized wage statement. Employers must also include certain new language in the notice to new hires. The statute also includes workplace posting requirements to inform workers of their right to take paid sick time.

Employers must keep accurate sick time records for 3 years, along with other payroll records. The Labor Commissioner will have access to these records, and employers must make the records available to their employees.

Enforcement and Penalties

Violations of the sick time law may result in reinstatement, back pay, payment of sick days unlawfully withheld, and additional administrative penalties. If sick days are

unlawfully withheld, employers may be subject to penalties up to \$4,000. If a violation results in "other harm to the employee or person, such as discharge from employment," an additional administrative penalty up to \$4,000 will apply. Employers that do not promptly comply with the law may be subject to further penalties.

The Labor Commissioner or Attorney General may bring a civil action against the employer in court, with legal and equitable relief available plus attorney fees, costs, and interest.

Existing Sick Time Policies Probably Sufficient

If an employer already has a sick time policy that meets or exceeds the above requirements, or if it provides undifferentiated paid time off (PTO) in lieu of sick leave, no changes need to be made. Note, however, that employers who provide undifferentiated PTO in lieu of sick leave must pay all of the PTO upon termination, despite the fact that the new law does not require such payment for differentiated sick leave.

Even for employers that do not need to make changes to their policies, the new posting and record-keeping requirements will still apply. The California Labor Commissioner will release a template to use for the posting purposes.

For more information, please contact your Farella Braun + Martel attorney, or the authors Doug Dexter at (415) 954-4409 / ddexter@fbm.com, Chandra Russell at 415.954.4905 / crussell@fbm.com, and Holly Sutton at (415) 954-4476 / hsutton@fbm.com.

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