

EMPLOYMENT

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California's Sick Leave Law Will Require Altering Most PTO Programs by July 2015

On September 10, 2014, Governor Brown signed into law the Healthy Workplaces, Healthy Families Act of 2014, mandating paid sick leave for most employees, including part-time, as well as many temporary employees. Employers must begin providing sick leave as required by the new law by July 1, 2015. As explained in our previous alert, [New Law Requires California Employers to Provide Paid Sick Leave](#), the Act generally requires paid sick leave for any employee who works in California for 30 or more days within a year from the start of employment. Employees must have been employed for 90 days before the law requires that they be allowed to use this accrued sick leave.

While these accrual requirements may be satisfied by the sick leave benefits many employers already provide to full-time workers, the Act will likely require expansion of sick leave benefits for part-time or temporary employees. Moreover, with respect to all employees, the Act imposes new notice and accounting requirements which may require alteration of employee policies and practices. This alert highlights those potential changes and explains some of the options employers have in revising their PTO policies and accounting practices to comply with the Act.

The Act May Require Adding Paid Time Off Benefits For Part-Time or Temporary Employees.

The Act explains that employees need not receive “additional” paid sick days if they already accrue PTO under a policy allowing use of the time for illness under the same conditions as specified in this new law, as

long as the policy either: (1) satisfies the accrual, carry-over and use requirements of the Act; or (2) grants at least 24 hours of accrual at the beginning of each employment year, calendar year, or 12-month period.

Thus, many full-time employees need not accrue additional PTO because employers commonly grant full-time employees at least an hour of PTO accrual for every 30 hours worked (i.e., approximately 70 hours or 9 days per annum). Adjustments are more likely to be necessary for part-time or temporary workers, who more commonly lack PTO benefits or accrue them at a reduced rate.

Employers may choose to establish special accrual policies for part-time or temporary workers that incorporate the Act's prerequisites (minimum 30 days worked in California), accrual rates (one hour per 30 hours worked), and caps (48 hours per year), as well as the Act's limitations (24 hours or three paid days off per annum). Alternatively, employers may adopt a separate policy for part-time or temporary workers whereby the employer grants part-time and temporary employees 24 hours of sick leave at the start of each 12-month period. This latter option allows employers to avoid tracking accruals and carry-over from year to year, and thus reduces the record-keeping burden.

But this new benefit for part-time and temporary employees raises the question of whether the PTO should be accrued in the same manner as existing PTO policies for full-time employees, or whether the time should be limited to sick leave only. The arguments favoring accrual per existing PTO policies are:

(1) avoidance of administrative and accounting burdens posed by an entirely new time off accrual; and (2) the complications arising from sick leave that led to the popularity of PTO policies in the first place, including the complexity of monitoring employees' reasons for the time off. Those complications will only be more burdensome under the Act because it provides that employees may use the paid sick time for preventive care for themselves or a family member, as well as for the diagnosis, care, or treatment of their or their family member's existing health condition. The term "family member" and the covered medical conditions under the act are more expansive than those in the federal and state family leave laws. The Act also requires paid sick days for employees who are victims of domestic violence, sexual assault, or stalking. Other potentially new complications are the Act's requirement that sick leave be granted upon oral or written request with advance notice only required as practical, and that the employer may set a reasonable minimum increment, not to exceed two hours, for the use of paid sick leave. Many of these administrative burdens and complexities could be avoided by bringing the new sick leave for part-time and temporary employees under existing PTO policies.

The argument favoring limiting this new paid time off to sick leave is that such a limitation avoids any obligation to pay out the value of the accrual upon termination. (Note that the Act does require reinstating the previously unused balance if the employee is rehired within one year.) Of course, the fact that unused sick leave is not compensable at termination may motivate employees to use their allotted sick leave during the year, so employers will need to evaluate whether the administrative burden of maintaining two categories of PTO is worth the cost savings for those few employees who terminate with unused sick leave balances.

All employers must comply with the new posting and record-keeping requirements.

Regardless of how employers decide to alter their existing PTO accrual policies, the Act will require some posting and accounting that is likely to be new for most California employers.

- Effective January 2015, employers must provide California new hires with a written statement of the law's substantive provisions. The California Labor Commissioner is accordingly revising its standard notice of rights to new hires.
- The Labor Commissioner has issued a poster explaining the Act that must be displayed with other standard posters, again effective January 2015.
- The Act requires employers to retain records documenting the hours worked, paid sick days accrued, and paid sick days used by each employee for at least three years.
- The Act requires that employers provide California employees a notice with each paycheck listing their current available sick leave. Effectively, for most full-time employees, this will require a written report of available PTO each payday. This may be printed on the pay stub, or it may be provided on a separate paper with the paycheck stub.

Some employers have adopted a policy allowing unlimited PTO. The California Division of Labor Standards Enforcement has announced its view that the Act will require those employers to track and report sick time in compliance with the above reporting requirements. So, overlying those requirements with an unlimited PTO policy will take careful consideration and legal counsel to minimize potential liability.

Employers with San Francisco employees may already be complying with the accrual requirements of the Act because the city's paid sick leave ordinance mandates that

employers provide full-time, part-time and temporary employees with paid sick leave of up to 72 hours annually, at an accrual rate of one hour for every 30 hours worked (with some other differences in accrual date, use limits and minimum use increments). Similarly, the City of San Diego recently passed a similar paid sick leave law that will take effect on April 1, 2015 and requires that employers provide covered employees with paid sick leave of up to 40 hours per year, at an accrual rate of one hour for every 30 hours worked.

The Act provides that, where paid sick leave is unlawfully withheld, the employee shall

recover the dollar value of the paid sick days withheld, or \$250 multiplied by three, whichever is greater, but not to exceed an aggregate penalty of \$4,000. If a paid sick leave-related violation results in “other” harm to the employee or person, the administrative penalty shall include a sum of \$50 for each day that the violation occurred or continued, not to exceed \$4,000.

This client alert is intended only to highlight issues to be considered in adjusting to the Act. Any policy revisions should be examined by experienced employment counsel to ensure compliance with all aspects of the Act and other related California employment laws.

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