



City of San Diego Enacts Paid Sick Leave and Minimum Wage Ordinance

Another city has added to the burdens of doing business in California by passing its own paid sick leave and minimum wage requirements not always consistent with state law. On June 7, 2016, voters approved an ordinance mandating paid sick leave and raising the minimum wage for employees working within the City of San Diego. San Diego employers will have to act quickly to comply with the new Ordinance as it is expected to take effect in late July. The following are the key takeaways:

Who Is Covered

With limited exceptions, persons are covered by the Ordinance if they perform at least two hours of work within the geographic boundaries of the city in one or more calendar weeks of the year and qualify as an employee entitled to minimum wage under California law.

Earned Sick Leave Overview

- Amount of Leave. Employers must provide covered employees with one hour of earned sick leave for every 30 hours worked by the employee within the geographic boundaries of the city. The Ordinance does not provide "frontloading" alternatives to hourly accrual of sick leave like state law. However, employers that provide an amount of paid leave, including paid time off, paid vacation, or paid personal days under policies meeting the requirements of the Ordinance, are not required to provide additional earned sick leave. Unlike state law, employers may not limit the amount of earned sick leave employees accrue. This may present a barrier to using a preexisting policy.
- Accrual. Employees begin to accrue paid sick leave at the commencement of employment or when the law takes effect, whichever is later. Employees may begin using earned sick leave on their 90th day of employment or the law's effective date, whichever is later; it can then be used as accrued.
- Employee Use of Leave. Employees may determine how much sick leave they need to use, provided that employers may set a reasonable minimum increment for the use of leave not to exceed two hours. However, employers may limit an employee's use of earned sick leave to 40 hours in a consecutive 12-month period (to be determined by the employer). All unused sick leave must be carried over to the following year. Employees may use earned sick leave for their own medical care and for the medical care of certain covered family members; and for themselves and covered family members for reasons associated with domestic violence, sexual assault or stalking, including medical care, counseling, relocation or legal services. In

addition, employees may use leave time for a public health emergency.

- Employee Notice. When the need is foreseeable, employers may require reasonable advance notice not to exceed seven days prior to the date the earned sick leave is to be used. When the need for sick leave is not foreseeable, employers may require employees to provide notice as soon as practicable. If the employee is absent for more than three consecutive work days, the employer may require reasonable documentation that the earned sick leave was taken for a permissible reason. Employers must accept reasonable documentation (which does not specify the nature of the injury, illness or medical condition) signed by a licensed health care provider.

Minimum Wage Overview

The minimum wage in the city will be increased to \$10.50 an hour following certification of the election results. The minimum wage will be raised to \$11.50 an hour effective January 1, 2017. Starting January 1, 2019, the minimum wage will increase by an amount corresponding to the prior year's increase, if any, in the cost of living, as defined by the Consumer Price Index. If the California or federal minimum wage exceeds the minimum wage set by the Ordinance, the minimum wage will be increased to the higher of the California or federal minimum wage.

Notice and Posting Requirements

Employers must post a notice published each year by the city in a conspicuous place at any workplace or job site where any covered employee works. Employers must provide each employee at the time of hire with written notice of the employer's name, address and telephone number, and the legal requirements under the Ordinance. Postings and notices must be in English and the employee's primary language if that language is one for which the San Diego County Registrar of Voters provides translated ballot materials, and it is spoken by at least five percent of the employees at a particular job site.

Enforcement

Employers face stiff penalties for failing to comply with the Ordinance. Any employer who fails to comply with the notice and posting requirements is subject to a civil penalty of \$100 for each employee who was not given appropriate notice, up to a maximum civil penalty of \$2000. An employer who violates any other requirement is subject to a civil penalty for each violation of up to, but not to exceeding, \$1000 per violation.

An employee claiming harm from a violation of the Ordinance may obtain equitable and legal remedies, including but not limited to the payment of back wages withheld, two times the back wages withheld as liquidated damages, damages for the denial of use of accrued earned sick leave, reinstatement of employment and injunctive relief, and reasonable attorney's fees and costs. Submitting a complaint to the city appointed enforcement agency (not yet designated) is neither a prerequisite to nor a bar to bringing a private cause of action.