

CARR McCLELLAN

THE DOCTOR IS IN: FAQS ON THE HEALTHY WORKPLACES, HEALTHY FAMILIES ACT OF 2014

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FAQS ON THE HEALTHY WORKPLACES, HEALTHY FAMILIES ACT OF 2014

The Healthy Workplaces, Healthy Families Act of 2014. You've heard a lot about it but still wonder if your company is compliant with the new law. And if your company is based in San Francisco, are you subject to San Francisco's Paid Sick Leave Ordinance or the new law... or both?

WHAT IS THIS NEW LAW?

- › Generally speaking, the Healthy Workplaces, Healthy Families Act of 2014 (AB1522) requires all California employers to provide paid sick leave to their employees beginning July 1, 2015.

DOES OUR COMPANY HAVE TO POST ANYTHING ABOUT THIS NEW LAW OR DISTRIBUTE INFORMATION TO OUR EMPLOYEES?

- › Yes, employers are required to post the Paid Sick Leave poster in a location that is readily visible and available to employees.
- › Additionally, employers must provide a DLSE Notice or other written documentation of paid sick leave information to employees 7 days after implementation of a paid sick leave policy or by July 8, 2015.

WHO IS ELIGIBLE TO RECEIVE PAID SICK LEAVE?

- › The law extends to all employees, including full-time, part-time, seasonal, and temporary, who have worked in California for your company for 30 or more calendar days in a year.
- › The following employees are exempted from this law: employees covered by a collective bargaining agreement which provides for paid sick days; providers of in-home supportive services under Sections 14132.95, 14932.952, or 14132.956 of the California Welfare Institutions Code (IHSS); or air flight deck or cabin crew employees who have equivalent benefits.

WHEN DOES ACCRUAL BEGIN?

- › An employee begins to accrue paid sick leave on July 1, 2015, or if hired after that date, on his or her first date of employment.

WHAT IS THE ACCRUAL FORMULA?

- › One hour of paid sick leave for every 30 hours worked. For example, an employee who works 40 hours per week will accrue 1.33 hours of paid sick leave per week.

› WHEN CAN AN EMPLOYEE BEGIN USING PAID SICK LEAVE?

- › An employee may use accrued paid sick leave after his or her 90th day of employment.

AT WHAT RATE DOES AN EMPLOYER PAY THE ACCRUED SICK LEAVE?

- › Paid sick leave is paid at the employee's current rate of pay.

CAN EMPLOYERS IMPOSE A CAP ON ACCRUAL OF PAID SICK LEAVE?

- › Yes, an employer may cap accrual at not less than 48 hours (or 6 days) of paid sick leave.

CAN EMPLOYERS LIMIT AN EMPLOYEE'S USE OF PAID SICK LEAVE?

- › Yes, employers can limit employees' use of paid sick leave to 24 hours (or 3 days) per year of employment.
- › Employees should be notified of the usage limit prior to implementation of the company's policy.

MUST SICK LEAVE CARRY OVER AT THE END OF THE YEAR?

- › Yes, paid sick leave must be carried over from year to year, subject to any caps that employers may have in place.

IS THERE AN ALTERNATIVE TO THE ACCRUAL METHOD?

- › Yes, employers can provide a lump sum amount of at least 24 hours (or 3 days) of paid sick leave at the beginning of each calendar year, anniversary date, or other twelve month basis.
- › Under this method, employees still cannot use it until after his or her 90th day of employment.
- › While employers won't need to track accruals under this method, they will need to track and display usage on wage statements, pay stubs, or some other written document provided to the employee.
- › Under this method, employers are not required to provide for carryover of sick leave.

WHAT IS THE SMALLEST INCREMENT OF SICK LEAVE THAT AN EMPLOYER CAN REQUIRE AN EMPLOYEE TO TAKE AT A SINGLE TIME?

- › Employers can require employees to use at least two hours of leave at a time, but generally, it is up to the employees to determine how much time they actually need.

DO EMPLOYERS HAVE TO PAY OUT ACCRUED BUT UNUSED PAID SICK LEAVE BENEFITS UPON TERMINATION OR SEPARATION FROM EMPLOYMENT?

- › No, an employer is not required to pay out accrued but unused paid sick leave at the time of termination or separation.
- › If the employer maintains a separate vacation or PTO plan, a final payout of accrued but unused vacation or PTO would be due at termination or separation.

ARE THERE ANY REINSTATEMENT PROVISIONS?

- › If an employee is rehired within one year from the date of his/her separation, all previously accrued but unused paid sick days must be reinstated.

SIX STEPS TO “HEALTHY” COMPLIANCE

1. Display the required poster on paid sick leave where employees can easily access and read it. Concurrently, develop an internal policy or ensure that your company’s current policy meets the law’s requirements.
2. Provide written notice to employees with information on paid sick leave as part of your new hire onboarding process.
3. Ensure that each employee is accruing at least one hour of paid sick leave for every 30 hours worked and ensure that employees know whether your company has a usage limit.
4. Allow eligible employees to use accrued paid sick leave upon request or notification.
5. Double check your employees’ wage statements (or other written document) to ensure that the accrual and usage is properly documented.
6. Maintain accurate records showing accrual and usage for a period of three (3) years.

SAN FRANCISCO

And for those of you with a San Francisco presence, fear not. This comparison chart should help alleviate some of the confusion that has arisen over whether the local ordinance trumps the new state law. Remember this though: when the local and state laws conflict, employers must provide benefits under the law that is most favorable to the employee.

**CA HEALTHY WORKPLACES,
HEALTHY FAMILIES ACT OF 2014
(EFFECTIVE 7/1/2015)**

**SAN FRANCISCO PAID
SICK LEAVE ORDINANCE
(EFFECTIVE 2/5/2007)**

COVERED EMPLOYERS	All. No minimum threshold of employees.	All. No minimum threshold of employees.
WHO IS COVERED?	Full-time, part-time, seasonal, and temporary employees who, on or after July 1, 2015, work in California for 30+ days within a year from the beginning of his/her employment.	All employees (full-time, part-time and temporary) who perform work in San Francisco, regardless of the number of hours actually worked, or where the employer is actually located.
POSTING REQUIREMENTS	Employers are required to post the Paid Sick Leave poster in a location that is readily visible and available to employees. Additionally, employers must provide a DLSE Notice or other written documentation of paid sick leave information to employees 7 days after implementation of a paid sick leave policy or by July 8, 2015.	Employers are required to post the San Francisco Paid Sick Leave Ordinance poster in a location that is readily visible and available to employees.
WHEN DOES ACCRUAL BEGIN?	On July 1, 2015 or the first day of employment, whichever is later.	After 90 calendar days of employment.
WHAT IS THE ACCRUAL RATE?	At least 1 hour for every 30 hours worked.	At least 1 hour for every 30 hours worked.
WHEN CAN EMPLOYEES BEGIN USING ACCRUED PAID SICK LEAVE?	90 calendar days after employment has commenced.	Immediately upon accrual.
WHAT IS THE RATE OF PAY?	Employee's current rate of pay (or hourly wage).	Employee's current rate of pay (or hourly wage).

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**CAN AN EMPLOYER LIMIT THE
USE OF PAID SICK LEAVE IN A
GIVEN YEAR?**

Yes, employers may limit the use of paid sick leave to 24 hours (or 3 days) per year of employment.

No, employers may NOT limit the amount of accrued sick leave that an employee may take.

MINIMUM USE INCREMENTS

Employers may require employees to use paid sick leave in two-hour increments or less.

Employers may require employees to use paid sick leave in one-hour increments or less.

**CAN EMPLOYERS CAP
ACCRUAL?**

Yes, not less than 48 hours (or 6 days).

If employer has less than 10 employees, employer may cap paid sick leave accrual at 40 hours (or 5 days).

If employer has more than 10 employees, employer may cap paid sick leave accrual at 72 hours (or 9 days).

**WHAT CAN AN EMPLOYEE USE
PAID SICK LEAVE FOR?**

Diagnosis, medical care (including preventive care) or treatment for an employee or employee's family member. An employee who is a victim of domestic violence, sexual assault, or stalking may also use paid sick leave time to address these issues.

The employee's own illness, injury, health condition, health care appointment or because the employee is receiving medical care, treatment or diagnosis, or to aid or care for a child, parent, spouse, siblings, grandparent or grandchild, domestic partner, domestic partner's child, or legal guardian/ward who is ill, injured, has a health condition, to attend a health care appointment, or because the individual is receiving medical care, treatment or diagnosis.

If the employee does not have a spouse or registered domestic partner, the employee may designate such an individual.

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DOES AN EMPLOYER HAVE TO PAY OUT ACCRUED BUT UNUSED PAID SICK LEAVE UPON TERMINATION OR SEPARATION?	No.	No.
REINSTATEMENT RIGHTS?	If an employee is rehired within one year from date of separation, all previously accrued but unused paid sick days must be reinstated.	If employee separates before becoming eligible to accrue paid sick leave and is rehired within one year of separation, the prior period of employment counts towards the 90-day eligibility period. If, however, the employee separates after becoming eligible to accrue paid sick leave and is rehired within one year of separation, the employee is not subject to the 90-day eligibility period. In this circumstance, an employer is not obligated to reinstate the employee's previously accrued but unused paid sick leave hours.
CAN AN EMPLOYER REQUIRE THE EMPLOYEE TO BRING A DOCTOR'S NOTE?	The new law is silent in this respect.	Employer can require a doctor's note if the employee uses paid sick leave for more than three consecutive work days. Employers should be cognizant of applying this requirement consistently to all employees.
HOW LONG SHOULD EMPLOYERS KEEP PAID SICK LEAVE ACCRUAL AND USAGE INFORMATION?	3 years.	4 years.
DISCRIMINATION AND RETALIATION	Employers may not discriminate or retaliate against any employee who requests and/ or uses paid sick days.	Employers may not discriminate or retaliate against any employee who requests and/or uses paid sick days.
