

## Governor Brown Signs Paid Sick Leave Bill Into Law

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On August 30, 2014, the Governor signed Assembly Bill 1152 into law and said “tonight, the Legislature took historic action to help hardworking Californians. This bill guarantees that millions of workers — from Eureka to San Diego — won’t lose their jobs or pay just because they get sick.”

The new law is called the “Healthy Workplaces, Healthy Families Act.” Beginning on July 1, 2015, both public and private employers (of any size) will be required to provide eligible employees with paid sick leave “at the rate of not less than one hour per every 30 hours worked.” Eligible employees are those employees who have worked 30 or more days within a year after their date of hire. Under the new law, exempt employees are deemed to work a 40 hour workweek. Employees are to be compensated at the same wage as the employee normally earns during regular work hours. The rate of pay shall be the employee’s hourly wage. If the employee in the 90 days of employment before taking accrued sick leave had different hourly pay rates, was paid by commission or piece rate, or was a nonexempt salaried employee, then the rate of pay shall be calculated by dividing the employee’s total wages (not including overtime premium pay) by the employee’s total hours worked in the full pay periods of the prior 90 days of employment.

There are a few exceptions in which employers are not required to offer the new paid sick leave benefit and they relate mainly to employees who are covered under a collective bargaining agreement, or who work in the construction industry, the home healthcare industry, or the airline industry.

### So How Does The New Law Work?

Employee shall be entitled to use accrued paid sick days beginning on the 90th day of employment, after which day the employee may use paid sick days as they are accrued.

- If not used by the employee, accrued paid sick days shall carry over to the following year of employment. However, an employer has no obligation to allow an employee’s accrual of paid sick leave to exceed a total of 48 hours or 6 days. Also, an employer may limit an employee’s use of paid sick days to no more than 24 hours or three days in each year of employment.
- An employer is not required to provide additional paid sick days pursuant to this section if the employer has a paid leave policy or paid time off policy, the employer makes available an amount of leave that may be used for the same purposes and under the same conditions as specified under the new law, and the policy does either of the following:

- Satisfies the accrual, carry over, and use requirements of this section; and
- Provides no less than 24 hours or three days of paid sick leave, or equivalent paid leave or paid time off, for employee use for each year of employment or calendar year or 12-month basis.
- An employer is not required to provide compensation to an employee for accrued, unused paid sick days upon termination, resignation, retirement, or other separation from employment. The only exception to this is if an employee separates from an employer and is rehired by the employer within one year from the date of separation. In that case, previously accrued and unused paid sick days shall be reinstated. The employee shall be entitled to use those previously accrued and unused paid sick days and to accrue additional paid sick days upon rehiring.
- An employer may lend paid sick days to an employee in advance of accrual, at the employer's discretion and with proper documentation.
- An employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement or in a separate writing provided on the designated pay date with the employee's payment of wages. Failure to do so can result in penalties.
- An employee may determine how much paid sick leave he or she needs to use, provided that an employer may set a reasonable minimum increment, not to exceed two hours, for the use of paid sick leave.
- If the need for paid sick leave is foreseeable, the employee shall provide reasonable advance notification. If the need for paid sick leave is unforeseeable, the employee shall provide notice of the need for the leave as soon as practicable.
- An employer shall provide payment for sick leave taken by an employee no later than the payday for the next regular payroll period after the sick leave was taken.
- Upon the oral or written request of an employee, an employer shall provide paid sick days for the following purposes:
  - Diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member;
  - For an employee who is a victim of domestic violence, sexual assault, or stalking, the purposes allowed for under the Labor Code.
- An employer shall not require as a condition of using paid sick days that the employee search for or find a replacement worker to cover the days during which the employee uses paid sick days.

Non-Interference/Non-Retaliation: Like most employment entitlement statutes, the new law prohibits interference and retaliation. The law provides that an employer shall not deny an employee the right to use accrued sick days or take other adverse employment action against

the employee for using accrued sick days, attempting to exercise the right to use accrued sick days, or for making a claim for a violation of the new law or participating in any investigation into such a violation. The law expressly provides that there shall be a rebuttable presumption of unlawful retaliation if an employer denies an employee the right to use accrued sick days, discharges, threatens to discharge, demotes, suspends, or in any manner discriminates against an employee within 30 days of any of the following:

- The filing of a complaint by the employee with the Labor Commissioner or alleging a violation of the new law;
- The cooperation of an employee with an investigation or prosecution of an alleged violation of the new law; or
- The opposition by the employee to a policy, practice, or act that is prohibited by the new law.

Postings and Record Keeping Requirements. The new law provides that employers shall display a poster in a conspicuous place containing all the information specified in the statute. The Labor Commissioner shall create a poster containing this information and make it available to employers.

An employer shall keep for at least three years records documenting the hours worked and paid sick days accrued and used by an employee, and shall allow the Labor Commissioner to access these records upon request. An employer shall make these records available to an employee in the same manner as other payroll records are required to be made available to employees under Labor Code section 226. If an employer does not maintain adequate records pursuant to this section, it shall be presumed that the employee is entitled to the maximum number of hours accruable under the law, unless the employer can show otherwise by clear and convincing evidence.

Penalties and Civil Liability. The Labor Commissioner is responsible for enforcing the new law via investigations and administrative proceedings. It has the authority to issue relief including reinstatement, back pay, the payment of sick days unlawfully withheld, and the payment of additional sums in the form of administrative penalties to an employee. Statutory penalties are set out as follows:

- If paid sick days were unlawfully withheld, the dollar amount of paid sick days withheld from the employee multiplied by three, or two hundred fifty dollars (\$250), whichever amount is greater, but not to exceed an aggregate penalty of four thousand dollars (\$4,000);
- If a violation of this article results in other harm to the employee or person, such as discharge from employment, or otherwise results in a violation of the rights of the employee or person, the administrative penalty shall include a sum of fifty dollars

(\$50) for each day or portion thereof that the violation occurred or continued, not to exceed an aggregate penalty of four thousand dollars (\$4,000).

Where prompt compliance by an employer is not forthcoming, the Labor Commissioner or the Attorney General has the power to file a civil action and, upon prevailing, shall be entitled to collect legal or equitable relief on behalf of the aggrieved employee and shall be awarded reasonable attorney's fees and costs. The remedies, penalties, and procedures provided under the new law are cumulative.

An employer shall not be assessed any penalty or liquidated damages under the new law due to an isolated and unintentional payroll error or written notice error that is a clerical or an inadvertent mistake regarding the accrual or available use of paid sick leave. In reviewing for compliance under the law, the fact finder may consider as a relevant factor whether the employer, prior to an alleged violation, has adopted and is in compliance with a set of policies, procedures, and practices that fully comply with the law.

**To Do:** Employers should review their sick leave (or PTO) policies to see if they already meet the standards under the new law. If they do not, employers should revise such policies so as to comply with the new law and then ensure that all payroll, postings/notices, recordkeeping, and leave administration practices comply with the new law by its effective date of July 1, 2015.

*Feel free to contact any one of the employment attorneys at Weintraub Tobin if you need assistance in evaluating your compliance obligations under this new law or any other federal or state employment law. We are happy to help.*