

PAID SICK LEAVE SOON TO BE REQUIRED

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Starting July 1, 2015, a new California law will go into effect that will require employers to provide their employees with paid sick days. Under this law (known as the Healthy Workplaces, Healthy Families Act of 2014 and codified under the California Labor Code sections 245 through 249), employees will accrue at least one hour of paid sick time for every 30 hours worked. This mandate includes employees who are exempt from overtime compensation (i.e. administrative, executive, and professional employees).

The accrual period will begin on July 1, 2105, or on the employee's first day of work, whichever is later. However, under the new law, employees will not be entitled to start using their accrued paid sick time until their 90th day of employment. Presumably, this 90-day period also begins on the later of July 1, 2015, or the employee's first day of work.

Accrued but unused paid sick time must carry over from year to year. "However, an employer may limit an employee's *use* of paid sick days to 24 hours or three days in each year of employment." (Lab. Code § 246(d) [emphasis added].) Also, employers have "no obligation . . . to allow an employee's *total accrual* of paid sick leave to *exceed* 48 hours or 6 days . . ." (Lab. Code § 246(i) [emphasis added].) If these provisions confuse you, you're not alone. After all, what good does it do an employee to accrue 48 hours or 6 days of paid sick leave if the employer can and does limit the employee's use of that time to 24 hours or three days in each year of employment?

Perhaps adding to the above confusion is that the new law does not require employers to provide a payout of the accrued but unused sick leave upon separation from employment, which, by the way, follows existing California law. (The opposite is true for accrued but unused vacation time and paid time off.) Thus, given that there is no payout requirement, if an employee accrues 48 hours or 6 days of paid sick leave but is allowed to use only 24 hours or three days of it per year, then the difference should simply disappear upon separation of employment.

Regarding existing policies, if employers already provide a paid time off or sick leave policy that can be used for the same purposes and under the same conditions as the new law, then employers do not have to provide additional paid sick days. (Of course, again, paid time off

requires a payout upon separation of employment unlike paid sick leave. Thus, by choosing to provide a paid time off policy as satisfaction of this new law, employers will impose on themselves an additional cost upon the employee's termination or resignation.)

Finally, and perhaps most importantly, like with most labor laws, the new law provides for onerous penalties and interest for violating its provisions, which are in addition to other remedies. It also empowers the Labor Commissioner, the Attorney General, and persons bringing lawsuits on behalf of the public (i.e. claims brought under the Private Attorneys General Act) to enforce these new sections of the Labor Code. And, not surprisingly, the prevailing complainant is entitled to reasonable attorney's fees and costs, which can be daunting to the defendant.

In short, if employers want to help avoid the sick feeling of being in trouble with the law, they better get familiar with the Legislature's new prescription!

**The above article is merely a brief summary of some of the new sections to the Labor Code and is not intended to provide legal advice. The author makes no guarantees or representations as to the accuracy of the information provided above.*