

# How to navigate California's new paid sick leave law

As the nation addresses its health care overall through the Affordable Care Act, California has taken a different approach to address the health of its populous. Governor Brown signed the Healthy Workplaces, Healthy Families Act of 2014

**GUEST VIEW**



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into law on Sept. 10. In sum, the law requires employers to provide employees paid sick leave. California became the second state (after Connecticut) to enact such a statute.

The new law, like the Affordable Care Act, has been met with controversy — hailed by worker's rights and labor groups, but opposed by many trade organizations and local chambers of commerce, including the Greater Fresno Area Chamber of Commerce. In any event, the law has caused confusion for those attempting to comply.

The new law is far reaching. Un-

like many employment laws that only apply to employers that meet a certain threshold number of employees, the law applies to employers of all sizes. While the law took effect on Jan. 1, the heart of the law — the right to take and accrue sick leave — does not begin until July 1.

Jan. 1 is still an important date because it marks the day employers are required to post a notice in a "conspicuous place at the workplace." More importantly, Jan. 1 is key because employees who work for 90 days at any time after that date will begin to accrue sick leave on July 1 (or the date on which they hit their 90th day of employment).

The employer can choose the method employees earn sick leave. They can either use the "accrual method" or the "up-front method." Under the accrual method, employees earn at least one hour of paid sick leave for every 30 hours worked. Under this method, employers must show on employees' paystubs or another document issued on payday how many days of sick leave an employee has earned.

Under the up-front method, employers simply grant qualifying employees 24 hours or three days of paid sick leave each year.

Under the accrual method, em-

ployees may accrue more paid sick leave than 24 hours. In such instances, employees will carry over their unused leave into the following year, but employers can cap the amount accrued to 6 days or 48 hours. Nonetheless, an employer can still limit employees to taking 24 hours or 3 days of sick leave per year.

Under the up-front method, there is no requirement to carryover unused sick leave.

Employees do not have to formally request sick leave. However, if the need is foreseeable (such as a doctor's appointment) the employee must give reasonable advance notice. Employees can use their sick leave for their own health condition or doctor's appointments, or a family member's health condition or doctor's appointments. Family members include a spouse, domestic partner, children, parents, siblings, grandparents and grandchildren. Paid sick leave may also be used if an employee is a victim of domestic violence, sexual assault or stalking.

Although the law specifies the purposes for which paid sick leave may be used, the law is silent as to what documentation an employee may be required to provide. This ambiguity is further complicated by the law's prohibition against retalia-

tion or discrimination against those taking sick leave, which is certain to lead to litigation.

Employees must be paid at their regular hourly rate for taking sick leave and must be paid for sick leave no later than the next payday. Employers must keep records showing how much sick leave employees accrued and used covering a three-year period.

Employers who currently have a sick leave or Paid Time Off (PTO) plan must make sure it satisfies the law's accrual, carryover and use requirements.

Failure to comply with the law may result in civil penalties, injunctive relief, restitution and reasonable attorney fees and costs.

Interestingly, only 77 of the 80 Assembly members voted on the measure on the Assembly floor, with two recording their vote after the fact — perhaps those absent were taking a sick day. In the end, while some employees may celebrate the new law, employers may need their own sick day to deal with the headache.

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