

California Compliant: Imminent Increase in Requirement to Provide Paid Sick Leave to California Workers

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California employers likely will need to provide more paid sick leave to employees beginning next year. Senate Bill 616 (SB 616), which would amend the Labor Code to increase the entitlement to paid sick leave, is awaiting approval by Governor Newsom. If signed, the new law would take effect January 1st.

Employees' Accrual & Use of Paid Sick Time, Historically

Since 2015, California has required employers to provide employees a limited amount of paid sick leave. The entitlement to paid sick leave is set forth in Labor Code Sections 245.5, 246 and 246.5. These statutes broadly define "employer," for this purpose, as including any person (or entity) having at least one employee. With limited exceptions, an employee's entitlement to paid sick leave vests upon their 30th day of work for the employer, and the employee may use accrued paid sick leave beginning on their 90th day of employment. (An employer may permit an employee an "advance" of their accrual of paid sick leave before that time, in its discretion.) Under some circumstances, employers that offer paid leave/paid time off that employees can use for the same purposes as the statutory entitlement to paid sick leave do not need to provide additional paid sick leave.

Employees accrue paid sick leave at regular intervals, and can carry over accrued, unused paid sick leave to subsequent years of employment. Employers may, however, cap employee's accrual of paid sick leave. At present, employees must accrue paid sick leave at a rate of at least 24 hours, or three days, every 12 months. Employers who cap employees' accrual of paid sick leave cannot cap the accrual at less than 48 hours, or 6 days, of paid sick leave. Employees are not entitled to be paid for their accrued, unused paid sick leave upon their separation from employment, but an employee who is rehired in less than a year is entitled to reinstatement of previously accrued and unused paid sick leave.

Paid sick leave may be used by an employee for their own health condition, or that of a family member. "Family member" is defined by the Code, and generally includes a spouse or domestic partner, immediate family members (including adopted, foster, and step children/parents), grandparents and grandchildren, and a "designated person" identified by the employee. (Employers may limit an employee to one "designated person" per 12-month period.)

Labor Code Sections 230 and 230.1 expand the use of paid sick leave to other circumstances. For example, employees who are victims of domestic violence, sexual assault, or stalking may use paid sick leave to obtain a restraining order or other relief to ensure the health, safety or welfare of the employee or their child. Also, employees who have been victims of a crime may use paid sick leave to seek medical attention, counseling, or to obtain services from a domestic violence shelter, rape crisis center, or victim services organization.

Employees may request to use paid sick leave orally or in writing. Employers cannot require an employee to find a replacement worker to cover for the employee who will be taking paid sick leave. Employees must be compensated for paid sick leave "at the same wage as the employee normally earns during regular work hours."

Employers can require employees to use paid sick leave in minimum increments of no more than two hours. The available amount of an employees' paid sick leave must be reflected on their wage statement or in a separate document provided on pay dates. Nothing in the Labor Code prevents an employer from providing employees unlimited paid sick leave if the employer so chooses. When an employer offers unlimited paid sick leave, it can indicate "unlimited" for the amount of available paid sick leave on wage statements or notices given at pay dates.



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The Labor Code prohibits employers from retaliating against an employee for requesting or using paid sick leave, or for reporting or participating in the investigation of an alleged interference with the right to paid sick leave.

Anticipated Changes in California's Entitlement to Paid Sick Leave

Under current law, covered employees must accrue at least 24 hours, or three days, of paid sick time each year, and must be permitted to accrue at least 48 hours, or six days, of paid sick leave before such accrual is capped by the employer. If Governor Newsom signs SB 616, the new law would:

- increase employees' minimum rate of accrual of paid sick time to 40 hours, or five days, each year; and
- increase the minimum cap on accrual of paid sick leave; beginning in 2024, employees would be able to accrue at least 80 hours, or ten days, of paid sick leave.

Employers would be able to limit an employee's use of accrued paid sick leave to 40 hours, or five days, per year, even if the employee has accrued a greater amount of paid sick leave.

Additional Paid Sick Leave May be Required in Some Locations

In addition to monitoring SB 616, employers should check to make sure their policies are compliant with local laws, which may require even more paid sick leave. For example, those who employ workers within the city of Los Angeles must provide covered employees up to 48 hours of paid sick leave annually, with a minimum cap on accrual of 72 hours.

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