

“Employers In A Fever Over Paid Sick Leave”

Healthy Workplaces, Healthy Families Act of 2014

Presented by

Landegger Baron Law Group, ALC



Exclusively Representing Employers
Employment Law, Advice, Litigation and Solutions
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What is the new sick leave law?

- Beginning July 1, 2015, California employers must provide a paid sick leave benefit to all employees
- Only exceptions:
 - Certain union employees
 - Certain in-home services
 - Airline cabin/flight deck crews



Who benefits and how much?

- Any employees who work 30+ days/year
- Must accrue at least 1 hour sick leave for every 30 hours worked
- Unused days must be carried over from year to year

For full time workers, 1.3 hours must be accrued per week

May cap accrual at 48 hours

Is there any flexibility in the law?

- May cap annual usage at just 3 days/year
- Although must allow carryover of what's not used, may “cap” the amount of carryover at just 6 days
- If “front load” 3 days at beginning of year:
 - No accrual reporting needed
 - No carryover needed
 - Must report usage



Communicating the Law



Can use the State's poster or your own, so long as your own has the same information

Whose illness qualifies?

- Employee
- Child (no matter how got there)
- Spouse or registered domestic partner
- Grandparents & children
- Siblings
- Parent (every kind) including step, foster, adoptive, legal guardian, and “loco parentis”

What reasons qualify?

- Must allow sick leave for:
 - Diagnosis
 - Care
 - Treatment
 - Preventive care
- Must allow sick leave for victims of:
 - Domestic violence
 - Sexual assault
 - Stalking



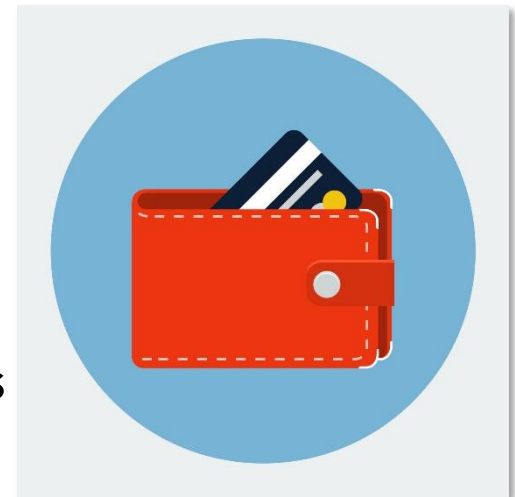
When can employees use paid sick leave?

- Accrual begins on 1st day
- Can make employees wait 90 days to use what's earned
- May limit use to 3 days/year
- Must “carry over” unused days from year to year, but may “cap” earnings at just 6 days



When do employees get paid for sick leave?

- Must pay sick pay in the paycheck immediately after the absence
- No end of year payout
- No payout when leave the job, but must reinstate balance if return with 12 months



Just “ask”...

- If need is foreseeable, must ask in advance
- Law is silent on whether can ask for a doctor's note
- Can't make employee find a replacement worker

*Minimum use rules
May require
employees to use at
least 2 hours at a
time*

*If no minimum use
policy, can use in
minutes*



When must paid sick be reported?

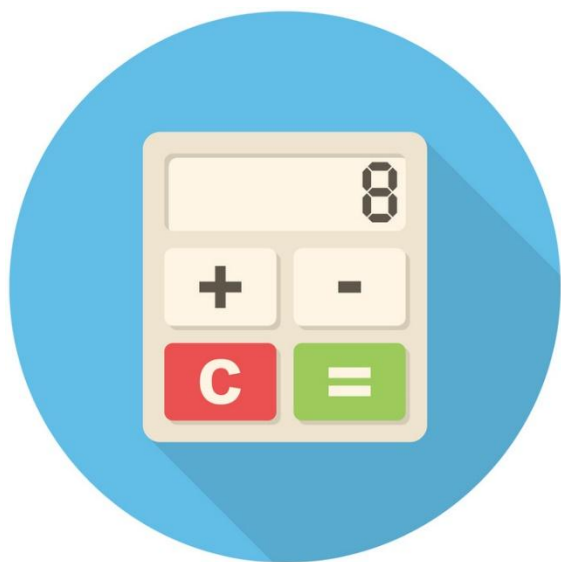
- Accrual and use **MUST** be reported with each paycheck

The screenshot displays a digital form for reporting California Paid Sick Leave. It is divided into two main sections: 'Annual leave' and 'Sick leave'. In the 'Annual leave' section, the 'Annual entitlement' is set to 4.00 weeks (pro-rata). The 'Opening balance' field is highlighted with a red box and contains the value 0.00 hrs, with a 'show help' link next to it. The 'Annual leave available' is also 0.00 hrs. The 'Sick leave' section shows an 'Annual entitlement' of 76.00 hrs (pro-rata). Its 'Opening balance' field is also highlighted with a red box and contains 0.00 hrs, with a 'show help' link. The 'Sick leave available' is 0.00 hrs.

Annual leave	
Annual entitlement:	4.00 weeks (pro-rata)
	hrs/year (fixed)
Opening balance:	0.00 hrs show help
Annual leave available:	0.00 hrs

Sick leave	
Annual entitlement:	76.00 hrs (pro-rata)
	hrs/year (fixed)
Opening balance:	0.00 hrs show help
Sick leave available:	0.00 hrs

When must paid sick leave be reported?



- If employee earns different hourly rates and/or commissions or other add-ons, you must calculate sick pay benefit using average pay of previous 90 days

When must paid sick leave be reported?

- Salaried employees also must be reported
- If an unlimited time off policy, still must report accrual and use
- Existing PTO policy OK if the accrual rate is at least 1 hour per every 30 hours worked



Keep good records!

- Must keep all wage and sick pay records for at least 3 years
- Must allow Labor Commissioner access... but call your labor lawyer first!
- If don't keep adequate records, presumed to owe the maximum



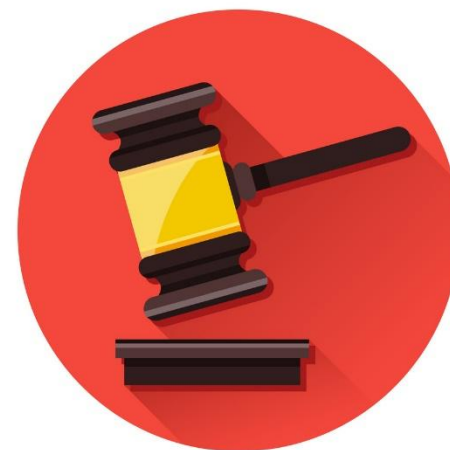
No retaliation...



- Cannot count sick days usage against the employee in any manner
- These are “legally protected” days off

Retaliation presumed

- Employer is presumed guilty of unlawful retaliation if bad things happen to the employee within 30 days of:
 - Using sick days
 - Complaining about sick pay policy
 - Employee filing complaint with government



What's at stake?

- Actual sick pay owed
- 3x Penalty (max. \$4,000)
- Reinstatement & back pay
- Penalty: \$4,000 max
- Lawsuit for wrongful termination



How is 30 day requirement calculated?

- Every EE who works 30 calendar days beginning on July 1, 2015, (or their first day of hire after July 1, 2015) through June 30, 2016, is entitled to sick leave.
- Even if an employee only works 5 minutes on any single calendar day, that counts as a “day” for purposes of the law.



How is the 90th day of employment calculated?

- Employers can require employees to complete their 90th day of employment before they can take accrued sick leave. The 90th day is calculated from their hire date.
- If someone is hired on or after July 1, 2015, their 90th day is September 28, 2015, regardless of actual calendar days worked.



How is the 3 day/24 hour use rule calculated?

- Employers can limit use to 3 days or 24 hours per year. The DLSE has interpreted this as whatever amount benefits employees most.
- If employees only work 4 hour shifts, then they will be entitled to take 24 hours of leave per year, or 6 days.
- If an employee works 10 hour shifts, then he/she can take 30 hours, or 3 days of leave per year.

