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Ten Quick Facts on California's New Paid Sick Leave Law

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Beginning July 1, 2015, virtually all California employees are entitled to accrue paid sick leave, which may be taken as early as September 30, 2015. To ensure timely compliance and minimal disruption to business operations, California employers of all sizes should become familiar with the new paid sick leave law, known as Healthy Workplaces, Healthy Families Act of 2014. The following ten points are the cornerstones of compliance.

- 1) **Accrual Rate.** Covered employees accrue one hour of paid sick leave for every 30 hours worked. The accrual rate for exempt employees is based on a presumed 40 hour-workweek, except that an exempt employee whose normal workweek is fewer than 40 hours will accrue paid sick leave based on that employee's normal workweek.
- 2) **Existing Sick Leave or PTO Policy.** The Act does not require an employer to provide additional paid sick days if (1) the employer has an existing paid leave or PTO policy, (2) the employer makes the paid leave available under the same conditions as stated in the new law, and (3) the existing policy either (a) satisfies the accrual, carry over, and use requirements of the Act or (b) provides for employee use at least 24 hours or three days of paid sick leave (or equivalent paid leave or PTO) per each (i) year of employment, (ii) calendar year, or (iii) 12 months. Thus, existing sick leave or PTO policies may require modification to ensure future compliance. Additionally, employers with adequate pre-existing policies still must comply with all notice and recordkeeping requirements.
- 3) **Sick Leave Use.** Employers can limit use of paid sick leave to 24 hours or three days during each year of employment. Employers may set a reasonable minimum increment, not to exceed two hours, for employees to use accrued sick leave. The employee otherwise is entitled to



determine how much sick leave he or she needs to use. Employees become eligible to use their accrued paid sick leave on their 90th day of employment, after which they may use paid sick leave as it is accrued. Employers cannot require employees to locate a replacement worker to cover days on which an employee uses paid sick leave.

- 4) **Qualifying Reasons for Use.** Employers must, upon an employee's written or oral request, provide paid sick leave for (1) the employee's own or "family member's" diagnosis, care, or treatment of an existing health condition, or preventive care; and (2) an employee who is a victim of domestic violence, sexual assault, or stalking to seek aid, treatment, or related assistance.
- 5) **Covered Family Members.** The Act defines "family member" broadly to include: (1) child (regardless of age or dependency status) – biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis; (2) biological, adoptive, or foster parent or step parent, legal guardian of the employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis to the employee when the employee was a minor child; (3) spouse or registered domestic partner; (4) grandparent; (5) grandchild; and (6) sibling.
- 6) **Rate of Pay for Paid Sick Leave.** Hourly employees are paid according to their hourly rates of pay. Where employees earn fluctuating wages (e.g., commissions, multiple hourly rates, piece rates), the rate of pay for paid sick leave is determined by dividing the employee's total wages (not including overtime pay) by the total hours worked in the full pay periods during the prior 90 days.
- 7) **Carry Over.** Employees must be permitted to carry over all accrued, unused paid sick leave to the following year, but employers may cap the accrual of paid sick leave at 48 hours or six days. Instead of using the accrual method, employers can choose to give covered employees at least three days or 24 hours of paid sick leave at the beginning

of each year. Under this option, no accrual or carry over is required. The "up-front" method may offer administrative time and cost savings.

- 8) **Employee Notices.** By July 8, 2015, employers must give all non-exempt employees a new Wage Theft Prevention Notice, announcing any the new paid sick leave law and any changes to existing sick leave policies, or provide such notice on a pay stub or wage statement. Employers must also post in the workplace a poster on the new sick leave law.
- 9) **Exemptions.** The California paid sick leave law applies to all employees, including part-time, temporary and seasonal employees, with few exceptions. Certain employees governed by a valid collective bargaining agreement, in-home supportive services providers, and certain air carrier and flight personnel may be exempt from the sick leave law. Experience counsel should be engaged before July 1, 2015, to ensure that any exemptions are properly asserted.
- 10) **No Pay-Out Required.** Unlike vacation time, accrued sick leave need not be paid out upon employment separation. However, any accrued, unused paid sick leave must be restored upon rehire within one year of separation.





For More Information

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- Employment Litigation Defense
- Employment Policies and Procedures Advice and Training
- ERISA Litigation
- Immigration Employment Issues
- Independent Contractor and Transportation Issues
- Labor (NLRB, Collective Bargaining, and Union Campaigns)
- Restrictive Covenants and Trade Secret Litigation
- Wage & Hour / Collective Action Defense
- Workplace Safety (OSHA, MSHA)

About Polsinelli

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