Healthy Workplace
Healthy Families Act of 2014
Paid Sick Leave

Labor Code sections 245-249

April 8, 2015 at 12:00pm

Speakers

- Tracy Mauldin, Wage Claims Adjudication, Labor Commissioner's Office
- Joan Healy, Retaliation Claims Investigation, Labor Commissioner's Office
- Helen Tien, Office of the Director, Department of Industrial Relations

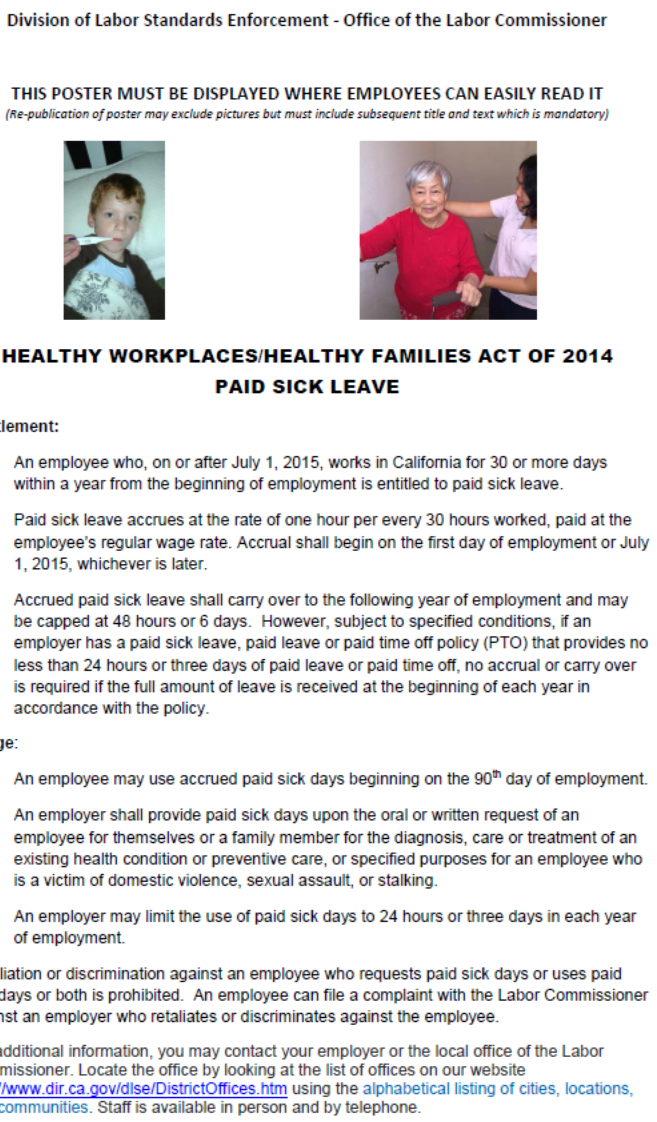
Agenda

- Key dates
- Facts on paid sick leave / AB 1522
- 6 steps to successful compliance
- Paid Time Off
- Exemptions
- Separation
- Protection from Retaliation
- Administrative Penalties
- Questions & Answers
- Resources

Key Dates in 2015

Provision	Effective Date
• Poster must be visibly displayed for employee viewing in workplace • Provide Notice to Employee to all workers hired after Jan. 1.	January 1
• Provide Notice to Employee to existing employees or other type of written documentation of paid sick leave information	7 days after implementation of paid sick leave policy or July 8
• Accrual begins, provided employee has met eligibility requirements	July 1

Notice to employee available online:
http://www.dir.ca.gov/DLSE/LC_2810.5_Notice.pdf



Division of Labor Standards Enforcement - Office of the Labor Commissioner

THIS POSTER MUST BE DISPLAYED WHERE EMPLOYEES CAN EASILY READ IT

(Re-publication of poster may exclude pictures but must include subsequent title and text which is mandatory)

HEALTHY WORKPLACES/HEALTHY FAMILIES ACT OF 2014
PAID SICK LEAVE

Entitlement:

- An employee who, on or after July 1, 2015, works in California for 30 or more days within a year from the beginning of employment is entitled to paid sick leave.
- Paid sick leave accrues at the rate of one hour per every 30 hours worked, paid at the employee's regular wage rate. Accrual shall begin on the first day of employment or July 1, 2015, whichever is later.
- Accrued paid sick leave shall carry over to the following year of employment and may be capped at 48 hours or 6 days. However, subject to specified conditions, if an employer has a paid sick leave, paid leave or paid time off policy (PTO) that provides no less than 24 hours or three days of paid leave or paid time off, no accrual or carry over is required if the full amount of leave is received at the beginning of each year in accordance with the policy.

Usage:

- An employee may use accrued paid sick days beginning on the 90th day of employment.
- An employer shall provide paid sick days upon the oral or written request of an employee for themselves or a family member for the diagnosis, care or treatment of an existing health condition or preventive care, or specified purposes for an employee who is a victim of domestic violence, sexual assault, or stalking.
- An employer may limit the use of paid sick days to 24 hours or three days in each year of employment.

Retaliation or discrimination against an employee who requests paid sick days or uses paid sick days or both is prohibited. An employee can file a complaint with the Labor Commissioner against an employer who retaliates or discriminates against the employee.

For additional information, you may contact your employer or the local office of the Labor Commissioner. Locate the office by looking at the list of offices on our website http://www.dir.ca.gov/dlse/DistrictOffices.htm using the alphabetical listing of cities, locations, and communities. Staff is available in person and by telephone.

Poster available online:
http://www.dir.ca.gov/dlse/LC_2810.5_Notice.pdf

Entitlement

- An employee working in California, on or after July 1, 2015, for 30 or more calendar days within a year is entitled to paid sick leave.
  - Applies to temporary, part-time and full-time employees.
- Paid sick leave accrues at the rate one hour per every 30 hours worked.
  - An employee who works 40 hours per week accrues 1.33 hours per week
- Paid at the employees current rate of pay.
- Accrued paid sick leave must carry over to the following year and may be capped at 48 hours (or 6 days) based on a policy.

Usage

- May begin using accrued sick leave on the 90th calendar day of employment.
- An employee may use paid sick leave for:
  - Themselves or a family member for the diagnosis, care or treatment of an existing health condition or preventive care
  - Specified purposes for an employee who is a victim of domestic violence, sexual assault, or stalking
- Employer may limit use at 24 hours or 3 days per year. Employee needs to be notified prior to implementation.
- Employer may lend paid sick days to an employee in advance of accrual.

Alternative to Accrual

- Employer can provide 24 hours or 3 days at the beginning of each calendar year, anniversary date or twelve months basis.
- Employer won't need to track accrual but will need to track and display usage on wage statement or other written document.
- Under this method, employer is not required to provide for carry over of sick leave.

Department of Industrial Relations
STATE OF CALIFORNIA

6 Steps to Successful Compliance

1. Display poster on paid sick leave where employees can read it easily. Document policy and share with staff.
2. Provide written notice to individual employee at the time of hire with paid sick leave information.
3. Provide for accrual of one hour of sick leave for 30 hours of work for each eligible employee to use.
4. Allow eligible employees to use accrued paid sick leave upon request or notification.
5. Show how many hours of sick leave an employee has available. This must be on a pay stub or a document issued the same day as a paycheck.
6. Keep records showing how many hours have been earned and used for three years.

Paid Time Off (PTO)

- Employers may offer more time and usage than provided in Paid Sick Leave provision but not less.
- PTO policy must be in writing.
- PTO plans will be found compliant if they provide both the same hours for usage AND for the same purposes as outlined in Paid Sick Leave provision.

Sick Leave Pay

- Same as hourly rate.

- If an employee is paid commission or piece rate, then divide total compensation for previous 90 calendar days by number of hours worked and pay this rate.

- Employee was paid a piece rate of $0.36 per square foot for 16,500 square feet during 400 hours of work in a 90 day period. He earned $5,940.
  - His hourly rate for paid sick leave is $5,940 ÷ 400 hours = $14.85 per hour
- Employee is paid on commissions only. In a 90 day period, she worked 480 hours and earned $9,000.
  - Her hourly rate for paid sick leave is $9000 ÷ 480 hours = $18.75 per hour

Local Ordinances

- Employer will comply with both the local and California laws.
- Employer will have to provide the more generous provision or benefit to an employee, where they differ between local and state laws.
- In some areas, such as the City and County of San Francisco for example, there are separate ordinances requiring paid sick leave. If the provisions of the local ordinance require more accrued sick leave, that provision would take precedence as it is more generous. For employers in the City and County of San Francisco there may be a higher rate of accrued sick leave.

Exemptions

- Employees covered by a valid collective bargaining agreement (CBA) which provides for paid sick days
- In-home support services employees (IHSS)
- Airline flight deck or cabin crew employees who have equivalent benefits

Separation

- An employer is not required to pay out accrued, unused paid sick days at the time of termination, resignation or retirement.
- If an employee is rehired within one year, previously accrued and unused paid sick days shall be reinstated.
- If employer has a separate PTO plan, a final payout of PTO is due at separation.

Protection from Retaliation

- Paid Sick Leave law protects employees who:
  - use sick leave,
  - file a complaint with the Labor Commissioner's Office,
  - allege a violation of these rights,
  - cooperate in an investigation or prosecution,
  - or oppose a policy or practice prohibited by this article

Retaliation Prohibited

- Prohibits an employer from
  - denying an employee the right to use paid sick leave,
  - discharging,
  - threatening to discharge,
  - demoting,
  - suspending
  - or in any manner discriminating against an employee
- There is a REBUTTABLE presumption of unlawful retaliation if the employer acts in a manner described above within 30 days of the employee's request for leave or other protected activity.

Possible Retaliation Damages

- If an employer takes any of the prohibited actions, the employee may be awarded
  - Reinstatement (if termination)
  - Lost wages (if suspended or terminated)
  - Removal of any disciplinary action from personnel file
  - A civil penalty of up to $10,000 per violation
- Employer may also be required to post a notice to all employees about the retaliation.

An Employee May File a Paid Sick Leave Claim

- Against employers who
  - Unlawfully withhold payment for use of accrued sick days
  - Fail to provide a statement of accrual of sick leave
  - Fail to accurately track accrued sick leave
  - Require an employee to use a full day or half day absence for any use of sick leave. However, an employer may require a minimum of 2 hours for each use of paid sick leave
  - Deny payment for sick leave if the employee fails to provide prior notice for an unforeseen illness
  - Require the worker requesting sick leave to find a replacement to cover his scheduled shift or assignment
  - Deny sick leave due to a failure to provide details

Administrative Penalties May Be Awarded

- An employee need only assert that the sick leave was for a covered purpose in general terms
- An employee may recover
  - An administrative penalty equal to the paid sick leave x 3 or $250 whichever is greater, but in no case greater than an aggregate penalty of $4,000.
  - The administrative penalty may also include a sum of $50 per day for each day the violation occurred or continued.

Administrative Penalty Example

- Employee earns $12.50 per hour and works 8 hours per day for $100 per day
  - Employee was denied 3 days of accrued sick leave
  - Penalty is 3 times the accrued sick leave
  - $100 per day for 3 days x 3 = $900
  - Because this amount is greater than $250, employee is awarded $900
- Employee is also entitled to $50 per day until the violation is corrected.

Scenario #1

Situation

Employer hires seasonal workers paid on a piece rate basis.

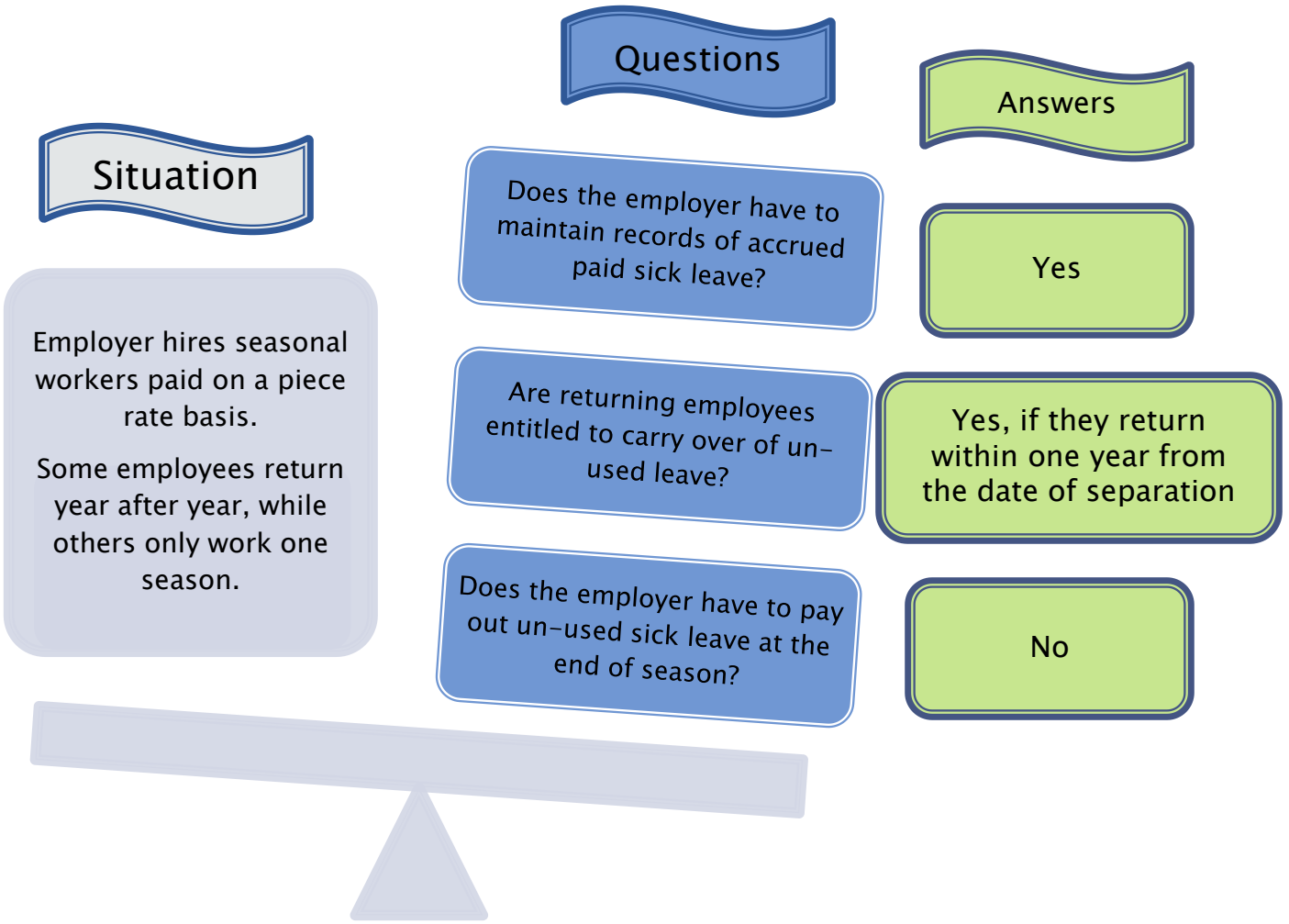
Some employees return year after year, while others only work one season.

Does the employer have to maintain records of accrued paid sick leave?

Are returning employees entitled to carry over of un-used leave?

Does the employer have to pay out un-used sick leave at the end of season?

Scenario #1


Situation
Questions
Answers
Employer hires seasonal workers paid on a piece rate basis.
Some employees return year after year, while others only work one season.
Does the employer have to maintain records of accrued paid sick leave?
Yes
Are returning employees entitled to carry over of un-used leave?
Yes, if they return within one year from the date of separation
Does the employer have to pay out un-used sick leave at the end of season?
No

Scenario #2

Situation

Employer pays minimum wage plus commission.

An employee started working on March 1, 2015, and received $1.00 raise after 6 months.

When can the employee begin to use sick leave?

How is paid sick leave rate calculated?

How long does employer have to keep sick leave accrual and carryover records?

Scenario #2

Situation	Questions	Answers
Employer pays minimum wage plus commission. An employee started working on March 1, 2015, and received $1.00 raise after 6 months.	When can the employee begin to use sick leave?	As soon as they accrue paid sick leave, after July 1st.
	How is paid sick leave rate calculated?	Look at 90 day period prior to the sick leave being used for total earnings and divide by number of hours worked to get hourly rate.
	How long does employer have to keep sick leave accrual and carryover records?	3 years.

Scenario #3

Situation

Employer has four distinct classes of employees: front office staff, warehouse workers, sales force and managers.

The sales force is paid base salary plus commission. Warehouse workers are members of CBA.

Can the employer offer PTO to managers only?

Does each class of employee accrue paid sick leave at different rates?

How does the employer handle CBA members?

Scenario #3

Situation	Questions	Answers
Employer has four distinct classes of employees: front office staff, warehouse workers, sales force and managers. The sales force is paid base salary plus commission. Warehouse workers are members of CBA.	Can the employer offer PTO to managers only?	Yes, as long as PTO plan is equal to or more generous than the paid sick leave provisions.
	Does each class of employee accrue paid sick leave at different rates?	Possibly, different classes of employees accrue differently. Warehouse workers are under CBA.
	How does the employer handle CBA members?	Employees subject to a CBA are exempt from Paid Sick Leave if the requirements for the exemption are met pursuant to LC Section 245.5(a)(1) and (2).

Department of Industrial Relations
STATE OF CALIFORNIA

Questions & Answers

Resources

- Paid Sick Leave website
  - www.dir.ca.gov/DLSE/ab1522.html
  - Workplace posting in English, Spanish and Vietnamese
  - Notice to employee in English, Spanish and Vietnamese
  - FAQ
- Email comments / questions to AB1522@dir.ca.gov
- Labor Commissioner's District Offices
  - Contact information available http://www.dir.ca.gov/dlse/DistrictOffices.htm