

California Paid Sick Leave: Frequently Asked Questions

This document contains answers to questions that are frequently asked about California's new Paid Sick Leave law (AB 1522, operative January 1, 2015, and as amended in AB 304 effective July 13, 2015).

DIR has updated the FAQ list originally posted in February 2015 to reflect new requirements under AB 304. This newer document also clarifies previous responses given in answer to questions received from members of the public.

UPDATE

New Questions Concerning the Paid Sick Leave Law

Updated March 29, 2017

Questions about An Employer's Use of a "Grandfathered" (Existing) Paid Time Off Plan to Provide Paid Sick Leave

1. **If my employer already had a paid time off plan that employees could use for paid sick leave before this law went into effect in 2015, was my employer required to provide *additional* sick days in response to the new law?**

No. The statute has provisions that allow for what are commonly referred to as "grandfathered" paid time off plans. Basically, in very general terms, and as described in more detail in additional FAQs below, if at the time the law went into effect in 2015, an employer already had an **existing** paid leave policy or paid time off plan, and if that existing policy or plan made an amount of paid leave available that could be used for at least as many paid sick days as required under the new law, and that could be used under the same conditions as specified in the new law, or that had conditions *more favorable* to employees, (i.e., that provided *more* sick days than created under the new law, or that had a *more* favorable accrual rate, etc.), the employer is allowed to continue to use that existing paid time off plan in order to satisfy the paid sick leave requirements of the new law.

2. **If my employer is providing paid sick days through an existing (grandfathered) paid time off policy, does the new law change the rate of pay my**

employer is required to pay for days that I take off under the existing paid time off policy for reasons *other than* a paid sick day?

No, the paid sick leave law addresses only the rate of pay that must be paid for time taken off as paid sick leave; it does not address or impact the rate of pay for paid time off taken for other purposes, such as vacation time or personal time.

Under the paid sick leave law, an employer must pay an employee for time taken **for paid sick leave** using **any** of the following calculations:

(1) Paid sick time for **nonexempt employees** shall be calculated in the same manner as the **regular rate of pay for the workweek** in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.

(2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

(3) Paid sick time for **exempt employees** shall be calculated in the same manner as the employer calculates wages for other forms of paid leave time.

(Lab. Code § 246, subd. (l), emphasis added.)

In general terms, these provisions mean that time taken off as paid sick leave must be paid at an employee's **regular rate of pay**, either for the workweek in which the paid sick leave was taken, or as determined by averaging over a 90-day period.

An employer using a "grandfathered" (i.e., existing) paid time off policy or plan must ensure that the plan "makes available an amount of leave applicable to employees that may be used for the same purposes [i.e., for paid sick leave] and under the same conditions [i.e., paid at the same rate] as specified in" section 246 of the new law. This means that an employer using a grandfathered paid time off plan must ensure that time that is taken off for paid sick leave must be paid in the manner as specified in the new law (as quoted and summarized above).

The new paid sick leave law, however, does not address in any way, nor impact, how employers must compensate employees under existing paid time off plans for time that is taken off for purposes **other than paid sick leave**, for example, for time that is taken as vacation, or for personal holidays, etc. (Note, however, the provisions of Labor Code section 227.3 concerning the requirements for payment for vested vacation time at termination of employment.) In practical terms, this means that an employer may compensate employees under an existing paid time off plan for vacation or personal holiday time, during employment, at a "base rate" of pay, whereas time taken as paid

sick leave must be paid at a higher regular rate of pay (determined for the workweek or by a 90-day average), as described above.

Paid Sick Leave and Employer Attendance Policies

3. Can my employer discipline me for taking a paid sick day or for using paid sick leave for part of a day to go to a doctor's appointment?

In general, no, an employer may **not** discipline an employee for using accrued paid sick leave. Depending on the circumstances, however, the issue may be more complex and may require more analysis.

The paid sick leave law specifically says the following:

An employer shall not deny an employee the right to use accrued sick days, discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using accrued sick days, attempting to exercise the right to use accrued sick days, filing a complaint with the department or alleging a violation of this article, cooperating in an investigation or prosecution of an alleged violation of this article, or opposing any policy or practice or act that is prohibited by this article.

(Lab. Code § 246.5, subd. (c)(1).)

Separately, Labor Code section 233 (commonly referred to as the “Kin Care” law) requires an employer to allow an employee to use accrued and “available” sick leave (which is the amount that would accrue during a six month period) for the purposes specified in the paid sick leave law. Labor Code section 234 provides that “[a]n employer absence control policy that counts sick leave taken pursuant to Section 233 as an absence that may lead to or result in discipline, discharge, demotion, or suspension is a per se violation of Section 233.”

This means, in general terms, that if an employee **has accrued sick days available**, an employer may not deny the employee the right to use those accrued paid sick days, including the right to use paid sick leave for a partial day (e.g., to attend a doctor's appointment), and may not discipline the employee for doing so.

Many employers have attendance policies under which employees may be given an “occurrence” or similar adverse personnel action (which is a form of discipline with potentially negative repercussions) if the employee has an unscheduled absence or provides insufficient notice of an absence. Under the terms of the paid sick leave law (and Labor Code sections 233 and 234), if an employee **has accrued and available**

sick leave, and is using his or her accrued paid sick leave for a purpose as specified in the law, it is **not permissible** for an employer to give the employee an “occurrence” for the absence under such an attendance policy because this would constitute a form of discipline against an employee for using his or her paid sick leave as allowed under the paid sick leave law.

If an employee does **not** have any accrued or available paid sick leave, however, (e.g., if the employee has already used all of his or her accrued and available paid sick leave under the employer’s policy, including as consistent with Labor Code section 233), and if the employee has an unscheduled absence that would otherwise violate the employer’s attendance policy, the paid sick leave law does not prohibit the employer from giving the employee an “occurrence” for such absence, even if the employee was actually sick and/or could have used paid sick leave for the absence if he or she had any such leave accrued. The paid sick leave law does not “protect” all time off taken by an employee for illness or related purposes; it “protects” only an employee’s accrued and available paid sick leave as specified in the statute.

Similarly, if an employee has an absence that would otherwise violate the employer’s attendance policy, and if the absence was for a reason **not** covered under the paid sick leave law, the employer is not required to allow the employee to use paid sick leave for that absence, and it is not a violation of the law for the employer to give an “occurrence” for such absence. The paid sick leave law provides that an employer **shall provide paid sick days for the following purposes:**

- 1) Diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee’s family member.
- (2) For an employee who is a victim of domestic violence, sexual assault, or stalking, the purposes described in subdivision (c) of Section 230 and subdivision (a) of Section 230.1.

(Lab. Code § 246.5, subd. (a).) An employer is not required to allow an employee to use accrued paid sick days for reasons other than those listed in the statute (as quoted above).

In addition, if an employee has an unscheduled absence that would otherwise result in an “occurrence” under an employer’s attendance policy, and if the employee elects to use accrued paid sick leave for only **part** of the unscheduled absence (for example, if the employee is absent for a full eight-hour day of work, but elects to use only four hours of his or her accrued paid sick leave for the absence [which the employee is allowed to do], the employer would be allowed to give an “occurrence” (or 1/2 of an “occurrence”) for the one-half day of unscheduled absence for which no paid sick leave was used. Only time that is properly taken as accrued paid sick leave is protected from

disciplinary action. The same would be true if the employee had a full eight-hour unscheduled absence, but only had available four hours of accrued paid sick leave. The portion of the unscheduled absence not covered by accrued paid sick leave could be subject to disciplinary action under the employer's attendance policy.

Eligibility for Paid Sick Leave Under the New Law

1. When does the new law take effect?

The state's new sick leave law went into effect on January 1, 2015. However, the right to begin accruing and taking sick leave under this law did not go into effect until July 1, 2015. Note that many employers already had sick leave policies in place for covered employees before the new law was adopted. If those existing sick leave policies already satisfied the requirements of the new law, there may not have been any required changes to an employee's right to accrue and take sick leave as a result of the new law.

2. How do I qualify for paid sick leave?

To qualify for sick leave, an employee must:

- Work for the same employer, on or after January 1, 2015, for at least 30 days within a year in California, and
- Satisfy a 90-day employment period (similar to a probationary period) before taking any sick leave

3. What if I work less than 30 days in California within a year?

If you work less than 30 calendar days within a year for the same employer in California, then you are not entitled to paid sick leave under this new law.

4. What if I work more than 30 days in California within a year but less than 90 days?

The 90 calendar day period works like a probationary period. If you work less than 90 days for your employer, you are not entitled to take paid sick leave.

5. When am I entitled to take paid sick leave?

A qualifying employee begins to accrue paid sick leave beginning on July 1, 2015, or if hired after that date on the first day of employment. An employee is entitled to use (take) paid sick leave beginning on the 90th day of employment.

6. Why does the law take effect January 1, 2015 if I don't begin accruing until July 1, 2015?

The different dates are a result of the general effective dates of new legislation (on January 1 following enactment of the law) and the way the law was drafted, making some of its provisions operative on a specified date (July 1, 2015). The qualifying period that determines which employees are eligible for paid sick leave, and the qualifying period for employee notice required by Labor Code 2810.5 both became effective on January 1, 2015; however the law provides that employees' right to accrue and take sick leave did not begin until July 1, 2015.

7. Does paid sick leave apply to all employees who work in California?

All employees who work at least 30 days for the same employer within a year in California, including part-time, per diem, and temporary employees, are covered by this new law with some specific exceptions. Employees exempt from the paid sick leave law include:

- Providers of publicly-funded In-Home Supportive Services (IHSS)
- Employees covered by collective bargaining agreements with specified provisions
- Individuals employed by an air carrier as a flight deck or cabin crew member, if they receive compensated time off at least equivalent to the requirements of the new law
- Retired annuitants working for governmental entities.

8. What if I am employed by a staffing agency?

Employees of a staffing agency are covered by the new law. Therefore, whoever is the employer or joint employer is required to provide paid sick leave to qualifying employees.

How do qualifying employees accrue and take paid sick leave

9. If I qualify, how much paid sick leave am I entitled to take and be paid for?

It depends on what kind of plan your employer chooses to offer in order to comply with the new law. Some employers already have paid time off or sick leave policies that meet the requirements of the new law, and for employees who are covered by those existing plans, the amount of sick leave you are entitled to take will not change. In general terms, the law requires employers to provide and allow employees to use at least 24 hours or three days of paid sick leave per year.

Employers adopting new policies to comply with the law may choose whether to have an “*accrual*” policy or a “*no accrual/up front*” policy.

An *accrual* policy is one where employees earn sick leave over time, with the accrued time carrying over in each year of employment. In general terms (and subject to some exceptions), employees under an accrual plan must earn at least one hour of paid sick leave for each 30 hours of work (the 1:30 schedule). Although employers may adopt or keep other types of accrual schedules, the schedule must result in an employee having at least 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment.

Although employees may accrue more than three days of paid sick leave under the one hour for every 30 hours worked (or under an alternative accrual standard) under an accrual method, the law allows employers to limit an employee’s **use** of paid sick leave to 24 hours or three days during a year. The law also allows an employer to limit an employee’s total accrued paid sick leave to no more than 48 hours or six days.

A *no accrual/up front* policy makes the full amount of sick leave for the year available immediately at the beginning of a year-long period, except for initial hires where it must be available for use by the 120th day of employment. The employer must provide at least 24 hours or three days of paid sick leave per year and the full amount of this leave must be available for the employee’s use from the beginning of each year of employment, calendar year, or 12-month period. Note: the employer determines how the year will be calculated, whether it tracks a typical calendar year, fiscal year, or other 12-month period).

Lastly, the law allows certain types of existing sick leave policies to be “grandfathered,” if the policy was in existence prior to January 1, 2015. These policies are deemed to comply with the new law if:

- The accrual provides no less than one day or 8 hours of accrued paid sick leave or paid time off within three months of employment per year, and
- The employee was eligible to earn at least three days or 24 hours of paid sick leave or paid time off within 9 months of employment.

Any modification to a grandfathered sick leave or paid time off policy will nullify its qualification as a grandfathered policy and the employer will be required to comply with the requirements under the new law.

10. How is the year measured?

Because paid sick leave accrues beginning on July 1, 2015, or the first day of employment if hired after July 1, 2015, the 12 month period will vary by hire date for those employees hired after July 1, 2015. Therefore, the measurement will mostly be tracked by the employee’s anniversary date.

11. Can my employer provide or advance paid sick leave to me prior to my accrual of sufficient paid leave time or prior to meeting the 90-day employment requirement?

Yes. An employer may elect to advance sick leave to an employee before it is accrued, but there is no requirement for an employer to do so under this law.

12. Why does the law let me accrue more time than I could use in a year?

Accrual, carryover, and use are all distinct concepts.

Accrual: Accrual of paid sick leave is based on the number of hours an employee works

Carryover: The amount of paid sick leave carried over to the next year; may be subject to a cap if the employer establishes a cap by policy.

Use: The use of paid sick leave may be limited to 3 days or 24 hours per year.

13. What happens if I am a seasonal employee and I only work 60 days one year but return to the same employer within one year and work another 60 days?

The paid sick leave law requires that your accrued and unused sick leave be restored to you if you return to the same employer within 12 months from the previous separation.

Note: An employer is not required to restore previously accrued and unused paid time off (PTO), if the sick leave was provided pursuant to a PTO policy covering sick leave which was paid or cashed out to the employee at the end of the previous employment with that employer.

14. What happens if I return to work for the same employer after more than one year?

The paid sick leave law does not require that your accrued sick leave be restored to you.

15. If I work part time, six hours per day, I have accrued 24 hours of paid sick leave and I take three paid sick days, can my employer refuse to allow me to take any more sick leave in that same year?

It will depend on the facts but generally speaking, no. The statute provides that an employer may limit the amount of sick leave to 24 hours or three days per year. Since you work 6 hours per day, you have only used 18 of your 24 hours. You still have 6 hours left to take and be paid for during the year because an employer must allow an employee to use at least three days or 24 hours, whichever is more (refer to [DLSE Opinion Letter](#) 2015.08.07).

Employer policies can provide more paid sick leave but not less

16. What happens when an employer has its own Paid Time Off (PTO) plan?

The new law establishes minimum requirements for paid sick leave, but an employer may provide sick leave through its own existing sick leave or paid time off plan, or establish different plans for different categories of workers. Each plan must satisfy the accrual, carryover, and use requirements of the new law. In general terms, the minimum requirements under the new law are that an employer must provide at least 24 hours or three days of paid sick leave per year. A paid time off (PTO) plan that employees may use for the same purposes of paid sick leave, and that complies with all applicable minimum requirements of the new law, may continue to be used.

In general terms, the new law provides that, employers who adopt an accrual plan for paid sick leave, employees must accrue at least 1 hour of paid sick leave for each 30 hours of work. An employer may use a different accrual method, as long as the accrual is on a regular basis and results in the employee having no less than 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment, or each calendar year, or in each 12-month period.

The law also has a “grandfather” clause, which allows employers with paid sick leave policies or paid time off policies that were in existence prior to January 1, 2015, to maintain those policies and be deemed in compliance as long as they meet the following requirements:

- The accrual provides no less than one day or 8 hours of accrued paid sick leave or paid time off within three months of employment per year, and
- The employee was eligible to earn at least three days or 24 hours of paid sick leave or paid time off within 9 months of employment.

Sick leave or annual leave provided to governmental employees pursuant to either certain Government Code provisions or a memorandum of understanding meet the accrual requirements.

17. How does an employer satisfy the provision for putting the full amount of leave into my leave bank under the alternative “up-front” (or advance) method for providing paid sick leave?

The law states that an employer is not required to have an accrual or carryover policy for paid sick leave if the “full amount of leave” is provided to employees at the beginning of each year of employment, calendar year or 12-month period. The “full amount of leave” that an employer is required to provide under this provision is at least 24 hours or three days of paid sick leave.

For initial hires, however, the employee must still meet the 90-day employment requirement prior to taking any paid sick leave.

18. Under the accrual method, can I carry over unused sick leave from one year to the next?

Yes, but an employer may limit or cap the overall amount of sick leave an employee may accrue to 6 days or 48 hours.

19. My employer provides paid time off which I can use for vacation or illness. Will my employer have to provide additional sick leave?

No, as long as your employer provides the minimum of at least 24 hours or three days per year of paid leave that can be used for health care and that meets other requirements in the law.

20. My company offers unlimited time off. How does the new law affect me?

Most employers with this new but growing policy do not track how much time employees take off or for what reason. Although the new law requires that employers separately track sick leave accrual and use, for employers with unlimited paid time off plans, the notice, itemized pay stub or separate written statement provided with the payment of wages meets this requirement by indicating the paid sick leave is “unlimited”.

For what purposes can an employee take paid sick leave

21. What can I use paid sick leave for?

You can take paid sick leave for yourself or a family member, for preventive care or diagnosis, care or treatment of an existing health condition, or for specified purposes if you are a victim of domestic violence, sexual assault or stalking.

- Family members include the employee’s parent, child, spouse, registered domestic partner, grandparent, grandchild, and sibling.
- Preventive care would include annual physicals or flu shots.

The employee may decide how much paid sick leave he or she wants to use (for example, whether you want to take an entire day, or only part of a day). Your employer can require you to take a minimum of at least two hours of paid sick leave at a time, but otherwise the determination of how much time is needed is left to the employee.

22. Do I have to notify my employer before taking sick leave?

The employee must notify the employer in advance if the sick leave is planned, as may be the case with scheduled doctors’ visits. If the need is unforeseeable, the employee need only give notice as soon as practical, as may occur in the case of unanticipated illness or a medical emergency.

Payment and tracking of earned and taken leave

23. When I take paid sick leave, will I get paid as I normally do for the applicable pay period?

The new law requires that an employer provide payment for sick leave taken by an employee no later than the payday for the next regular payroll period after the sick leave was taken. This does not prevent an employer from making the adjustment in the pay for the same payroll period in which the leave was taken, but it permits an employer to delay the adjustment until the next payroll. For example, if you did not clock in for a shift and therefore were not paid for it but utilized your paid sick leave, your employer would have to pay you not later than the following pay period and account for it in the wage stub or separate itemized wage statement for that following regular pay period.

24. How much will I get paid?

It depends on whether you are an “exempt” or “non-exempt” employee. For non-exempt employees, you will be paid your regular or normal non-overtime hourly rate for the amount of time that you took as paid sick leave. For example, if you took two hours of paid sick leave to attend a doctor’s appointment, you will be paid for those two hours at the same non-overtime hourly rate you would have earned if you had been working.

To determine the rate of pay, the employer may either:

- Calculate your regular, non-overtime rate of pay for the workweek in which you used paid sick leave, whether or not you actually worked overtime in that workweek (in general terms, this is usually done by dividing your total non-overtime compensation by the total non-overtime hours worked), or
- Divide your total compensation for the previous 90 days (excluding overtime premium pay) by the total number of non-overtime hours worked in the full pay periods of the prior 90 days of employment

For exempt employees, paid sick leave is calculated in the same manner the employer calculates wages for other forms of paid leave time (for example, vacation pay, paid-time off).

25. How will I know how much sick leave I have accrued?

Employers must show how many days of sick leave you have available on your pay stub, or on a document issued the same day as your paycheck. If an employer provides unlimited paid sick leave or unlimited paid time off, the employer may indicate “unlimited” on your pay stub or other document provided to you the same day as your wages.

Employers also must keep records showing how many paid sick day you earned and used for three years. This information may be stored on documents available to employees electronically.

26. Does my employer have to document the reason I use paid sick leave?

The law states that an employer is not obligated to inquire into, or record, the purposes for which an employee uses paid sick leave or paid time off.

27. How does the new law fit in with local sick leave ordinances?

If employees are subject to local sick leave ordinances, the employer must comply with both the local and California laws, which may differ in some respects. The employer must provide the provision or benefit that is most generous to the employee.

28. What if I work an alternative work schedule of four 10-hour days and I take paid sick leave. How much should I be paid?

The paid sick leave law allows employees to decide how much paid leave time to take, subject to their employer's ability to set a two-hour minimum.

For example, if an employee has accrued ten hours, he or she can request to be paid for ten hours. If the employee decides to take less time than that in paid sick leave, then he or she will be paid for the number of hours that they chose to take. Be advised, employees must take a minimum of two hours when they choose to take sick leave if the employer sets a two-hour minimum.

If an employee on an alternative work schedule is sick for three days and has accrued only 24 hours of paid sick leave, the employer will pay for the 24 hours accrued. However, if the employee has accrued 30 hours of paid sick leave they must be paid for the full 30 hours, or three days, of work (refer to [DLSE Opinion Letter](#) 2015.08.07).

29. Do I have the right to cash out my unused sick days, like I can with vacation and paid time off?

No, not unless your employer's policy provides for a payout. If you leave your job and get rehired by the same employer within 12 months, you can reclaim (restore) what you had accrued in paid sick leave, provided it was not paid out pursuant to a paid time off policy at termination.

Required information to be provided to employees

30. How will I learn of my rights to paid sick leave from my employer?

Beginning January 1, 2015, employers are required to display a [poster](#) in a conspicuous place at the workplace.

The workplace posting must contain the following information:

- That an employee is entitled to accrue, request, and use paid sick days;
- The amount of sick days provided for and the terms of use of paid sick days;
- That retaliation or discrimination against an employee who requests paid sick days or uses paid sick days or both is prohibited; and
- That an employee has the right under this law to file a complaint with the Labor Commissioner against an employer who retaliates or discriminates against an employee

The new law required the Labor Commissioner to develop such a poster, and it is now available on the Labor Commissioner's website.

After January 1, 2015, employers are required to provide most employees with an individualized Notice to Employee (required under Labor Code section 2810.5) that includes paid sick leave information. A [Notice to Employee](#) form revised to reflect the new sick leave law by the Labor Commissioner's Office must be used for employees hired after January 1, 2015. For employees hired prior to January 1, 2015, the employer is required to provide a revised Notice to Employee or otherwise inform each employee of the information regarding paid sick leave, using any of the alternative methods specified in Labor Code section 2810.5(b).

The Notice to Employee provisions of Labor Code section 2810.5 do not apply to exempt employees, most government employees, or to employees covered by a valid collective bargaining agreement that meets certain specifications.

31. How will I know if my employer's policy has different terms from the paid sick leave law?

The state law providing for paid sick leave creates *minimum* standards for paid sick leave. Employers may use their existing policies so long as the policy complies with the minimum requirements of the law. The revised [Notice to Employee](#) form includes a check box to inform an employee of an employer's own existing paid time off or paid sick leave policy that meets or exceeds the requirements of the new law.

To avoid misinformation or misunderstanding regarding an employer's paid time off or paid sick leave policy, employers are encouraged to ensure that employees are made fully aware of the terms and conditions of their policy. Although the notice requirements of Labor Code section 2810.5 do not apply to employees who are exempt from the payment of overtime, employees who are exempt from the payment of overtime are covered by this new paid sick leave law.

32. Does my employer have to issue new notices to employees who were hired prior to January 1, 2015?

In general, yes. Unless the notice requirement in Labor Code section 2810.5 does not apply (exempt employees, public employees, and employees covered under certain collective bargaining agreements are excluded), or if the paid sick leave does not apply under one of the exceptions stated in Labor Code section 245.5(a), an employer must notify all employees hired prior to January 1, 2015 of changes to terms and conditions of employment that relate to paid sick leave within 7 days of the actual change. A revised [Notice to Employee](#) may be used for providing individual notice to these existing employees unless the employer chooses an authorized alternative method.

33. If I already work under an existing paid leave policy or sick leave policy which is in writing and my employer states it complies with the new law and will not be changed as a result of this law, will I still get individual notice?

Although an existing paid sick leave or paid time off policy may already satisfy the minimum requirements of the law, and the policy may have been previously provided to an employee or contained in an employer's policy manual available to employees), employers must provide some form of notice of the employee's rights under the new law.

The Labor Commissioner's Office has advised employers that it is a best practice to provide an individual notice containing information about the new paid sick leave law on the [revised DLSE notice form](#) to existing employees.

Whether an employer elects to use the DLSE revised form or another kind of written document, such notice must contain information about the employee's rights under new paid sick leave law, and ideally should include details on how the employer intends to meet the requirements of the new law for the particular employee. For example, a written statement provided to the employee which refers to or summarizes the employer's existing sick leave policy and contains the points of information as specified in the revised notice form that is provided to each employee would be the recommended best practice.