

California Sick Leave Overview

California employers, both public and private, are required to provide paid sick leave to their employees, unless exempted by law. See the section on **Paid Sick Leave**, below, for details.

Kin care requirement. Any employer that offers sick leave must also allow employees to use part of their accrued and available sick leave time in a calendar year to take care of a sick child, parent, spouse, domestic partner, or child of a domestic partner.

Each year, employees are entitled to use the amount of sick leave they would earn in 6 months for this purpose.

This law does not extend the maximum period of leave to which the employee is entitled under the **California Family Rights Act (CFRA)** or the federal **Family and Medical Leave Act (FMLA)** (*CA Lab. Code Sec. 233*).

Employers that have absence control policies that count sick leave taken for this purpose as an absence that may lead to or result in disciplinary action are in violation of the law (*CA Lab. Code Sec. 233, Sec. 234*).

Paid Sick Leave

All employers, both public and private, are required to provide paid sick leave to their employees, unless exempted (*CA Lab. Code Sec. 245 et seq.*).

The Healthy Workplaces, Healthy Families Act of 2014 (the Act) requires that covered employers provide paid sick leave for employees for diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member. The Act also requires that paid sick leave be provided to eligible employees who are victims of domestic violence, sexual assault, or stalking.

Covered family members include children, parents, spouses, registered domestic partners, grandparents and grandchildren, and siblings.

Covered children include biological, adopted, or foster children, stepchildren, legal wards, or a child to whom the employee stands *in loco parentis*. The definition of a child is applicable regardless of age or dependency status.

Covered parents include biological, adoptive, or foster parents, stepparents, or legal guardians of an employee or the employee's spouse or registered domestic partner, or a person who stood *in loco parentis* when the employee was a minor child.

Eligibility. In order to be eligible for paid sick leave, an employee must have worked within the state for the same employer for 30 or more days within a year from the commencement of employment. An employee will be entitled to use accrued paid sick days beginning on the 90th day of employment, after which day the employee may use paid sick days as they are accrued.

Notice. At the time of hire, each employee must be provided a written Notice to Employee detailing sick leave rights.

Sample notices in several languages are available [from the Division of Labor Standards Enforcement \(DLSE\)](#). Employers must also provide employees with information on the amount of paid sick leave, or paid time off (PTO) provided in lieu of sick leave, the employee has available for use. This information must be included in the employee's itemized wage statement or detailed in a separate writing provided on the designated pay date with the employee's payment of wages.

If an employer provides unlimited paid sick leave or unlimited PTO to an employee, the employer may satisfy these requirements by indicating "unlimited" on the employee's itemized wage statement or the separate writing provided.

If the need for paid sick leave is foreseeable, the employee must provide reasonable advance notification. If the need for paid sick leave is unforeseeable, the employee must provide notice of the need for the leave as soon as practicable.

Accrual, use, and carryover. Eligible employees will accrue paid sick days at the rate of at least 1 hour per every 30 hours worked, beginning at the commencement of employment (or the July 1, 2015, effective date of the Act— whichever is later).

Exempt employees will be deemed to have worked 40 hours per workweek unless the employee's normal workweek is less than 40 hours, in which case the employee will accrue paid sick days based on that normal workweek. An employer has no obligation to allow an employee's total accrual of paid sick leave to exceed 48 hours or 6 days, provided that an employee's rights to accrue and use paid sick leave are not otherwise limited.

An employer may use a different accrual method, other than providing 1 hour per every 30 hours worked, provided that the accrual is on a regular basis so that an employee has no less than 24 hours of accrued sick leave or PTO by the 120th calendar day of employment or each calendar year, or in each 12-month period.

An employer may satisfy the accrual requirements by providing not less than 24 hours or 3 days of paid sick leave that is available to the employee to use by the completion of his or her 120th calendar day of employment.

Employees must be allowed to determine how much paid sick leave he or she needs to use, provided that the employer may set a reasonable minimum increment, not to exceed 2 hours, for the use of paid sick leave.

The Act does not supersede the state "kin care" sick leave law. As a result, employers with sick leave plans that provide more than the Act's minimum 6 days of paid sick leave per year must also allow employees to use one-half of their annual sick leave entitlement for kin care.

Accrued paid sick days will carry over to the following year of employment. However, an employer may limit an employee's use of accrued paid sick days to 24 hours or 3 days in each year of employment, calendar year, or 12-month period. No accrual or carryover is required if the full amount of leave (3 days or 24 hours) is received at the beginning of each year of employment, calendar year, or 12-month period.

An employer may lend paid sick days to an employee in advance of accrual, at the employer's discretion and with proper documentation.

Calculation of rate for paid sick time. For nonexempt employees, an employer must calculate paid sick leave using one of the following calculations:

1. Paid sick time for nonexempt employees may 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; *or*
2. Paid sick time for nonexempt employees may 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.

Paid sick time for exempt employees may be calculated in the same manner as the employer calculates wages for other forms of paid leave time.

Employers must 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.

Employers with paid sick leave policies in place. The Act permits an employer to use a paid sick leave or PTO policy established before January 1, 2015, provided that the accrual is on a regular basis so that an employee, including an employee hired into that class after January 1, 2015:

- Has no less than 1 day or 8 hours of accrued sick leave or PTO within 3 months of employment of each calendar year or each 12-month period; *and*
- Was eligible to earn at least 3 days or 24 hours of sick leave or PTO within 9 months of employment.

If an employer modifies the accrual method used in the policy it had in place before January 1, 2015, the employer must comply with any accrual method set forth in the Act or provide the full amount of leave at the beginning of each year of employment, calendar year, or 12-month period.

The exception for policies established before January 1, 2015, does not prohibit an employer from increasing the accrual amount or rate for a class of employees covered by the provision.

Payout at termination/separation. An employer is not required to provide compensation to an employee for accrued, unused paid sick days upon termination, resignation, retirement, or other separation from employment.

If the employee is rehired by the employer within 1 year from the date of separation, previously accrued and unused paid sick days must be reinstated. The employee is entitled to use those previously accrued and unused paid sick days and to accrue additional paid sick days upon rehiring.

An employer is not required to reinstate accrued PTO to an employee that was paid out at the time of termination, resignation, or separation of employment.

Discrimination and retaliation. Employers may not require, as a condition of using paid sick days, that the employee search for or find a replacement worker to cover the days during which the employee uses paid sick days.

Employers may 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 the Act, cooperating in an investigation or prosecution of an alleged violation of the Act, or opposing any policy or practice that is prohibited by the Act.

An employer will be presumed to have retaliated against an employee if an employer denies an employee the right to use accrued sick days, discharges, threatens to discharge, demotes, suspends, or in any manner discriminates against an employee within 30 days of any of the following:

- The filing of a complaint by the employee with the labor commissioner or alleging a violation of the Act;
- The cooperation of an employee with an investigation or prosecution of an alleged violation of the Act; or
- Opposition by the employee to a policy, practice, or act that is prohibited by the Act.

Posting. Employers are required to post a paid sick leave notice or poster where employees can easily read it.

A copy of the poster, available in multiple languages, may be downloaded [from the DLSE website](#).

An employer that willfully violates the posting requirements will be subject to a civil penalty per offense.

Records. Employers must keep records documenting the hours worked and paid sick days accrued and used by an employee for at least 3 years. Employers must allow the labor commissioner to access these records and make these records available to an employee.

If an employer does not maintain adequate records, it is presumed that the employee is entitled to the maximum number of hours accruable under the Act, unless the employer can show otherwise by clear and convincing evidence.

An employer is not obligated to inquire into or record the purposes for which an employee uses paid leave or PTO.

Penalties. If the labor commissioner determines that a violation of the Act has occurred, he or she may order any appropriate relief, including reinstatement, back pay, the payment of sick days unlawfully withheld, and the payment of an additional sum in the form of an administrative penalty to an employee or other person whose rights under this law were violated.

An employer will not be assessed any penalty or liquidated damages due to an isolated and unintentional payroll error or written notice error that is a clerical or an inadvertent mistake regarding the accrual or available use of paid sick leave.

In determining whether the employer's actions were isolated and unintentional, a fact finder may consider whether the employer, before an alleged violation, has adopted and is in compliance with a set of policies, procedures, and practices that fully comply with the Act