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## California Enacts Comprehensive Paid Sick Leave Law: What Employers Need to Know

By Rebecca Newman

While employers in other states may watch leaves turn from green to yellow to orange, California employers are accustomed to seeing many new yellow cautions and red flags each fall. Among a number of new legal requirements for California employers, from [anti-bullying components to harassment training for managers](#) to [protecting unpaid interns and apprentices](#) under the state's antidiscrimination statute, Governor Jerry Brown also signed the [Healthy Workplaces, Healthy Families Act of 2014 \("HWHFA"\)](#), which requires employers to provide paid sick days to employees effective July 1, 2015.

Currently, Connecticut is the only other state in the country with a paid sick leave law, though some major cities, such as San Francisco; New York City; Portland, Oregon; Washington, D.C.; and Newark, New Jersey, have already enacted paid sick leave provisions. California's HWHFA goes a step further than most other paid sick leave laws and ordinances in that it applies to *all* employers regardless of company size, subject to a few exceptions detailed below.

Here's the quick breakdown of employer requirements under HWHFA:

- **Accrual:** Employees working in California for 30 days or more per year will begin accruing at least one hour of sick pay per every 30 hours worked, as of July 1, 2015, or the first day of

work, whichever is later. Exempt employees are deemed to work 40 hours per week for purposes of the law, unless their normal workweek is less than 40 hours. Employers can limit accrual to six days, or 48 hours, per year.

- **Use:** Employees' accrued sick time can be used after 90 days of employment. Paid sick leave can be used in minimum increments of two hours or more.
- **Carry-Over:** Accrued sick days carry over to the following year of employment, but employers may limit an employee's use of paid sick days to three days, or 24 hours, per year of employment.
- **Eligibility and Use:** Paid sick leave can be used for the illness or preventative care of an employee or an employee's family member (defined as a parent, child, spouse, registered domestic partner, grandparent, grandchild, or sibling). Paid sick leave can also be used for employees who are victims of domestic violence, sexual assault, or stalking, as described in California Labor Code Sections 230 and 230.1. As these issues were referenced in the bill's findings, it is clear that the California legislature enacted HWHFA in part in order to mandate paid sick leave provision to such victims.
- **Compensation:** Paid sick days are compensated at the same wage rate as the employee normally earns during regular work hours. If, in the 90 days before an employee is eligible to use the sick leave, the employee has varying rates of pay (or was paid by commission or piece rate, or was non-exempt and salaried), the rate of pay is determined by dividing the employee's total wages (except overtime) during the 90 days by total hours worked in that period.

Unlike paid vacation days, paid sick days do not have to be paid out at the termination or separation of employment. HWHFA does not apply to employees covered by collective bargaining agreements that provide paid sick leave terms and certain wage rates, to providers of in-home supportive services, and to individuals employed by air carriers as flight deck or cabin crew members.

How will this affect the many employers who already provide discretionary PTO benefits to their employees? For these employers, if their PTO policy (1) can be used for the illness or preventative care for the employee or eligible family members, (2) provides at least three days, or 24 hours, of equivalent paid time off per year, and (3) meets the accrual, use, and carry-over requirements discussed above, their policy does not need to be altered. There are, however, notice, posting, and record-keeping requirements under the law, and it may be advisable to consult with employment counsel to review existing policies for compliance.

California employers without a PTO policy may want to consider creating a wholly separate, compliant paid sick leave policy.

Although many employers have moved away from separating sick leave from other types of leave, opting instead for a regular "no-hassle" PTO policy, in light of HWHFA it may be easier for employers without PTO policies to tailor their paid sick leave policies to the law's requirements. For employers interested in doing so, there are a few things to keep in mind. First, the policy must apply to both non-exempt and exempt employees, so a full-time salaried employee working 2,080 hours per year would accrue approximately 8.66 sick days (69.33 hours) per year. However, an employer may limit use of paid sick leave to three days (24 hours) per year of employment, and can limit total accrual to six days (48 hours).

Employers should also consider HWHFA's interaction with California's Kin Care requirement, which authorizes employees to use up to one-half of annually accrued sick leave to take time off to care for a sick family member. Previously, Kin Care did not apply to employers who did not have specific paid sick leave policies, but now that all California employers must have such policies, employers need to become more familiar with Kin Care requirements.

Importantly, HWHFA has a prohibition against taking any adverse action against an employee for using accrued sick days, including a presumption of retaliation if the employer takes any action against an employee for using the leave or after the employee has complained about any issues with their sick leave. For example, if an employee has procedures in place in the event of an unexpected absence, an employee who fails to follow such procedures, but invokes their accrued sick time for protected reasons, may be insulated from adverse action. The Labor Commissioner has jurisdiction to investigate and enforce the law, which carries hefty penalties similar to other wage and hour violations for unlawful withholding of sick days or other related violations.

As with many new laws, there are still open questions raised by HWHFA. The law does not specify whether employers may require a doctor's note or certification from employees before applying accrued paid sick days to absences. Moreover, an employer cannot require that the employee find a replacement for the time they are out sick. As [several other state legislatures](#) introduced paid sick leave bills in 2014, all employers should closely monitor such legislative developments in the states in which they do business. California employers in particular should check in with employment counsel as they weather the fall and winter and prepare for paid sick leave next summer.

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