

# PAYNE & FEARS

Employment Law Alert

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## California "Fixes" Paid Sick Leave Law

Governor Brown just signed urgency legislation effective immediately fixing some of the problems in California's Healthy Workplaces, Healthy Families Act of 2014, the Paid Sick Leave Law. Key changes to the Paid Sick Leave Law include:

**Eligibility.** An employee who, on or after July 1, 2015, works in California *for the same employer* for 30 or more days within a year from the commencement of employment is entitled to paid sick days.

**Accrual.** An employer may use a different accrual method other than providing one 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 paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period.

**Use.** An employer may limit an employee's use of paid sick days to 24 hours or 3 days in each year of employment, calendar year, or 12-month period, rather than just year of employment.

**Payment.** Three alternative methods for calculating how sick leave is paid are now permitted:

1. Paid sick time for *nonexempt* employees can 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 can 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; and
3. Paid sick time for *exempt* employees is calculated in the same manner as the employer calculates wages for other forms of paid leave time.

**Reinstatement.** An employer is not required to reinstate accrued paid time off to an employee, rehired within one year of separation from employment, that was paid out at the time of termination, resignation or separation.

**Notice.** An employer that provides unlimited sick leave to its employees may satisfy certain notice requirements by indicating "unlimited" on the employee's itemized wage statement.

**Recordkeeping.** In keeping records for three years documenting the hours worked and paid sick days accrued and used by an employee, an employer need not inquire into or record the purposes for which an employee uses sick leave or paid time off.

**Grandfather Provision.** An employer is not required to provide additional paid sick days if the employer provided paid sick leave or paid time off to a class of employees before January 1, 2015, pursuant to a sick leave policy or paid time off policy that used an accrual method different than providing one hour per 30 hours worked, 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 one day or eight hours of accrued sick leave or paid time off within three months of employment, of each calendar year, or each 12-month period, and the employee was eligible to earn at least three days or 24 hours of sick leave or paid time off within nine months of employment. If, however, an employer modified the accrual method used in the policy it had in place prior to January 1, 2015, the employer must comply with any of the accrual methods allowed by the law, or provide the full amount of leave at the beginning of each year of employment, calendar year, or 12-month period.

With numerous ambiguities and impractical requirements not typically found in how employers have provided paid sick leave, employers have struggled to implement California's Paid Sick Leave Law. These amendments fix some of those problems, but employers should carefully analyze their sick leave or paid time off policies to ensure compliance with these new requirements. For additional information, please contact your Payne & Fears LLP lawyer, Eric Sohlgren ([ecs@paynefears.com](mailto:ecs@paynefears.com)), or Amy Patton ([arp@paynefears.com](mailto:arp@paynefears.com)).

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