

EMPLOYERS: THE CLOCK IS TICKING

Are You in Compliance with California's New Sick Leave Law and Anti-Bullying Training Requirements?

The biggest change affecting California employers for 2015 is California's new requirement that employers provide **paid sick leave** to all employees who work more than 30 hours in California—including seasonal, temporary, and part-time employees. The new law goes into effect **July 1, 2015**. Given the law's upcoming effective date, now is a great time to make sure your policies are compliant.

Employers can implement sick leave policies that comply with California's new sick leave requirements in one of three ways: (1) **accrual**; (2) **grant**; or (3) combining sick leave and vacation into a paid time off ("**PTO**") policy.

Accrual

If employers choose to employ the accrual method, employees are entitled to accrue sick leave at a rate of at least 1 hour of paid sick leave for every 30 hours worked. Employers may cap usage to 24 hours per year and cap accrual to 48 hours per year. Employees accruing paid sick leave are entitled to carry over all accrued and unused sick leave from year to year. However, employees are not entitled to be paid for accrued and unused sick leave at separation. (But, if the employee is re-hired within 1 year of separation, the employer must reinstate all of the employee's previously accrued and unused sick leave upon re-hire.) This method might work best for a workplace with high turnover.

Grant

If employers apply the grant method, employers must grant employees with at least 24 hours of paid sick leave at the beginning of each "year" (calendar, anniversary, or other 12-month period). The advantage of this method is that employers do not have to track accrual over time, thereby minimizing an administrative burden. Employers granting paid sick leave need not carry over unused time from year to year, and the time need not be paid out at separation. (But, again, if the employee is re-hired within 1 year of separation, the employer must reinstate all of the employee's previously unused sick leave upon re-hire.)

PTO

Employers who already have a PTO policy may wish to maintain their existing PTO policy. California's new law permits this so long as the PTO policy is otherwise compliant with the new California law

(meaning the policy provides for at least 48 hours of accrual per year). However, California law treats PTO as a wage that is earned, and thus PTO must carry over from year to year and must be paid out at separation.

Regardless of the method employers utilize, employees are not eligible for paid sick leave until they have been employed by the employer for 30 days, and employers' policies may limit the employee's ability to use accrued paid sick leave until after the employee has been employed with the employer for 90 days.

Further, employers may wish to establish different sick leave policies for different categories of employees. For instance, an employer may provide full-time employees with PTO through an already compliant policy. However, rather than giving temporary, seasonal, and part-time employees the same level of benefits as full-time employees, an employer may wish to provide non-full-time employees sick leave accrued at the minimum rates required by the new law. Take care to avoid any impermissible discrimination in making distinctions between categories of employees.

Usage

Sick leave is to be used for an employee's own qualifying need or that of the employee's "family member," as defined below, for the following reasons: (1) diagnosis, care, or treatment of an existing health condition, or (2) preventative care. Sick leave may also be used if the employee is a victim of domestic violence, sexual assault, or stalking.

"Family member" for purposes of sick leave includes biological, adopted, or foster child, stepchild, or legal ward, or a child to whom the employee stands *in loco parentis*; a biological, adoptive, or foster parent, step parent, or legal guardian of any employee or the employee's spouse or registered domestic partner, or a person who stood *in loco parentis* when the employee was a minor; spouse or registered domestic partner; grandparent; grandchild; or sibling. Sick time should be paid at the employee's regular rate of pay at the time the leave is taken.

Other Requirements

Employers must post a poster regarding sick leave in the workplace. The poster can be found here: [http://www.dir.ca.gov/dlse/Publications/Paid_Sick_Days_Poster_Template_\(11_2014\).pdf](http://www.dir.ca.gov/dlse/Publications/Paid_Sick_Days_Poster_Template_(11_2014).pdf)

Employers must also issue a new Wage Theft Prevention Act Notice to all new and current employees who are not exempt from overtime requirements, which can be found here: https://www.dir.ca.gov/dlse/LC_2810.5_Notice.pdf

Finally, employers are required to keep records of sick leave accrual for three years, and the employee's wage statements (paystubs) must reflect the balance of paid sick leave.

Oakland/San Francisco

Employers with employees working in Oakland or San Francisco should take special notice as both cities have enacted their own sick leave laws, which contain slightly different and, in some instances, conflicting policies with California's new law.

If you are making changes to your policies, Hoge Fenton's employment law group can help you evaluate those changes and draft policies compliant with the new law.

It's That Time Again: Sexual Harassment Prevention Trainings and New Anti-Bullying Requirements

Ten years ago, the California legislature enacted a law requiring all employers with 50 or more workers to provide at least two hours of interactive training to all supervisory employees on the prevention of sexual harassment, discrimination and retaliation (commonly referred to as AB 1825 training). The law required the first training be completed within 2005 and repeated every two years thereafter. The law also requires new supervisory employees receive such training within six months of hire (or from becoming a supervisor). Accordingly, for most California employers, 2015 is a "training year."

Effective in 2015, the California legislature modified the law, now requiring the training also include a discussion of abusive conduct in the workplace (e.g., bullying).

If you regularly employ 50 or more persons (for this law, "employ" includes using independent contractors), now is a good time to check your records and determine whether you are up to date on your trainings. Hoge Fenton's employment law group regularly provides harassment prevention trainings that satisfy California's requirements.

Jenn Protas helps employers navigate California's numerous employment laws and defends employers with an eye toward successful, yet cost-effective resolution. Her practice focuses on matters related to wage and hour advice and litigation, employee leave issues, claims of trade secret misappropriation, and defense of wrongful termination, harassment, discrimination, and retaliation litigation. In addition, Jenn has substantial experience drafting employer policies, handbooks, confidentiality and nondisclosure agreements, separation agreements, and settlement agreements. Her practice also includes housing discrimination matters, and general litigation, including business disputes.

Jenn is a frequent public speaker and regularly presents seminars and trainings on such employment issues as: annual legal updates, complex leave issues, complying with California wage and hour laws, and effective management of employees. She also provides legally-mandated anti-harassment trainings (AB 1825) and fair housing trainings at clients' sites.

The Fine Print.

This Employment Law Update is provided as an educational service by Hoge Fenton for clients and friends of the firm. This communiqué is an overview only, and should not be construed as legal advice or advice to take any specific action.

Primary Contact

- Jenn Protas