

THE PATCHWORK CONTINUES: ADDITIONAL CALIFORNIA MUNICIPALITIES JOIN IN ADOPTING VARYING SICK LEAVE AND MINIMUM WAGE REQUIREMENTS

Sick Leave

California employers are still grappling with how best to implement sick leave or paid time off policies to comply with the California Healthy Workplace, Healthy Family Act (also known as the California sick leave law) and existing municipal ordinances. Now, additional Southern California municipalities (Santa Monica, Los Angeles, San Diego, and Long Beach [1]) have added their own sick leave ordinances, and San Francisco has amended its sick leave ordinance, creating an even more confusing and administratively burdensome patchwork. Below are brief highlights of each of the new/amended municipal ordinances.

Los Angeles

- Effective date: Businesses must comply with the sick leave requirements starting July 1, 2016
- Covered employees: The law applies to employees who work two or more hours in a particular week in the City of Los Angeles
- Accrual rate: The ordinance provides that paid sick leave begins to accrue at the commencement of employment, and the employee shall accrue one hour of paid sick leave for every 30 hours worked
- Accrual cap: Employers may implement an accrual cap of 72 hours of accrued paid sick leave. Accrued time must be carried over from year to year
- Usage cap: Employees must be permitted to use up to 48 hours of accrued sick leave each year
- Grant: Instead of permitting employees to accrue paid sick leave, employers may grant the full amount of leave at the beginning of each year, and if they do so, the time need not carry over from year to year
- Usage: Employers may prohibit employees from using any accrued paid sick leave until after the first 90 days of employment
- Pay at separation: Unused paid sick time does not need to be paid to the employee upon separation

- Leave to care for others: In addition to the persons identified in the California sick leave law for whose care employees can use sick leave, the ordinance permits employees to use sick leave to care “for any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship”

Santa Monica

- Effective date: Businesses must comply with the sick leave requirements starting January 1, 2017
- Covered employees: Generally speaking, the law applies to employees who work two or more hours in a particular week in Santa Monica [2]
- Accrual rate: The ordinance provides that paid sick leave begins to accrue at the commencement of employment, and the employee shall accrue one hour of paid sick leave for every 30 hours worked
- Accrual cap:
 - Employers with 26 or more employees shall provide at least 40 hours of paid sick leave as of January 1, 2017 (note, however, that the California law requires employees be permitted to accrue up to 48 hours) and at least 72 hours of paid sick leave as of January 1, 2018
 - Employers with 25 or fewer employees shall provide at least 32 hours of accrued paid sick leave as of January 1, 2017 and at least 40 hours of accrued paid sick leave as of January 1, 2018 (note, again, that the California law requires employees be permitted to accrue up to 48 hours)
 - Accrued time must be carried over from year to year
- Usage cap: Unlike the California sick leave law, the ordinance does not permit a usage cap
- Grant: Instead of permitting employees to accrue paid sick leave, employers may grant the full amount of leave at the beginning of each year, and if they do so, the time need not carry over from year to year
- Usage: Employers may prohibit employees from using any accrued paid sick leave until after the first 90 days of employment
- Pay at separation: Unused paid sick time does not need to be paid to the employee upon separation

San Diego

- Effective date: The voters of San Diego approved the paid sick leave ordinance on June 7, 2016. Under San Diego election laws, the law will take effect on the date the City Council adopts a resolution declaring the result of the election. It is assumed this will occur sometime in July
- Covered employees: Generally speaking, the law applies to any employee who, in one or more calendar weeks of the year, performs at least two hours of work in the City of San Diego [3]
- Accrual rate: The ordinance provides that earned sick leave begins to accrue at the commencement of employment, and the employee shall accrue one hour of earned sick leave for every 30 hours worked within the geographic boundaries of the City of San Diego
- Accrual cap: Employers may not implement an accrual cap; employees must be permitted to continue to accrue earned sick leave. Accrued time must be carried over from year to year

- Usage cap: Employers may limit usage of earned sick leave to 40 hours per year
- Grant: The law does not expressly provide for a grant of earned sick leave
- Usage: Employers may prohibit employees from using any accrued earned sick leave until after the first 90 days of employment
- Pay at separation: Unused earned sick leave does not need to be paid to the employee upon separation

San Francisco

San Francisco amended its sick leave law to better align its provisions with the later-enacted California paid sick leave law. The amendments become operative January 1, 2017. The amendments now provide that San Francisco's sick leave begins to accrue upon the commencement of employment, but employers may disallow usage until after the 90th day of employment. The amendments also now permit employers to "advance" the sick leave at the beginning of the year instead of permitting employees to accrue the time. This is treated as an advance, temporarily halting accrual until after working the number of hours necessary to have accrued the advanced amount, at which point accrual resumes. However, unlike the grant method under California's sick leave law, employers must still permit employees to carry over unused sick time to the following year. The amendments also make changes to the definition of "family members" for whom time may be used, expands the permitted uses to include preventative care and time for purposes related to domestic violence, sexual assault, and stalking suffered by the employee, clarifies how and when sick leave must be paid, requires written notice to employees regarding available balances of paid sick leave, and, like California's law, requires reinstatement of unused sick leave if an employee is rehired within one year of separation.

Recommendation

If you have employees working in any of these cities, you should review your existing sick leave or paid time off policies to evaluate whether they comply with both the state and municipal sick leave ordinances. Businesses with employees in multiple cities should consider adopting a different policy for employees in certain cities to avoid having to create a "universal" policy that is unreasonable and would result in greater expense than otherwise required. Should you need assistance in understanding the various ordinances or with drafting your policies, please contact Hoge Fenton's employment law team for help reviewing and drafting your policies.

Minimum Wage

In addition to new sick leave requirements, many cities have enacted their own minimum wage ordinances, and some have increases that will become effective July 1, 2016 or later this year:

City	Minimum Wage Rate	Effective Date
	\$11.00/hour	Current
Berkeley	\$12.53/hour	October 1, 2016
El Cerrito	\$11.60/hour	July 1, 2016

	\$12.25/hour (55 or fewer employees)	
Emeryville	\$13.00/hour (55 or fewer employees)	Current
		July 1, 2016
	\$14.44/hour (>55 employees)	Current
	\$14.82/hour (>55 employees)	July 1, 2016
Long Beach (applies to hotel workers)	\$13.80/hour	Current
Los Angeles (city)	\$10.50/hour (26 or more employees; requirement for smaller employers delayed until 2017)	July 1, 2016
		Current
	\$15.37/hour (applies to hotel workers)	
Los Angeles (county)	\$10.50/hour (26 or more employees; requirement for smaller employers delayed until 2017)	July 1, 2016
Mountain View	\$11.00/hour	Current
Oakland	\$12.55/hour	Current
Palo Alto	\$11.00/hour	Current
Pasadena	\$10.50/hour (26 or more employees; requirement for smaller employers delayed until 2017)	July 1, 2016
Richmond	\$11.52/hour	Current
San Diego	\$10.50/hour	Effective when election results are certified
San Francisco	\$12.25/hour	Current
	\$13.00/hour	July 1, 2016
San Jose	\$10.30/hour	Current
Santa Clara	\$11.00/hour	Current
Santa Monica	\$10.50/hour (26 or more employees; requirement for smaller employers delayed until 2017)	July 1, 2016
		Current
	\$13.25/hour (applies to hotel workers)	
Sunnyvale	\$10.30/hour	Current
	\$11.00/hour	July 1, 2016

Keeping up with these ever-changing requirements can be challenging. Hoge Fenton's employment law team is here to help.

[1] Long Beach Resolution No. RES-12-0049 establishes paid sick leave and minimum wage requirements for certain hotel employers.

[2] The ordinance does not apply to government agencies. The ordinance also provides variations for “hotel workers,” “transitional workers,” and employees subject to collective bargaining agreements.

[3] The law does not apply to persons authorized to be employed at less than the minimum wage; persons employed under a publicly subsidized summer or short-term youth employment program; any student employees, camp counselors, or program counselors of an organized camp; or persons employed as independent contractors.

The Fine Print.

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Primary Contact

- Jenn Protas