

## YOUR **CURE** FOR COMMON QUESTIONS ABOUT CALIFORNIA SICK LEAVE LAW

### What options do we have for providing sick leave?

Employers may provide sick leave through one of two methods: (1) an “accrual” method where the time is accrued as service is performed and is carried over from year to year, subject to any cap (this can be provided as a separate entitlement or as part of PTO), or (2) an “advance” method, where the full amount of the time is given to the employee once every year. Employers with high turnover or a large number of temporary or part-time employees may prefer the “accrual” method. Employers who do not want to track accrual, caps and carryover may prefer the “advance” method.

### How is the “year” measured?

It will vary. The year is measured from July 1, 2015, or the employee’s hire date, whichever is later. Under the “accrual” method, accrual begins on July 1 or any later hire date. Under the “advance” method, employees will be provided the full sick leave entitlement on July 1 or any later hire date.

### If we use the “advance” method and provide the full amount of sick leave up front, do employees still need to be employed for 90 days before they can use it?

Yes. The full amount of leave must be available at the beginning of the 12-month period, but for initial hires, employees must still meet the 90-day employment requirement prior to using paid sick leave. If an employee has been employed at least 90 days as of July 1, he or she will be entitled to use “advanced” paid sick leave immediately as long as he or she has worked 30 or more days in California since the commencement of employment.



### What if we provide PTO?

Employers may satisfy their sick leave obligations through a PTO policy. However, employers should closely examine their PTO policies to ensure that they meet the qualification, accrual, cap, and carryover requirements. In order to satisfy the sick leave obligations, a PTO policy must apply to all employees (including exempt and part-time employees), must provide for accrual on the first day of hire, must have an accrual rate of at least 1 PTO hour for every 30 hours worked including overtime hours, must provide for at least 24 hours per year that can be used for health care, and any cap must be no less than 48 hours.

### May we have different PTO policies for different categories of employees?

Yes.

### We are thinking about adding a sick leave policy and reducing our PTO policy so that employees do not accrue as many PTO days. Can we do this?

Yes, but employees will need to keep whatever they have accrued under the existing PTO policy prior to the change, and employers should give reasonable advance notice of the change.



*Pettit Kohn Ingrassia & Lutz’s employment team is happy to assist you with questions regarding the new sick leave law to help you achieve compliance and best practices. Let us know if we can help with reviewing your existing policies or implementing any new policies. Contact Tom Ingrassia, Jennifer Lutz, Jenna Leyton-Jones, Christine Mueller, or Tristan Mullis.*

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### **We have an attendance policy which states that employees who have three or more absences within a month are subject to discipline. Is this okay?**

Employers should examine their attendance policies to ensure that employees are not subject to discipline for taking sick leave or other protected time off. Sick leave days provided under this law cannot count against employees. In this example, if the employee has three days of sick leave time, he or she is entitled to take it with no negative effect on his or her attendance record.

### **We have workers who are paid by a staffing agency. Do we need to provide them with sick leave?**

Qualifying temporary and leased employees who qualify must be provided with sick leave by the employer and/or joint employer. If such employees are paid through an agency, employers need to permit the time off and should verify that the agency is providing proper pay for that time.

### **Are we required to cash out unused sick leave upon termination of employment?**

No. However, if sick time is covered under a PTO policy, any accrued and unused PTO will be paid out upon termination of employment. For employers providing a separate sick leave entitlement, if an employee is rehired within one year, previously accrued and unused sick leave must be reinstated.

### **For what purposes may employees use sick leave?**

Sick leave may be taken for the diagnosis, care, or treatment of existing health conditions, or for preventive care, which may include such things as annual physicals and flu shots. It may be used for the employee, or the employee's child, grandchild, parent, grandparent, spouse, registered domestic partner, or sibling. Sick leave may also be taken for specified purposes for employee victims of domestic violence, sexual assault, or stalking.

### **How is sick leave to be reflected on itemized wage statements?**

Under both the "accrual" and "advance" methods, each itemized wage statement or pay stub must reflect the amount of paid sick leave that the employee has available for use.

### **We have an employee who works 10-hour days. Are we required to pay him for three 10-hour days of sick leave?**

The California Division of Labor Standard Enforcement (DLSE) recently updated its position regarding employees who work alternative work schedules. It appears that the DLSE interprets the phrase "24 hours or three days" as the greater of the two numbers. According to the DLSE, therefore, employees who work 10-hour days are entitled to take and be paid for up to 30 hours of leave (the equivalent of three days) per year. Presumably, employees working 12-hour days would be entitled to take and be paid for up to 36 hours of leave (the equivalent of three days) per year.

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