

# Frequently Asked Questions

## About California's New Paid Sick Leave law ([AB 1522](#))

### Eligibility for paid sick leave under the new law

#### When does the new law take effect?

The state's new sick leave law takes effect January 1, 2015. However, the right to accrue and take sick leave under this law does not take effect until July 1, 2015.

#### How do I qualify for paid sick leave?

An employee qualifies for paid sick leave by working for an employer on or after January 1, 2015, for at least 30 days within a year in California and by satisfying a 90 day employment period (which works like a probationary period) before an employee can actually take any sick leave.

#### What if I work less than 30 days in California within a year?

If you work less than 30 days in California within a year, then you are not entitled to be paid sick leave under this new law.

#### What if I work more than 30 days in California within a year but less than 90 days?

The 90 day period works like a probationary period. Although you begin to accrue paid sick leave on July 1, 2015, or your first day of employment if you are hired after July 1, 2015, if you work less than 90 days for your employer, you are not entitled to take paid sick leave.

#### When am I entitled to take paid sick leave?

A qualifying employee begins to accrue paid sick leave beginning on July 1, 2015, or if hired after that date on the first day of employment. An employee is entitled to use (take) paid sick leave only after meeting the qualifications for paid sick leave (addressed in the previous three questions/responses) and accruing enough paid sick leave time to use for one of the stated purposes of the law.

#### Why does the law take effect January 1, 2015 if I don't begin accruing until July 1, 2015?

The different dates are a result of the general effective dates of new legislation (on January 1 following enactment of the law) and the way the law was drafted making some of its provisions operative on a specified date (July 1, 2015). Both the qualifying periods that determine which employees are eligible for paid sick leave and the employee notice required by Labor Code 2810.5 become effective on January 1, 2015, but the law provides that entitlement does not begin until July 1, 2015.

#### Does paid sick leave apply to all employees who work in California?

An employee who works at least 30 days within a year in California, including part-time, per diem, and temporary employees, are covered by this new law with some specific exceptions. Providers of publicly-funded In-Home Supportive Services (IHSS) are exempt. Employees covered by collective bargaining agreements with specified provisions are exempt, as are individuals employed by an air carrier as a flight deck or cabin crew member, if they receive compensated time off at least equivalent to the requirements of the new law.

## What if I am employed by a staffing agency?

Temporary employees of a staffing agency are covered by the new law. Therefore, whoever is the employer or joint employer is required to provide paid sick leave to qualifying employees.

## How do qualifying employees accrue and take paid sick leave

### If I qualify, how much paid sick leave am I entitled to take and be paid for?

Starting July 1, 2015, employees will **earn** at least one hour of paid leave for every 30 hours worked. That works out to a little more than eight days a year for someone who works full time. But employers can limit the amount of paid sick leave you can **take** in one year to 24 hours (three days).

### How is the year measured?

Because paid sick leave accrues beginning on July 1, 2015 or the first day of employment if hired after July 1, 2015, the 12 month period will vary by hire date for those employees hired after July 1, 2015. Therefore, the measurement will mostly be tracked by the employee's anniversary date.

### Can my employer provide paid sick leave to me prior to July 1, 2015?

Yes. An employer may elect to advance sick leave to an employee before it is accrued, but there is no requirement for an employer to do so under this law.

### Why does the law let me accrue more time than I could use in a year?

Accrual, carryover, and use are all distinct concepts. Accrual is based on the number of hours an employee works; the amount carried over to the next year may be subject to a cap if the employer establishes a cap by policy; and finally, use may be limited to 3 days per year.

### What happens if I am a seasonal employee and I only work 60 days one year but return to the same employer within one year and work another 60 days?

The paid sick leave law requires that your accrued sick leave be restored to you if you return to the same employer within 12 months from the previous separation. Although an employer does not have to allow an employee use of the paid sick leave prior to working 90 days, because the law specifically requires that the leave be restored to you, in your second year, you have met the 90 day restriction on use after 30 days (due to working 60 days in the prior year) and can begin to use your paid sick leave after working 30 days in the second year.

### What happens if I return to work for the same employer after more than one year?

The paid sick leave law does not require that your accrued sick leave be restored to you. Whether you have to re-establish eligibility by working another 30 days within a year and 90 days before use, is a question that is not addressed in the new law and will depend on the particular facts of the situation to answer.

### If I work part time, six hours per day and I have accrued 24 hours of paid sick leave and I take three paid sick days, can my employer refuse to allow me to take any more sick leave in that same year?

No. Because the statute provides that an employer may limit the amount of sick leave to 24 hours or three days, and because you work 6 hours per day, you have only used 18 of your 24 hours. For enforcement purposes, DLSE interprets the reference to "three days" to state an equivalent of 24 hours (based on an 8 hour workday) and is not a limitation that can be used to prohibit a part-time employee from using at least 24 hours of accrued leave in a year. Therefore, the minimum

amount that you have to be allowed to take cannot fall below 24 hours. In this situation, you still have 6 hours left to take and be paid for, during the year.

## **Employer policies can provide more paid sick leave but not less**

### **What happens when an employer has its own Paid Time Off (PTO) plan?**

The new law establishes a minimum requirement, but an employer can provide sick leave through its own plan or establish different plans for different categories of workers. However, each plan must satisfy the accrual, carryover, and use requirements of the law or put the full amount of leave into your leave bank at the beginning of each year in accordance with the PTO policy. If an employer provides a policy which exceeds the minimum requirements, including providing a specific cap, the policy must be clear as to the additional terms that apply to their employees.

### **How does an employer satisfy the provision for putting the full amount of leave into my leave bank under the alternative “up-front” (or advance) method for providing paid sick leave?**

An employer must have a paid leave policy that satisfies the same purposes required by the new law and must provide no less than 24 hours or three days of paid sick leave for an employee to use each year. Therefore, the full amount of accrued leave must be available to the employee at the beginning of the 12 month period. For initial hires, however, the employee must still meet the 90 day employment requirement prior to taking any paid sick leave.

### **Under the accrual method, can I carry over unused sick leave from one year to the next?**

Yes, but an employer can limit or cap the amount of sick leave an employee may accrue to 6 days or 48 hours.

### **My employer provides paid time off which I can use for vacation or illness. Will my employer have to provide additional sick leave?**

No, as long as your employer provides at least 24 hours per year of paid leave that can be used for health care and meets other requirements in the law.

### **My company offers unlimited time off. How does the new law affect me?**

Most employers with this new but growing policy do not track how much time employees take off or for what reason. However, the new law requires that employers separately track sick leave accrual and use.

## **For what purposes can an employee take paid sick leave**

### **What can I use sick leave for?**

You can take paid leave for you or a family member for preventive care or care of an existing health condition or for specified purposes if you are a victim of domestic violence, sexual assault or stalking. Family members include the employee’s parent, child, spouse, registered domestic partner, grandparent, grandchild, and sibling. Preventive care would include annual physicals or flu shots. For partial days, your employer can require you to take at least two hours of leave, but otherwise the determination of how much time is needed is left to the employee.

### **Do I have to give notice that I need to take my paid leave?**

Employers must permit the employee to use the paid sick leave upon an oral or written request, and the law forbids requiring an employee to find a replacement as a condition for using leave. If

the need is foreseeable the employee must give reasonable advance notice, but where the need is unforeseeable the employee need only give notice as soon as practicable.

## Payment and tracking of earned and taken leave

### When I take paid sick leave, will I get paid as I normally do for the applicable pay period?

The new law requires that an employer provide payment for sick leave taken by an employee *no later than* the payday for the next regular payroll period after the sick leave was taken. This does not prevent an employer from making the adjustment in the pay for the same payroll period in which the leave was taken, but it permits an employer to delay the adjustment until the next payroll. For example, if you did not clock in for a shift and therefore were not paid for it but utilized your paid sick leave, your employer would have to pay you not later than the following pay period and account for it in the wage stub or separate itemized wage statement for that following regular pay period.

### How much will I get paid?

You must be paid at your regular hourly rate. If your pay fluctuates - for example, if you get a commission or piece rate - your employer will divide your total compensation for the previous 90 days by the number of hours worked and pay you that rate.

### How will I know how much sick leave I have accrued?

Employers must show, on your pay stub or a document issued the same day as your paycheck, how many days of sick leave you have available. Employers also must keep records showing how many hours you earned and used for three years. This information may be stored on documents available to employees electronically.

### How does the new law fit in with local sick leave ordinances?

For employees subject to local sick leave ordinances, the employer will have to comply with both the local and California laws, which may differ in some respects. For each provision or benefit, the employer will have to provide whichever is more generous to the employee.

### What if I work an alternative work schedule of four 10-hour days and I take paid sick leave. How much should I be paid?

The paid sick leave law allows the employee to decide how much paid leave time to take, subject to the employer's ability to set a two hour minimum. Therefore, if you have ten hours in your bank, you can request to be paid for ten hours. If you decide to take less time than that in paid sick leave, then you will not receive your full pay but instead, pay for the number of hours that you choose to take. If you are sick for three days and have accrued 24 hours then your employer will have to pay you for 24 hours. However, if you have accrued 30 hours then because the minimum requirements of the statute are 3 days or 24 hours, you will have to be paid for 30 hours.

### If I leave my job, can I cash out my unused sick days, like I can with vacation and paid time off?

No, not unless your employer's policy provides for a payout. But if you leave your job and get rehired by the same employer within 12 months, you can reclaim what you had in your leave bank.

## Required information to be provided to employees

### How will I learn of my rights to paid sick leave from my employer?

Beginning January 1, 2015, employers are required to post in a conspicuous place at the workplace, a poster containing the following information: (1) that an employee is entitled to accrue, request, and use paid sick days; (2) the amount of sick days provided for and the terms of use of paid sick days; (3) that retaliation or discrimination against an employee who requests paid sick days or uses paid sick days or both is prohibited; and (4) that an employee has the right under this law to file a complaint with the Labor Commissioner against an employer who retaliates or discriminates against an employee. The new law required the Labor Commissioner to develop such a [poster](#), and it is now available on the Labor Commissioner's website.

Second, after January 1, 2015, employers are required to provide most employees with an individualized [Notice to Employee](#) (required under Labor Code section 2810.5) that includes paid sick leave information. A revised Notice to Employee form (available to employers for download at DLSE's website) must be used for employees hired after January 1, 2015, and is optional for use prior to the January 1, 2015 effective date. Use of the revised form prior to January 1, 2015, will be deemed compliant with the new requirement as of January 1, 2015; otherwise, for employees hired prior to January 1, 2015, the employer is required to provide a revised Notice to Employee or otherwise inform each employee of the information regarding paid sick leave within 7 days of the change, using any of the alternative methods specified in Labor Code section 2810.5(b).

### How will I know if my employer's policy has different terms from the paid sick leave law?

The state law providing for paid sick leave creates minimum standards for paid sick leave. Employers may use their existing policies so long as the specific policy complies with the minimum requirements of the law. Where the employer provides additional terms (e.g., creates caps on maximum use or accruals above the minimums), they must inform employees of those additional terms. The revised Notice to Employee form has a check box to inform an employee of an employer's own policy that meets or exceeds the requirements of the new law. To avoid misinformation or misunderstanding regarding an employer's specific paid leave policy, employers are encouraged to ensure that employees are made fully aware of the terms and conditions of their specific policy which provides any additional paid sick leave terms. Although the notice requirements of Labor Code section 2810.5 do not apply to employees who are exempt from the payment of overtime, employees who are exempt from the payment of overtime are covered by this new paid sick leave law.

### Does my employer have to issue new notices to employees who were hired prior to January 1, 2015?

Yes. An employer must individually notify all employees hired prior to January 1, 2015 of changes to terms and conditions of employment that relate to paid sick leave within 7 days of the actual change. Information concerning any new or previously existing paid sick leave program that includes information required to be given to each employee by Labor Code section 2810.5(a), must be provided to all employees. A revised DLSE notice form, available on our website, may be used for providing individual notice to these existing employees unless the employer chooses an authorized alternative method.

### If I was hired prior to January 1, 2015, by what date am I supposed to receive individual notice of the changes to my terms and conditions of employment that relate to paid sick leave?

The specific date will depend on when your employer either establishes a paid sick program under this law or changes an existing paid leave program to be compliant with this law. However, in view of the operative date of the law and the requirement to notify existing employees of changes in certain terms or conditions of their employment, employees hired prior to January 1, 2015, and who were provided a previous notice which was in effect as of December 31, 2014, must be notified of any change between the period from January 1, 2015 to no later than July 8,

2015.\*\* An employer may choose to issue a new notice to all employees. An employer may also elect to provide notice under the alternatives stated in 2810.5 (b)(1) or (b)(2). If an employer chooses an alternative method (e.g. includes notice of change in a pay stub or itemized wage statement), the employer must ensure that the required paid sick leave information (the same paid sick leave information as contained in the revised notice) is contained in the applicable writing and is compliant with an authorized alternative manner for providing such information under subdivision (b).

\*\* Subdivision (b) provides a 7 day period following the change in employment terms or conditions in which employees must be notified in writing. This makes July 8, 2015, the final date (July 1, 2015 operative accrual date + 7 days) for providing notice of changes relating to paid sick leave to an employee hired before January 1, 2015.

### **If I already work under an existing paid leave policy or sick leave policy which is in writing and my employer states it complies with the new law and will not be changed as a result of this law, will I still get individual notice?**

Yes. While an existing employer policy may already satisfy the minimum requirements of the law and the policy may have been previously provided to an employee (or contained in an employer's policy manual available to employees), specific notice containing information about the new paid sick leave law is now required on the revised notice form and must be made to existing employees. This requirement was made by the Legislature by amending Labor Code section 2810.5. Whether an employer elects to use the DLSE revised form or any other writing to be provided to each employee, such notice of change must contain information about the new paid sick leave law and how the employer intends to meet the requirements of the new law for the particular employee. For example, a writing provided to the employee which refers to or summarizes the existing policy and contains the points of information specified in the revised notice form which is timely provided to each employee would be compliant with the individual notice requirement.