

CALIFORNIA SICK LEAVE

Your guide to figuring it all out

WHAT IS IT?

The California Paid Sick Leave Law, more formally known as the Healthy Workplaces, Healthy Families Act of 2014 (AB 1522) and amendments (AB 304), mandates that employees who work for 30 or more days within a year in California be given at least 24 hours of paid sick leave annually. The stated purpose of this legislation is to provide support to employees and avoid the choice between an individual or family's health and their job or income. It is estimated that the law extends paid sick leave to approximately 6.5 million workers who previously did not have it. California joins two other states and many municipalities with a paid sick leave requirement.

WHO IS COVERED?

In general, employees who work 30 days or more in California for the same employer in a year (including temporary and part-time workers) are covered by this act. There is no exception for small employers. The law does specifically exempt certain categories of employees from coverage, including employees with a collective bargaining agreement (provided that the agreement meets certain specifications), construction employees with specific provisions in their collective bargaining agreements, in-home support service providers, and certain air carrier and flight employees.



There is NO exception for small employers; organizations with one or more employees will be required to provide paid sick leave.

The Basics

Effective July 1, 2015



24 hours of paid sick leave per year



Two allowed methods for earning leave: accrual and lump sum



Applies to all sizes of employers and covers part-time and temporary workers

This handy guide to the California Sick Leave was created by



and



HOW IS LEAVE EARNED?

Employees accrue paid sick leave at a rate of one hour of sick leave for every 30 hours worked, beginning at date of hire. For exempt employees, a workweek is considered to be the lesser of 40 hours or the actual normal workweek. Pursuant to amendments to the original sick leave statute, alternative accrual methods (such as accruing time per pay period, per week or per month) are also allowed provided that the accrual is on a regular basis and that an employee will have at least 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment, of each calendar year, or of each 12 month period.



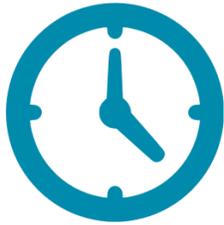
Workers can roll accrued sick leave over to the next year, but employers may cap the amount of sick leave accrued at 48 hours and limit the actual annual use of paid sick leave to a maximum of 24 hours.

Employers may, instead of using an accrual method as described above, opt to provide a lump sum of 24 hours of sick leave at the beginning of each year. Provided that a new bank of 24 hours is immediately available in the new year, sick leave remaining from the end of the prior year from this lump sum bank does not need to carry over from the prior year. For new hires, employers may delay granting the lump sum of sick leave until up to the 120th calendar day of employment.

Earned paid sick time is not required to be paid out at termination unless it is part of a combined paid time off (PTO) plan. If an employee is rehired within a year, however, the previous paid sick leave balance must be restored unless it was paid out at termination.

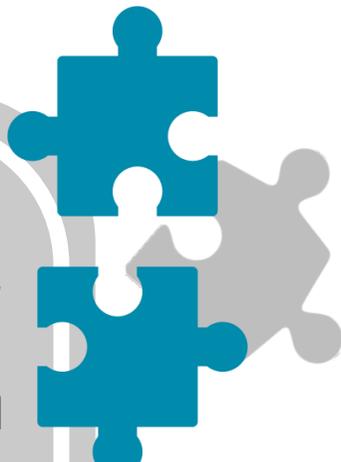
Accrual vs. Lump Sum

Accrual	Lump Sum
Use can be capped at 24 hours/year	Use can be capped at 24 hours/year
1 hour for each 30 hours worked	24 hours given all at once
Earns time more slowly; Immediate use will be limited	All time available for use immediately
Administratively more complicated	Easy administration
Must allow at least 48 hours to be accrued before capping	Only need to allow 24 hours in the bank/year
Must allow at least 48 hours to roll over	Can implement a use or lose provision for each year so long as the lump sum of 24 hours is given and immediately available in the new year

WHEN AND FOR WHAT PURPOSES CAN LEAVE BE USED?

Annual use of paid sick leave may be capped by the employer at 24 work hours or three days. Employees are eligible to begin using any accrued paid sick leave on the 90th day of their employment. Employees can determine how much sick leave to use for a particular instance, though employers may set a minimum increment for use (so long as that increment is not more than two hours).

Employers must allow eligible employees to use paid sick leave upon verbal or written request for the diagnosis, care, and treatment of an existing health condition, or as a preventative measure for themselves or for a family member. Paid sick leave may also be used by employees who are the victims of domestic or sexual violence or stalking, or whose family member is a victim of such a crime. Covered family members under this act include children, spouses, registered domestic partners, parents, step-parents, parents-in-law, grandparents, grandchildren, and siblings.

*Kin Care and Paid Sick Leave*

As you may know, the California Kin Care law requires that, for any sick leave given to employees, they must be able to use at least 1/2 of that time to care for a sick child, parent, spouse, registered domestic partner (RDP), or child of an RDP. While the Kin Care law still exists, it will become much less important as the new sick leave requirements allow the employee to use *any* amount of their sick leave provided in compliance with this law for all family members included under Kin Care plus grandparents, grandchildren, and siblings.

WHAT ARE THE OTHER COMPLIANCE REQUIREMENTS?

This law contains strict posting and documentation requirements. Employers must

- ✓ Give a written notice of sick leave entitlements as part of the Wage Theft Prevention Act notice to employees. This notice, which is an updated version of the old Wage Theft Prevention Notice, details employees' rights in accruing, requesting, and using paid sick leave as well as their right to file complaints and participate in investigations of the employer's non-compliance. Employees hired after January 1, 2015 should be given the notice upon hire. Employees hired before January 1, 2015 will need to receive an updated notice with the sick leave information within 7 days of the new sick leave policy being put into place.
- ✓ Display the Paid Sick Leave poster created by the Division of Labor Standards Enforcement in a place where employees can read it easily. (Posting requirement was effective on January 1, 2015.)
- ✓ Distribute a written accounting of each employee's available sick leave to the employee each pay day.
- ✓ Document each employee's accrual and usage of paid sick leave.
- ✓ Retain the records regarding accrual and use of paid sick leave for at least three years.

Employers who violate this new law may be liable for civil penalties to the employee as well as the attorney fees and costs of the employee and the Labor Commission.

NEXT STEPS

Employers who already have paid sick leave or PTO policies in place should determine if their current policies will meet the requirements of the new plan or qualify to be grandfathered in for accrual purposes. Employers who do not currently offer paid sick leave should begin to determine how they plan to implement the new requirements, including whether they plan to incorporate an accrual or lump sum method for providing the required leave. All employers should ensure that they have the appropriate notice and recordkeeping procedures in place prior to July 1, 2015.

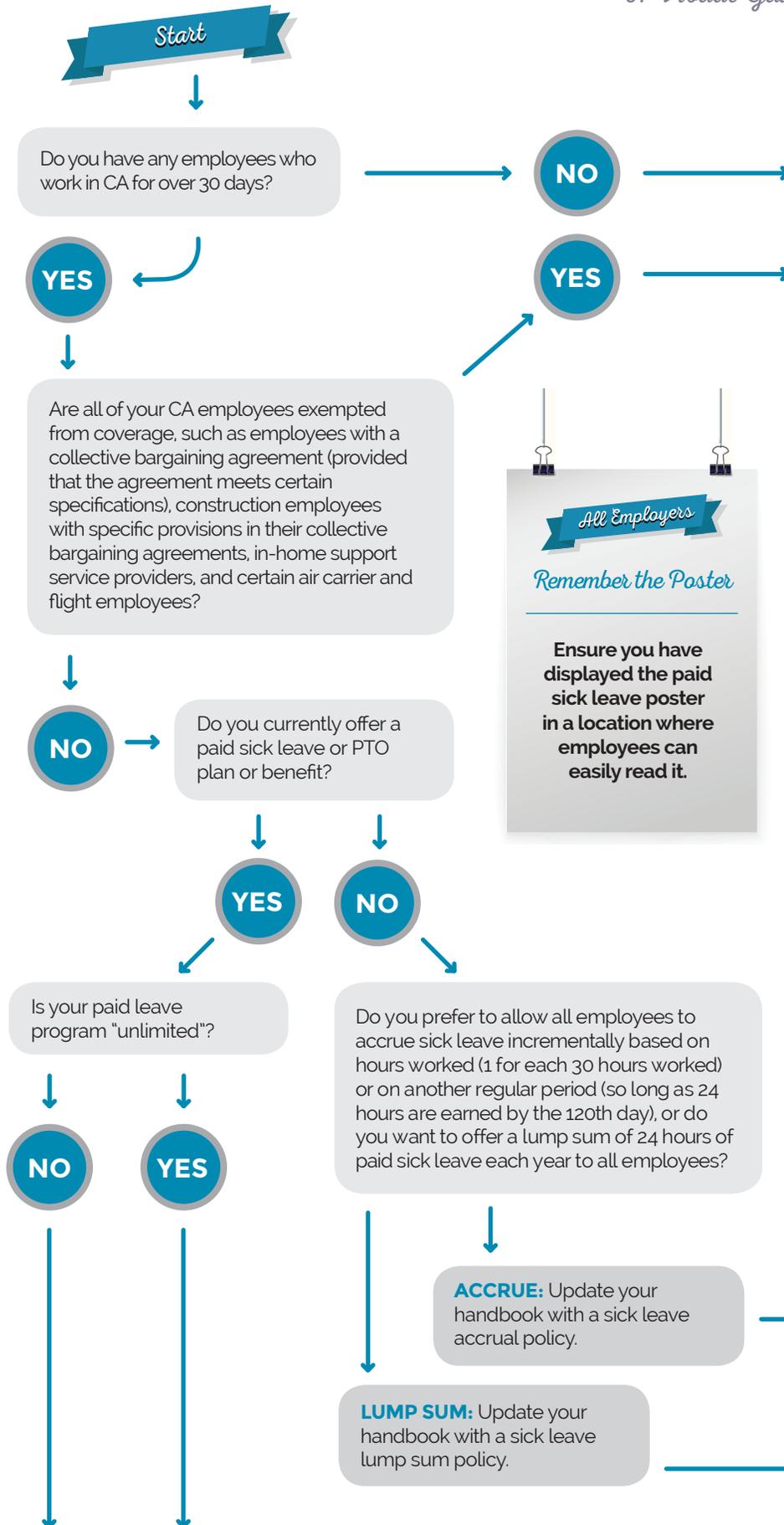
Already have a policy for some employees but not others? Here are some options . . .

1. Make one new compliant policy that applies to all employees.
2. Rework old general policy to be compliant for those to whom it applies and add secondary policy for those who do not qualify for your general policy.
3. Keep old general policy as it is and add secondary sick leave only policy for all employees.

CALIFORNIA SICK LEAVE AND YOUR ORGANIZATION



A Visual Guide on How to Comply



All Employers

Remember the Poster

Ensure you have displayed the paid sick leave poster in a location where employees can easily read it.

California state sick leave likely does not apply.

Please check local ordinances as some California cities and municipalities have enacted their own paid sick leave laws. If you provide sick leave, you should ensure that it is provided on a non-discriminatory basis and in accordance with established policy and practice. Also, if you provide an employee with an indefinite number of paid sick days on an as-needed basis, it must comply with Kin Care obligations.

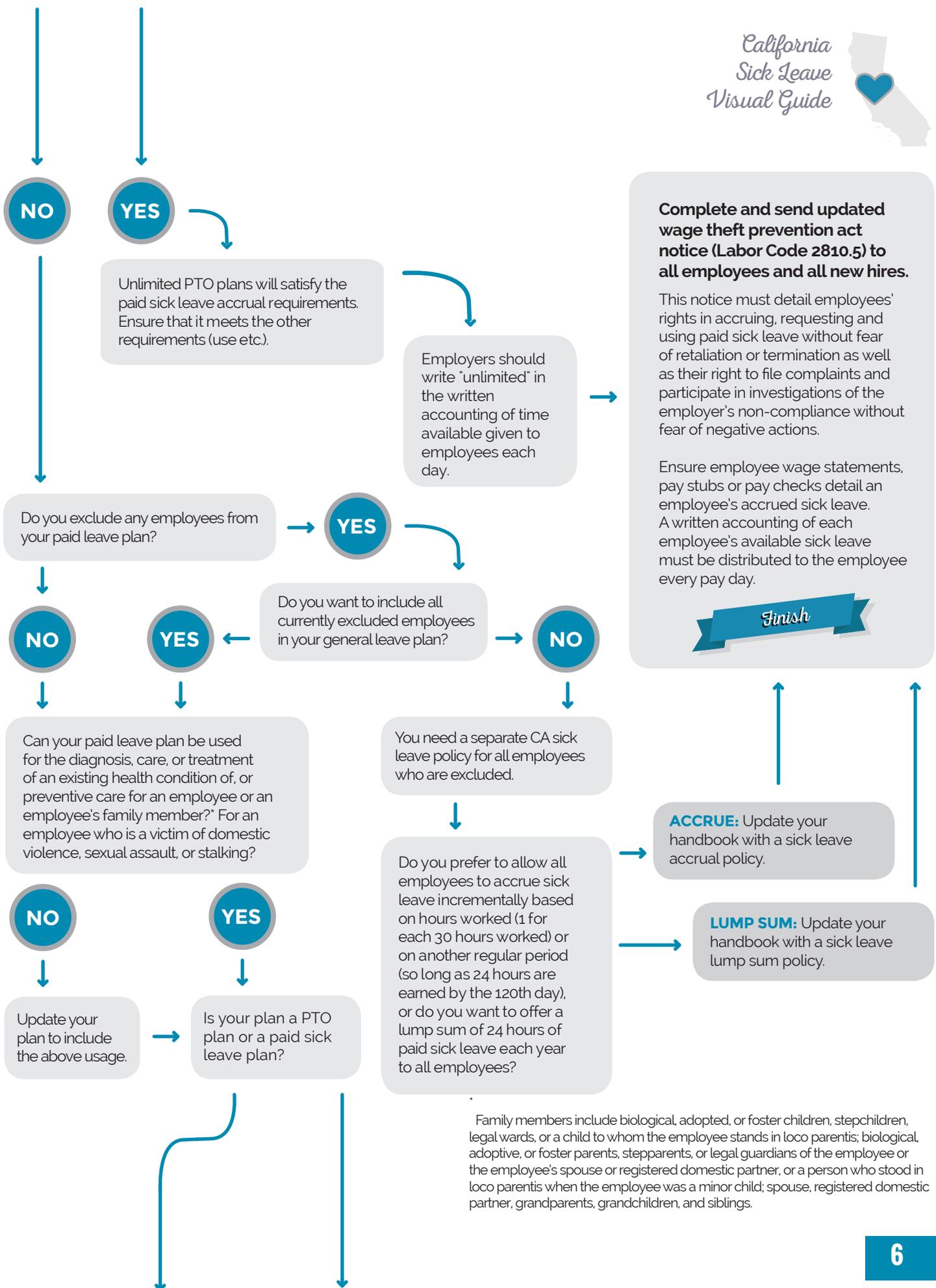
Finish

Complete and send updated wage theft prevention act notice (Labor Code 2810.5) to all employees and all new hires.

This notice must detail employees' rights in accruing, requesting and using paid sick leave without fear of retaliation or termination as well as their right to file complaints and participate in investigations of the employer's non-compliance without fear of negative actions.

Ensure employee wage statements, pay stubs or pay checks detail an employee's accrued sick leave. A written accounting of each employee's available sick leave must be distributed to the employee every pay day.

Finish





PTO: Do you offer PTO in a *lump sum* or do employees *accrue* the leave?

PAID SICK LEAVE: Do you offer paid sick leave in a *lump sum* or do employees *accrue* the leave?

LUMP SUM: Do you offer every employee at least 24 hours of paid time off at hire and at the beginning of the calendar year or other annual period?

ACCRUAL: Do you offer all employees 1 hour of PTO for every 30 hours worked (or other accrual such that 24 hours are earned by the 120th day) with an accrual cap & carryover allowance of at least 48 hours?

LUMP SUM: Do you offer every employee at least 24 hour of paid sick leave at hire and at the beginning of every calendar year or other annual period?

ACCRUAL: Do you offer all employees 1 hour of paid sick leave for every 30 hours worked (or other accrual such that 24 hours are earned by the 120th day) with an accrual cap & carryover allowance of at least 48 hours?

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NO

Will you *update* your policy to comply with the law or *create a separate policy*?

UPDATE: Review the minimum eligibility, accrual, carryover and other requirements of the law and adjust your policies accordingly. Remember your policy must offer at least as much benefit as required under the law.

CREATE SEPARATE POLICY: Update your handbook with a sick leave lump sum policy or a sick leave accrual policy.

YES

Frequently Asked Questions

If our current policy has employees accruing at least 24 hours of paid sick leave each year, do we meet the requirements of the new law?

If your plan was in place prior to January 1, 2015 and it allows employees to accrue no less than one day (eight hours) in the first three months of the accrual year and no less than three days (24 hours) in the first nine months of the accrual year, under a provision of the amendments to the California Paid Sick Leave Law, your plan qualifies to be grandfathered in as compliant for accrual purposes. You will still need to make sure that you comply with the other aspects of the law. Your plan must begin accrual upon hire and allow usage after 90 days employment (unless you are providing a new employee with a lump sum which can then be provided by the 120th day of employment). You should also ensure that you allow 48 hours to be accrued and carried over (if using the accrual method), that it can be used for the purposes given in the law and in the required increments, and that you track and document the time as required. In short, even if you have a plan that is overall as, or more generous, than required by the law, you will still need to look at your policy carefully to make sure it includes all the required details.

If we do not use the accrual method, but instead offer a lump sum of 24 hours at the beginning of the year, are we required to roll over the time to the next year?

If you elect the lump sum method of paid sick leave, it does not need to be carried over into a new calendar year or 12 month period that you set or be paid at termination as long as the employee is granted 24 hours of paid sick leave at the start of the new annual period. However your policy should expressly state this. In addition, all employees must receive a new 24 hours of paid sick leave at the start of the new annual period.

Why does the law require the accrual and carryover cap to be at least 48 hours when the actual use can be capped at 24 hours for a year?

While it seems counterintuitive that an employee could earn more time than he or she could use in a year, for the accrual method, having this higher cap and carryover amount will ensure that an employee will have time available even at the beginning of a sick leave year cycle.

Can we offer paid sick leave at the minimum wage instead of at the employee's regular rate?

No. The law authorizes three methods for determining the rate of pay for paid sick leave. Minimum wage is not one of them. The three allowed ways are:

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 sick time;
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 in the prior 90 days of employment;
3. Paid sick time for exempt employees can be calculated in the same manner as the employer calculates wages for other forms of paid leave time.

How is the year measured?

The statute permits the employer to use the calendar year, a year based on anniversary date, or other 12-month basis. Since the earning provision became effective on July 1, 2015 for current employees and upon hire for employees hired after July 1, 2015, we expect that a 12-month basis from July to June, a year based on anniversary date, and the calendar year will be the most popular options for measurement.

Does an employee accrue extra sick time for overtime?

If you offer paid sick leave according to the accrual method, the employee must accrue one hour paid sick leave for every thirty hours worked including overtime. The accrual rate is not different for overtime hours. For exempt employees, a workweek for accrual purposes will be considered to be the lesser of 40 hours or the actual normal workweek.

We do not want to change our existing PTO/personal leave policies, what should we do?

If you want to keep your existing policy or eligibility unchanged, you would need to offer a separate California paid sick leave policy to all employees who are not eligible for your paid leave programs and employees who are offered a form of paid leave that does not meet the minimum requirements of the law.

If we offer unlimited PTO, do we still need to provide a written accounting of the available sick leave to each employee on pay day?

You will still need to provide a written statement. Writing “unlimited” on that statement will satisfy the statute as far as declaring the amount of sick leave available.

Does sick leave need to be paid at termination?

Accrued paid sick time is not required to be paid out at termination unless it is part of a combined paid time off (PTO) plan. If an employee is rehired within a year, however, the previous paid sick leave balance must be restored.

How does the state paid sick leave fit in with local paid sick leave provisions?

Employers who are subject to local city or county sick leave provisions will need to ensure that they are in compliance with both sick leave requirements. When the two requirements differ, employers should always apply the provision that is most generous to the employee. This will often mean that the employer will need to apply some portions of the state policy and other portions of the local policy.