

CALIFORNIA HEALTHY WORKPLACES HEALTHY FAMILIES ACT OF 2014 FAQ

On September 10, 2014, Governor Jerry Brown signed into law the California Healthy Workplaces, Healthy Families Act of 2014. Effective July 1, 2015, this new law will entitle eligible employees to up to six (6) days of paid sick leave per year. The below FAQs answer many of the questions that employers have about the new law.

Q1: WHEN DOES THIS LAW GO INTO EFFECT?

A1: July 1, 2015

Q2: WHAT EMPLOYEES ARE COVERED BY THE LAW?

A2: The law gives new paid sick leave rights to anyone who works 30 or more days in the year following commencement of employment. Relevant to Keenan's clients, the law **does not** apply to:

1. An employee covered by a valid collective bargaining agreement if the agreement expressly provides for all of the following: the wages, hours of work and working conditions of employees and expressly provides for paid sick days or a paid leave or paid time off (PTO) policy that permits the use of sick days for those employees, final and binding arbitration of disputes concerning the application of its paid sick days provisions, premium wage rates for all overtime hours worked, and regular hourly rate of pay of not less than 30% more than the state minimum wage rate.
2. Employees in the construction industry covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of employees, and expressly provides for paid sick days or a paid leave or PTO policy that permits the use of sick days for those employees, final and binding arbitration of disputes concerning the application of its paid sick days provisions, premium wage rates for all overtime hours worked, and regular hourly rate of pay of not less than 30% more than the state minimum wage rate and the agreement either was entered before January 1, 2015 or expressly waives the requirement of this law in a clear and unambiguous way.
3. Providers of in-home support services under Medi-Cal.

Q3: DOES THIS LAW APPLY TO HEALTH CARE PROVIDERS AND STATE AND LOCAL GOVERNMENTAL AGENCIES?

A3: Yes.

Q4: WHAT ARE ELIGIBLE EMPLOYEES ENTITLED TO UNDER THE LAW?

A4: Employees will accrue paid sick days at the rate of at least one hour per every 30 hours worked, beginning on July 1, 2015, or if hired after July 1, 2015 beginning upon commencement of employment. Employers do not have to allow an employee's total accrual of paid sick leave to exceed 48 hours (6 days).

Q5: HOW DOES AN EMPLOYER CALCULATE AN EXEMPT EMPLOYEE'S ACCRUAL OF PAID SICK LEAVE UNDER THE LAW?

A5: Exempt employees are deemed to work 40 hours per week, unless their normal workweek is less than 40 hours/week, in which case they would accrue based on their normal workweek.

Q6: WHEN CAN EMPLOYEES BEGIN USING THEIR ACCRUED PAID SICK DAYS?

A6: The law provides that employees may use accrued paid sick days beginning on their 90th day of employment, after which employee may use paid sick days as they are accrued.

Q7: DOES THE LAW REQUIRE AN EMPLOYER TO ALLOW EMPLOYEES TO CARRY-OVER PAID SICK DAYS FROM YEAR-TO-YEAR?

A7: Yes. The law requires that accrued paid sick days shall carry over to the following year of employment. An employer may limit use of paid sick days to 24 hours (3 days) in each year of employment. No accrual or carryover is required if the full amount of leave is received at the beginning of each year.

Q8: WHAT IF AN EMPLOYER ALREADY HAS PTO OR PAID LEAVE POLICY?

A8: An employer is not required to provide additional paid sick days if:

The employer makes available an amount of leave that may be used for the same purposes and under the same conditions in the law and the policy either:

- (1) Satisfies the accrual, carry over and use requirements of the law, or
- (2) Provides at least 24 hours (3 days) of paid sick leave (or equivalent PTO) for employee use for each year of employment, or calendar year, or 12-month basis.

Q9: DOES AN EMPLOYER HAVE TO PAY AN EMPLOYEE FOR ACCRUED UNPAID SICK DAYS UPON SEPARATION FROM EMPLOYMENT UNDER THIS LAW?

A9: No. However, if the employee is rehired by the employer within a year of the date of separation, the previously accrued and unused paid sick days must be reinstated and the employee will be entitled to accrue additional paid sick days upon rehiring.

Q10: WHAT ARE AN EMPLOYER'S COMMUNICATION REQUIREMENTS UNDER THE LAW?

A10: Employers are required to provide employees with written notice that sets forth the amount of paid sick leave or PTO the employee has available, either in the employee's itemized wage statement or in a separate writing provided on the employee's pay date with the payment of wages.

Additionally, employers are required to provide employees written notice of the sick leave policy at time of hiring. This notice provision does not apply to public employees, exempt employees, or those covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of the employee, and if the agreement provides premium wages rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than 30% more than the state minimum wage.

Q11: CAN AN EMPLOYER REQUIRE AN EMPLOYEE TO TAKE THE WHOLE DAY OFF, IF THE EMPLOYEE NEEDS TO TAKE SICK LEAVE TIME?

A11: No. The law allows employers to set a reasonable minimum increment, not to exceed 2 hours, for the use of paid sick leave.

Q12: WHAT DOES AN EMPLOYER HAVE TO PAY AN EMPLOYEE FOR SICK TIME?

A12: An employer is required to pay the employee at the employee's regular rate of pay. The rate of pay is the employee's hourly wage.

Q13: HOW IS THE HOURLY WAGE CALCULATED IF THE EMPLOYEE IN THE 90 DAYS OF EMPLOYMENT BEFORE TAKING ACCRUED SICK LEAVE HAD DIFFERENT HOURLY PAY RATES, WAS PAID BY COMMISSION OR PIECE RATE, OR WAS A NONEXEMPT SALARIED EMPLOYEE?

A13: The rate of pay is 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 of the prior 90 days of employment.

Q14: WHAT KIND OF NOTICE CAN AN EMPLOYER REQUIRE AN EMPLOYEE TO GIVE BEFORE TAKING PAID SICK LEAVE TIME?

A14: If the need for paid sick leave is foreseeable, the employee shall provide the employer with reasonable advance notice. If the need for paid sick leave is unforeseeable, the employee is to provide notice of the need for the leave as soon as practicable.

Q15: DO EMPLOYERS HAVE NOTICE POSTING OBLIGATIONS UNDER THE LAW?

A15: In each workplace, the employer shall display a poster detailing employee's rights under the sick leave law. The Labor Commissioner is tasked with creating both the template for the notice and the poster and making them available to employers.

Q16: WHAT CAN AN EMPLOYEE USE PAID SICK LEAVE DAYS FOR?

A16: Paid sick days are to be provided upon request (oral or written) from the employee for the following purposes:

- Diagnosis, care or treatment of an existing condition, or
- Preventive care for an employee's family member (using the current CFRA definitions of child, parent, spouse, registered domestic partner, grandparent, grandchild, or sibling.)

For an employee who is a victim of domestic violence, sexual assault, or stalking, an employer is required to allow the use of paid sick days for:

- Taking time off from work to obtain or attempt to obtain any relief, including, but not limited to, a temporary restraining order, restraining order, or other injunctive relief to help ensure the health, safety, or welfare of the victim or his or her child.
- To seek medical attention for injuries caused by domestic violence, sexual assault, or stalking.
- To obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence, sexual assault, or stalking.
- To obtain psychological counseling related to an experience of domestic violence, sexual assault, or stalking.
- To participate in safety planning and to take other actions to increase safety from future domestic violence, sexual assault, or stalking, including temporary or permanent relocation.

Q17: CAN AN EMPLOYER REQUIRE AN EMPLOYEE TO SEARCH FOR OR FIND A REPLACEMENT WORKER TO COVER THE DAYS DURING WHICH THE EMPLOYEE USES PAID SICK DAYS?

A17: No. That cannot be a condition of using paid sick days under the law.

Q18: WHAT IF AN EMPLOYER'S SICK LEAVE POLICY ALREADY EXCEEDS THE REQUIREMENTS OF THIS LAW? CAN THE EMPLOYER REDUCE ITS LEAVE POLICY TO PROVIDE NO MORE THAN THE LAW REQUIRES?

A18: The new law does not expressly prohibit such action, but it does discourage it. The law states that it shall not be construed to discourage or prohibit an employer from the adoption or retention of a paid sick days policy more generous than that required by the law. It further provides that the law establishes minimum requirements pertaining to paid sick days and does not preempt, limit or otherwise affect the applicability of any other law, regulation, requirement, policy or standard that provides for greater accrual or use by employees of sick days, either paid or unpaid, or that extends other protections to an employee. It also provides that the law does not lessen the obligation of an employer to comply with a contract, collective bargaining agreement, employment benefit plan, or other agreement providing more generous sick days to an employee than those required by this law.

Q19: DOES AN EMPLOYER HAVE TO RETAIN RECORDS DOCUMENTING ITS SICK LEAVE POLICY?

A19: Under the new law, an employer shall keep records documenting the hours worked and paid sick days accrued and used by an employee for at least three (3) years. An employer that does not maintain accurate records will be subject to a presumption that the employee is entitled to 48 hours of sick leave, unless the employer can show otherwise by clear and convincing evidence.

Q20: ARE THERE ANY ADDITIONAL REPORTING REQUIREMENTS UNDER THIS NEW LAW?

A20: No.

Q21: WHAT ARE THE PENALTIES FOR NON-COMPLIANCE?

A21: If paid sick days are unlawfully withheld, an employer can be held liable for a penalty of up to \$4,000.

We anticipate that the California Department of Labor will fill in the gaps with regulatory guidance in the coming months. Because much of the language of the new statute mirrors the language in California's unpaid family leave laws, it is reasonable to assume that regulatory guidance will be similar to that currently in effect for unpaid leaves under state law.

For questions regarding this *Briefing*, please contact your Keenan Account Manager.

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