



# The Green Law Group, LLP

Construction and Business Attorneys

1777 E. Los Angeles Ave.

Simi Valley, CA 93065

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## Understanding Paid Sick Leave Laws

California Labor and Employment laws can be confusing and difficult to navigate for employers and business owners. The bulk of employment regulations are designed to protect employees' rights and will *heavily* favor the employee in disputes arising from their selection, employment, or termination.

There is no way to guarantee that your business will not face law suits from current or past employees. However, there are several steps an employer can take to minimize the risk of being sued. This article briefly discusses how to limit some of the risks that come with having a business by properly complying with California paid sick leave requirements.

### **How Employees Accrue Paid Sick Leave**

One key purpose of the Healthy Workplaces/Healthy Families Act of 2014 is to ensure that most employees can take at least three days of paid time off per year for qualified medical purposes. Though the three day minimum is simple enough, the way the employee accrues or earns this time can be slightly more complicated, and the employer has a few options available.

The default accrual rate is one hour of paid sick leave for every 30 hours worked. With a 2,080 hour work year, an employee would accrue nearly 70 hours (almost nine days) of paid sick leave each year. However, an employer can limit accrual to 48 hours, and can limit the employee to only using 24 hours (three days) per year. An employer may use a different accrual method, other than one hour for every 30, so long as the employee has at least 24 hours of paid sick leave available by the 120<sup>th</sup> day after the start of employment or calendar year, or in each 12-month period.

There are special rules for large employers (more than 25 employees) in the City of Los Angeles.<sup>1</sup> A large employer in Los Angeles must allow the employee to use up to 48 hours of paid sick leave per year, and can only cap accrual at 72 hours or more.

Of course an employer can provide more sick leave, or satisfy the requirements under a different paid-time-off program as long as the minimum accrual rates are met and the leave can be used in the same manner as sick leave. If an employer uses any other method of accrual it should be clearly stated in a written policy, and included in the [employment handbook or manual](#) that the employer uses.

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<sup>1</sup> Other cities that have special sick-leave rules include: Berkeley, Emeryville, Oakland, San Diego City, San Francisco, and Santa Monica. If you are unsure if your company is meeting local sick leave requirements consult with an experienced employment law attorney.



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### **Carry-over and Payout**

The law requires that accrued sick leave typically carries over from one year to the next under Labor Code section 246. An employer can avoid keeping track of carry-over by making at least three days of sick leave available to the employees on the first day of the year. An employer can also cap the total number of hours an employee can accrue at 48 hours.

An employer is not required to pay out an employee's accrued sick leave when the employee separates. However, if the employer satisfies the sick leave requirements by providing vacation time that can be used as sick leave, the vacation time must be paid out. Also, if an employer re-hires an employee who had sick leave available when they separated, then that sick leave must be reinstated.

### **How Employees Can Use Paid Sick Leave**

An employee is entitled to use accrued sick leave after their 90th day of employment. Sick leave can be taken for diagnosis, care, or treatment of an existing health condition, or for preventive care.<sup>2</sup> This means that an employee can "call out" sick or use sick leave for a regularly scheduled doctor's visit, but if the need for sick leave is foreseeable the employee should provide advance notice to the employer. The employee can give notice of the need to use sick leave either orally or in writing, and the employer cannot demand a doctor's note or require the employee to find their own replacement.

An employee can also use sick leave for the medical care of a family member. An employer is not allowed to deny an employee the right to use paid sick leave. Nor can an employer discharge, demote, or suspend an employee for using sick leave, or threaten to retaliate in anyway against an employee who uses sick leave. The same is true for an employee who complains to the EDD about the employer's sick leave policies, or cooperates in an investigation by the EDD.

Retaliating against an employee for using sick leave or complaining to the EDD could make the employer liable for back-pay, lost wages, reinstatement, attorney fees, and even punitive damages. The law prohibiting retaliation is designed to protect employees and any adverse action against an employee (discharge, demotion etc.) within 30 of the employee complaining about the sick leave policies will be *presumed by law* to be a retaliatory act.

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<sup>2</sup> An employee who is a victim of domestic violence, sexual assault, or stalking, may also take paid sick leave for any time off required to seek a restraining order or obtain services from a domestic violence shelter, program, or rape crisis center.



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### Notice Requirements

Employers are required to notify employees when they are hired about their rights to accrue and use paid sick leave. The Labor Commission has prepared a [Notice to Employee form](#) that satisfies the sick leave and other notice requirements.

Employers are also required to display, in each place of employment, a poster that informs employees about their rights to paid sick leave. [The California Chamber of Commerce has posters available](#) that contain all of the required sick leave information as well as other required notices.

An employer must also inform each employee of the amount of paid sick leave available each pay period. This can be included on the employee's regular wage statement ([Paying Accurate Wages Article](#)). Even if the employer provides unlimited sick leave, the employer must indicate "unlimited" as the amount of available sick leave each pay period.

The Green Law Group is happy to offer a complete Human Resources Package as part of our services. This package would include an employee handbook custom-formulated to meet your specific business needs. The Green Law Group can also assist with preparing job descriptions, offer letters, commission agreements, employment contracts, and other useful documents.

If you have any questions or comments regarding this article, please do not hesitate to contact Matthew Bechtel at The Green Law Group, LLP.

*Please note that this article is only intended to provide some general educational information. For your particular legal questions, be sure and consult with an attorney.*

Matthew Bechtel

Phone: (805) 306-1100, ext. 122

Email: [matthew@thegreenlawgroup.com](mailto:matthew@thegreenlawgroup.com)

