

California

PAID SICK LEAVE

Note: For more information on COVID-19 specific paid sick leave see the [California law alerts](#).

Paid Sick Leave

According to the California Healthy Workplace Healthy Families Act, located Cal. Labor Code §§ 245-249, employees who work in California for 30 or more days within a year from the beginning of employment, are entitled to paid sick leave. Employees, including part-time and temporary employees, will earn at least one hour of paid leave for every 30 hours worked. Accrual begins on the first day of employment.

The following localities also have their own paid sick leave:

- [Berkeley](#)
- [Emeryville](#)
- [City of Los Angeles](#)
- [Oakland](#)
- [San Diego](#)
- [San Francisco](#)
- [Santa Monica](#)

Covered Employers

California's paid sick leave law generally applies to all employers regardless of size. However, the law does not apply to:

- Employees covered by qualifying collective bargaining agreements;
- In-Home Supportive Services providers; and
- Certain employees of air carriers.

Covered Employees

Generally, all employees who work in California for the same employer for 30 or more days within a year from the beginning of employment are covered by the law and are entitled to paid sick leave. This includes part-time, seasonal, and temporary employees.

Plan Methods

Employers may provide paid sick leave to employees using one of the following methods:

- Statutory accrual method.
- Optional accrual method that provides no less than 24 hours by the 120th day.
- Alternative accrual for new hires.
- Lump-sum method.
- Pre-existing employer policy.

Employers may also:

- Establish different plans for different categories of workers but the plans must satisfy legal accrual, carryover, and use requirements.
- Choose to offer a more generous plan that allows employees to use and accrue more than the minimum amount of paid sick leave.

Statutory Accrual Method

Under the statutory accrual method, an eligible employee earns one hour of sick leave for every 30 hours worked beginning on either July 1, 2015, or, if hired after that date, on the employee's first day of employment. Both regular and overtime hours are counted toward the accrual rate of one hour for every 30 hours worked. Employees who are exempt from overtime requirements (administrative, executive, or professional employees under a wage order) are deemed to work 40 hours per workweek, unless the employee's normal workweek is less than 40 hours, in which case the employee will accrue paid sick leave based upon the normal workweek.

Optional Accrual Method

According to Cal. Labor Code § 246(b)(3), employers may use an optional accrual method, other than one hour per every 30 hours worked, if it is on a regular basis so that an employee has no less than three days or 24 hours of accrued sick leave or paid time off (PTO) by:

- The 120th calendar day of employment;
- Each calendar year; or
- In each 12-month period.

Employers may determine the accrual method so long as it meets these requirements.

Alternative Accrual for New Hires

According to Cal. Labor Code § 246(b)(4), an employer may satisfy the accrual requirements by providing no less than 24 hours or three days of paid sick leave that is available to the employee to use by the completion of his or her 120th calendar day of employment.

Lump-Sum Method (Frontloading)

Under the lump-sum method, an employer can credit an employee with three days or 24 hours of sick leave at the beginning of each year of employment, calendar year, or 12-month period. Using the lump sum method, the employer is not required to track accrual based on hours worked.

No accrual or carryover is required if the employer uses the lump-sum method and credits an employee with at least three days or 24 hours of sick leave as of the beginning of each year of employment,

calendar year, or 12-month period. Any lump-sum policy must allow employees to use the leave for all the same purposes and conditions specified under the act.

Pre-Existing Employer Policy

Employers with a paid sick leave or PTO policy in place prior to January 1, 2015 may use their existing accrual method and not provide an additional three days/24 hours of paid sick leave or PTO as long as the pre-existing policy accrues on a regular basis and both of the following apply:

- Employees have no less than one day or eight hours of accrued sick leave or PTO within three months of employment, each calendar year, or each 12-month period.

- Employees were eligible to earn at least three days or 24 hours of sick leave or PTO within nine months of employment.

Note: If an employer has a modification to the accrual method in place prior to January 1, 2015, the employer will be required to comply with the accrual or frontloading requirements of the paid sick leave law.

Accrual Cap and Use Limitation

Employers may cap **accrual** of paid sick leave to six days or 48 hours. Once an employee reaches 48 hours, the employee will not accrue any additional sick leave until a portion of the leave is used.

Employees may carry over all their unused sick time into the following year subject to the employer's cap on accrual. As stated previously, employers may avoid calculating accrual and carryover by frontloading the full amount of leave (24 hours) at the beginning of each year.

Employers may also limit employee **use** of accrued paid sick days to three days (24 hours) in each year of employment, calendar year, or 12-month period.

Rehired Employees and Payout at Termination

According to Cal. Labor Code § 246(f), if an employee separates from an employer and is rehired by the employer within one year from the date of separation, previously accrued and unused paid sick days must be reinstated. The employee is entitled to use those previously accrued and unused paid sick days and to accrue additional paid sick days upon rehiring, subject to the use and accrual limitations (no more than 48 hours or six days). Therefore, if an employer has a larger cap, an employer has no obligation to allow an employee's total accrual of paid sick leave to exceed 48 hours or six days.

An employer is not required to reinstate accrued paid sick leave to an employee that was paid out at the time of termination, resignation, or separation of employment.

Use of Leave

Employees may not use accrued paid sick days until the 90th day of employment. After the 90th day, employees may use paid sick days as they are accrued. An employer may lend or advance paid sick leave to an employee before it is accrued, but there is no legal requirement to do so.

An employee may use paid sick leave for the diagnosis, care, or treatment of an existing health condition of, or preventive care for, the employee or the employee's family member. In addition, an employee who is a victim of domestic violence, sexual assault, or stalking may use paid sick leave for any of the following:

- 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 take other actions to increase safety from future domestic violence, sexual assault, or stalking, including temporary or permanent relocation.

Employers may not require as a condition of using paid sick time that the employee search for or find a replacement to cover the days he or she uses paid sick days. Additionally, although an employee may determine how much paid sick time he or she needs to use, employers may set a reasonable minimum increment of use, not to exceed two hours. For instance, an employer may not require an employee to take half of a day off for a doctor's appointment, but he or she could be required to take two hours off.

Note: The lump-sum, frontloading method still requires that the 90-day requirement be met before an employee is entitled to take paid sick leave.

Calculating Pay for Sick Leave

Employers must calculate paid sick leave using the following calculations:

For nonexempt employees, the following two calculation methods may be used:

In the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek; or

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.

For exempt employees, paid sick time is calculated in the same manner as the employer calculates wages for other forms of paid leave time.

Paid sick leave must be paid no later than the payday for the next regular payroll period after the sick leave was taken.

California

PAID SICK LEAVE

Cash Out

Employees are not entitled to be paid for accrued unused sick leave upon termination, resignation, retirement, or other separation from employment. However, employers that combine the sick leave and vacation into a PTO policy are required to abide by the rules relating to vacation and PTO, including paying out accrued but unused PTO upon termination.

Note: Per California law, accrued PTO and vacation are treated like wages.

Employee Protections

Employers may not:

- Deny an employee the right to use accrued sick leave.
- Discharge, threaten to discharge, demote, suspend, or in any manner discriminate against any employee for:
 - Using accrued sick leave.
 - Attempting to use accrued sick leave.
 - Filing a complaint or alleging a violation of the law.
 - Cooperating in an investigation or prosecution of an alleged violation.

Opposing any policy or practice that is legally prohibited.

Employee Leave Requests

Employees may request leave verbally or in writing and reasonable advance notice must be provided if the need for paid sick leave is foreseeable. If the need is unforeseeable, then notice must be provided as soon as practicable.

Notice to Employees

At the time of hire, and as part of the Wage Theft Prevention Act notice requirements (located at Cal. Labor Code § 2810.5), new employees must be provided notice of the right to both paid sick leave and to file a complaint with the Labor Commissioner upon violation.

Employers must also provide employees with written notice specifying the amount of available paid sick leave, or PTO provided in lieu of sick leave, on their itemized wage statement or separately but on pay date with the employee's wage payment. Employers with unlimited paid sick leave or PTO policies may satisfy this requirement by indicating on the itemized wage statement or written notice that the balance is "unlimited."

California

PAID SICK LEAVE

Posting

Employers must conspicuously post the California Division of Labor Standard's Healthy Workplaces/Healthy Families Act and Paid Sick Leave poster in each workplace.

Recordkeeping

Employers must keep records documenting an employee's hours worked and the paid sick leave accrued and used for three years. These records must be made available to employees for inspection within 21 days of a verbal or written request. If the employer fails to maintain adequate records then it is presumed that the employee is entitled to the maximum number of hours accruable under the law, unless the employer can prove otherwise.

Note: Employers are not required to ask about or record why an employee uses paid leave or PTO.

Kin Care

California's Kin Care leave law, located at Cal. Labor Code § 233, requires all employers to allow an employee to use accrued and available sick leave (which is the amount that would accrue during a six month period) for the purposes specified in the paid sick leave law. In other words, if an employee has accrued sick days available, an employer may not deny them the right to use those accrued paid sick days, including the right to use paid sick leave for a partial day (for instance, to attend a doctor's appointment), and may not discipline the employee for doing so.

Leave Purposes

Employers must provide paid sick days for the following purposes (which are the same as under the state's paid sick leave law);

Diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member.

For an employee who is a victim of domestic violence, sexual assault, or stalking.

Whether the leave is used is for an employee's family member is at the employee's sole discretion. Additionally, employers may not deny an employee their right to use sick leave, retaliation against them for using it, or in any manner discriminate against them for using it to care for themselves or a family member. A **family member** is any of the following:

- Child (biological, adopted, or foster child, stepchild, legal ward, or a child the employee stands in loco parentis to, and all regardless of age or dependency status).
- Parent (biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor).
- Spouse.

California

PAID SICK LEAVE

- Registered domestic partner.
- Grandparent.
- Grandchild.
- Sibling.

If an employee has an absence that would otherwise violate an employer's attendance policy, and it was for a reason not covered under the paid sick leave law, then the employer is not required to allow the employee to use paid sick leave for that absence.

Interaction with Other Laws

Kin Care leave does not include any benefit provided under an employee welfare benefit plan subject to the Employee Retirement Income Security Act (ERISA), and does not include any insurance benefit, workers' compensation benefit, unemployment compensation disability benefit, or benefit not payable from the employer's general assets.