

TIPS ON COMPLYING WITH CALIFORNIA'S UPDATED PAID SICK LEAVE LAW (SB 616)

By Stephanie L. Gonzalez

Starting January 1, 2024, California's Paid Sick Leave law was updated to require employers to provide at least 40 hours or five days of paid sick leave per year for most workers, including full-time, part-time, and temporary workers. Recent agency guidance has provided some needed clarification on how employers should transition their policies to comply with the updated law. This article provides tips and best practices for transitioning paid sick leave policies to be compliant with the new law.

What Is SB 616?

SB 616 went into effect on January 1, 2024 and amends the state's Labor Code to raise the minimum paid sick leave in California to 40 hours or 5 days, whichever is more. As a reminder, California requires that employers provide paid time off to employees for treatment, diagnosis, and preventive care for themselves, family members, and designated persons. Prior to January 1, 2024, the minimum paid sick leave in the state was 3 days or 24 hours.

Applicability of SB 616

SB 616 applies to employees who are full-time, part-time, and temporary workers who (1) work for the same employer for at least 30 days within a year in California, and (2) complete a 90-day employment period before taking any paid sick leave.

Note: The statute seemingly advantages part-time employees because there is no proration of hours. Example, a part-time employee who works a 6-hour day and misses 5 days of work due to illness uses 30

*hours of paid sick leave still has 10 hours left. Whereas a full-time employee who works 8-hour days and misses 5 days of work due to illness uses all 40 hours of paid sick leave. Both employees miss the same number of workdays but because an employer must provide 40 hours or five days of paid sick leave, **whichever is more**, the part-time employee gets to miss more days and still get paid.*

Employees exempt from the paid sick leave law include:

- 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 paid sick leave law.
- Retired annuitants working for governmental entities.
- Employees of railroads.
- Employees in the construction industry covered by a collective bargaining agreement with specified provisions.[1]

Complying With the New Requirements Under SB 616

Employee handbooks should be updated to reflect any changes needed to remain in compliance with SB 616's expanded requirements. Additionally, employees who manage paid sick leave requests should be made familiar with the new requirements.

California employers can calculate paid sick leave one of two ways. The first method is the "accrual method", under which employees earn paid sick leave as they work. The second method is the "up front" method, under which employees

receive their annual allotment of paid sick leave at the start of a defined year. Below is brief guidance on how employers can transition their current paid sick leave policies to meet the SB 616 requirements.

Employers Who Use the Accrual Method

The minimum statutory accrual rate of one hour of paid sick leave for every thirty hours worked remains the same. Employers can choose to use another accrual rate; however, employees must receive at least 3 days (24 hours) by their 120th day of employment, and 5 days (40 hours) by their 200th day of employment. The 120/240 rule does not apply to employers who use the minimum statutory accrual rate of one hour of paid sick leave for every thirty hours worked remains or something more generous.

Employers may cap accrual at 10 days or 80 hours, whichever is more. Further, employers may limit year-to-year carryover to 5 days or 40 hours, whichever is more, per year and limit annual use to 5 days or 40 hours, whichever is more.

Note: The statute creates a safe harbor for employers who use the minimum statutory accrual rate or a more generous accrual rate. Otherwise, employers must make sure to provide 24 hours of paid sick leave to employees by their 120th day and 40 hours by their 200th day of employment, regardless of how many hours they have actually worked by those dates.

If an employer uses an annual start date other than January 1 and implements a 12-month use cap, that cap must change to 40 hours or 5 days on January 1, 2024. For example, if an employer uses the 12-month period of May 1, 2023 – April 30, 2024 and implements a cap and an employee used 24 hours or three days before January 1, 2024, the employer must allow the employee to use an additional 2 days or 16 hours before April 30, 2024 if the employee has accrued that additional leave.

Employers Who Use the Up-Front Method

Employers who use the “up-front” method can either (1) frontload the two additional days on

January 1, 2024, or (2) move the measurement of the yearly period to January 1, 2024 and frontload five days. For example, if an employee started on May 1, 2023 and the employer frontloaded 3 days or 24 hours on May 1, 2023, the employer may either provide 2 days or 16 hours on January 1, 2024 and keep the May 1 anniversary to frontload, or the employer can “reset” the frontload date to January 1, 2024 and provide the employee 5 days or 40 hours then.

Note: Using a calendar year anniversary (i.e. January 1) for purposes of paid sick leave for new hires could result in inequities based on the employee’s date of hire. For example, an employee is hired on December 15, 2024 and the employer frontloads 5 days or 40 hours. On January 1, 2025, the employer will frontload 5 days or 40 hours to all employees, including the employee that was just hired on December 15, 2024.

In Sum

SB 616 raised the minimum paid sick leave for California employees starting January 1, 2024. Employers should review their current paid sick leave policies to confirm they are in compliance with the new law. Additionally, any employees who manage paid sick leave requests should become familiar with the new requirements.

If you have any questions regarding this new law or need assistance with reviewing your company’s policies on paid sick leave, please don’t hesitate to reach out to Stephanie Gonzalez.

[1] Employees outside the construction industry covered by a collective bargaining agreement (CBA), who are still entitled to some paid sick leave under their CBA. However, as of January 1, 2024, these employees must be allowed to take sick leave for all the purposes specified in the paid sick leave law and cannot be required to find a replacement as a condition for taking paid sick leave.



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