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## California Passes Amendment to Sick Leave Law

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### Executive Summary

**Overview:** The state of California has passed an amendment to the Healthy Workplaces, Healthy Families Act of 2014. Significantly, the amendment provides employers with greater flexibility in drafting compliant sick leave plans and provides an option to grandfather existing sick leave or PTO plans provided certain requirements are met.

**Coverage:** All employers with employees in CA (subject to narrow exceptions).

**Effective Date:** The amendment is was effective immediately upon the governor's signature earlier this month.

**Action Required:** Review the details below and contact your HR Business Partner for assistance as needed to review your policy for compliance.

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### The Details

#### Background

As we previously reported, California passed a sick leave law requiring most employers to provide sick leave to eligible employees. Broadly stated, the law requires that employers, public or private and regardless of size, permit employees to accrue paid sick time (unless an employer chooses to frontload sick time). An employee is entitled to sick leave if the individual works, in California, for at least 30 days within a year from the commencement of employment. An employer is permitted to limit an employee's use of paid sick leave to 24 hours or three days in each year. Any accrued, unused sick leave beyond the 24 hours or any unused, accrued sick leave must carry over from year to year. Employees can use accrued sick days beginning on the 90th day of employment. The law contained a number of ambiguities making compliance challenging.

## The Amendment

The new amendment clarifies a number of issues and generally provides employers greater flexibility to achieve compliance. The chart below provides an overview of the key changes. A full reading of the amendment can be accessed by [clicking here](#).

Previous Requirement / Challenge	Current Change
<p><b>Calculation of Paid Sick Leave</b> – The law required paid sick leave to be paid at the employee’s hourly wage. However, if an employee was paid different hourly rates, by commission or a piece rate formula, or paid as a salaried non-exempt employee, the employer was required to perform a 90 day look back calculation.</p>	<p>The amendment distinguishes between exempt and non-exempt employees and allows an employer to calculate paid sick leave using <u>any</u> of the following calculations:</p> <p><i>(1) Paid sick time for nonexempt employees shall be calculated in the same manner as the <b>regular rate of pay</b> for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.</i></p> <p><b>Note:</b> It is unclear if employers are required to include in the calculation non-discretionary payments earned in the workweek in which paid sick time was taken but paid in a later pay period (ex. bonuses and commissions). Normally a “regular rate” calculation requires an employer to apportion back such payments over the workweeks in which they were earned in order to calculate the <u>new</u> regular rate for overtime purposes. We therefore recommend that clients include these payments in the calculation if the payment is earned in the workweek in which paid sick time is taken even if the payment is later made.</p> <p>To perform a regular rate calculation (for employees paid by commission, bonuses, two or more rates etc.) you should divide total wages (excluding overtime premiums) earned by the number of hours worked for the workweek. This becomes the regular rate for paid sick time.</p> <p>This rate should be recorded as a “temp rate” on</p>

the payroll. Contact your Payroll Service Representative for additional guidance. Remember if commissions, bonuses or similar payments are earned in the workweek in which paid sick time was taken but is paid in a subsequent pay period, the employee is arguably due an additional amount based on a new "regular rate" calculation discussed above.

Finally, the law is not clear if employers who choose to use a PTO policy to satisfy the paid sick time requirement (this remains an option under the amendment) must also pay out PTO used for sick days based on the calculation options described above. The safest course of action is to assume the calculations apply.

These rates would also be recorded as temp rates. Please contact your Payroll Service Representative for assistance in performing these calculations and to help ensure such payments are properly reflected on employee wage statements / pay stubs.

*(2) Paid sick time for nonexempt employees shall 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 of the prior 90 days of employment.*

Importantly, the amendment eliminates the prerequisite that an employee earns commissions, piece rate, varying pay rates or be paid as a salaried nonexempt to trigger any special calculation method.

*(3) Paid sick time for exempt employees shall be calculated in the same manner as the employer calculates wages for other forms of paid leave time.*

**Accrual Methods** - If an employer chose to use the accrual method for calculating the amount of sick leave available to an employee, then employees accrued paid sick leave at the rate of one hour for every 30 hours worked.

The amendment allows an employer to provide for sick leave accrual on a basis *other than* one hour for every 30 hours worked, provided that the accrual is on a regular basis and the employee will have 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment of each calendar year, or in each 12-month period.

Employers may also satisfy the accrual requirements by providing not less than 24 hours or three days of paid sick leave that is available to the employee to use by completion of his or her 120th calendar day of employment.\*

Though the intent of the second option is not clear, it essentially means employers will not need to track hours worked for accrual purposes if the statutorily-required minimum paid sick leave (24 hours/3 days) is provided by the 120<sup>th</sup> day of employment.\*

The senate committee analysis indicates that this change was made in order to accommodate employers whose payroll systems do not track their employees on an hourly basis. For example, this change allows employers to enact and maintain policies where sick leave accrues on a per-pay period basis.

Where a flat per pay period accrual rate is elected to satisfy the CA PSL requirement of meeting 24hrs by the 120<sup>th</sup> day of employment; the following minimum rates should be utilized:

- Weekly: 1.5 hours per pay period
- Biweekly or Semimonthly: 3 hours per pay period
- Monthly: 6 hours per pay period

**\*Note:** The amendment did not change the existing provisions of the law regarding carryover and an accrual cap of 48 hours.

<p><b>Unlimited Sick leave / Employee Notifications -</b> Employers are required to notify employees of their balance of available paid sick time, either on a paycheck stub or on a separate document accompanying the paycheck or paycheck stub. However, it was unclear how an employer could satisfy this requirement if it offered its employees unlimited paid sick leave.</p>	<p>The amendment permits an employer who provides unlimited sick leave or unlimited paid time off to its employees to satisfy the law's notice requirements by indicating "unlimited" on the employee's itemized wage statement or the separate writing provided on the designated pay date with the payment of wages.</p> <p><b>Note:</b> Wage statement / check stub messages are displayed the same for all employees.</p> <p>If you would like to limit the display to specific employees, "home departments" may be utilized. This can possibly impact any management reports or general ledger processing ADP does on your Company's behalf.</p> <p>Please contact your Payroll Service Representative for assistance in setting up wage statement messages.</p>
<p><b>Recordkeeping</b> – the law requires that employers keep records of hours worked and sick time accrued and used during the last three years. It was unclear if the law required employers to inquire whether a PTO-related day is due to sickness (vs. any other purpose).</p>	<p>The Amendment provides that the employer has no obligation to inquire into or record the purposes for which an employee uses sick leave or paid time off.</p>
<p><b>Reinstatement of Prior Accrued Time -</b> The law requires employers to reinstate accrued sick leave to employees rehired within a year of separation. It was unclear if reinstatement would still be required if the previously accrued balance had been paid out at the time of separation.</p>	<p>The amendment clarifies that an employer is not required to reinstate accrued paid time off to an employee that was paid out at the time of termination, resignation, or separation of employment. The amendment also clarifies that a reinstated employee's rights are still "subject to the use and accrual limitations" of the law. In other words, an employee must still satisfy a 90 day waiting period (if not already satisfied) before usage of sick time is allowed and any limits on usage and accrual (as employers are allowed to impose under the law) will also apply.</p>

### Safe Harbor for Pre-January 1, 2015, Policies

The Amendment permits an employer to use a prior paid sick leave or paid time off policy which applied to employees before January 1, 2015, using an accrual method different than providing one hour for every 30 hours worked, provided that the accrual is on a regular basis so that an employee, including an employee hired into that class after January 1, 2015, has:

- no less than one day or eight hours of accrued sick leave or paid time off within three months of employment of each calendar year, or each 12-month period; *and*
- the employee was eligible to earn at least three days or 24 hours of sick leave or paid time off within nine months of employment.

If an employer modifies the accrual method used in the policy in place prior to January 1, 2015, the employer must comply with any accrual method set forth in Labor Code section 246(b) (see accrual methods above) or provide the full amount of leave at the beginning of each year of employment, calendar year, or 12-month period. However, this newly added subsection does not prohibit an employer from increasing the accrual amount or rate for a class of employees.

### Next Steps

As always we stand ready to assist clients in meeting their compliance obligations. While the amendment generally eases an employer's compliance burden, the law remains complicated. We expect that the California Department of Labor Standards Enforcement will be issuing additional guidance shortly and we will alert clients when such guidance is available. Please contact your HR Business Partner if you need assistance in reviewing your current policies for compliance or if you have any questions.

As a reminder, employers are required to provide employees with a statement of their available sick leave or PTO every pay period either on the employee's pay stub or by issuing a separate balance statement pay each payday. A sample stand alone paper balance statement titled "California Sick Leave Checklist and Balance Statement" is available on FormSource in the California state appendix.

If you would like to accrue PTO or sick days on the payroll platform in order to display the balances on your employees' paystubs, please contact your HRBP to review your policy and request your setup.

*This content provides practical information concerning the subject matter covered and is provided with the understanding that ADP is not rendering legal advice.*

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