



CALIFORNIA SICK LEAVE

Your guide to figuring it all out

WHAT IS IT?

The Healthy Workplaces, Healthy Families Act of 2014 (AB 1522), also known as the California Paid Sick Leave Law, mandates that employees who work for 30 or more days within a year in California be given at least 24 hours of paid sick leave annually. The stated purpose of this legislation is to provide support to employees and avoid the choice between an individual or family's health and their job or income. It is estimated that the law will expand paid sick leave to approximately 6.5 million workers who currently do not have it. When this law goes into full effect on July 1, 2015, California will be one of three states with a paid sick leave requirement.

WHO IS COVERED?

In general, employees who work 30 days or more in California in a year (including temporary and part-time workers) are covered by this act. The law does specifically exempt certain categories of employees from coverage, including employees with a collective bargaining agreement (provided that the agreement meets certain specifications), construction employees with specific provisions in their collective bargaining agreements, in-home support service providers, and certain air carrier and flight employees.



There is NO exception for small employers; organizations with one or more employees will be required to provide paid sick leave.

This handy guide to the California Sick Leave was created by



The Basics

Effective July 1, 2015



24 hours of paid sick leave per year



Two allowed methods for earning leave: accrual and lump sum



Applies to all sizes of employers and covers part-time and temporary workers



HOW IS LEAVE EARNED?

Effective July 1, 2015, employees who have worked 30 days in California within one year are eligible to accrue paid sick leave at a rate of one hour of sick leave for every 30 hours worked. For exempt employees, a workweek will be considered to be the lesser of 40 hours or the actual normal workweek. Workers must be allowed to roll accrued sick leave over to the next year, but employers can cap the amount of sick leave accrued at 48 hours and may limit the actual annual use of paid sick leave to a maximum of 24 hours.

Employers may, instead of using the accrual method described above, opt to provide a lump sum of 24 hours of sick leave at the beginning of each year. Provided that a new bank of 24 hours is immediately available in the new year, sick leave remaining from the end of the prior year from this lump sum bank does not need to carry over from the prior year.

Accrued paid sick time is not required to be paid out at termination unless it is part of a combined paid time off (PTO) plan. If an employee is rehired within a year, however, the previous paid sick leave balance must be restored.

Accrual vs. Lump Sum

Accrual

Lump Sum

Use can be capped at 24 hours/year

Use can be capped at 24 hours/year

1 hour for each 30 hours worked

24 hours given all at once

Earns time more slowly;
Immediate use will be limited

All time available for use immediately

Administratively more complicated

Easy administration

Must allow at least 48 hours to be accrued before capping

Only need to allow 24 hours in the bank/year

Must allow at least 48 hours to roll over

Can implement a use or lose provision for each year so long as the lump sum of 24 hours is given and immediately available in the new year



WHEN AND FOR WHAT PURPOSES CAN LEAVE BE USED?



Annual use of paid sick leave may be capped by the employer at 24 work hours or three days. Employees are eligible to begin using their accrued paid sick leave on the 90th day of their employment. Employees can determine how much sick leave to use for a particular instance, though employers may set a minimum increment for use (so long as that increment is not more than two hours).

Employers must allow eligible employees to use paid sick leave upon verbal or written request for the diagnosis, care, and treatment of an existing health condition, or as a preventative measure for themselves or for a family member. Paid sick leave may also be used by employees who are the victims of domestic or sexual violence or stalking, or whose family member is a victim of such a crime. Covered family members under this act include children, spouses, registered domestic partners, parents, step-parents, parents-in-law, grandparents, grandchildren, and siblings.

Kin Care and Paid Sick Leave

As you may know, the California Kin Care law requires that, for any sick leave given to employees, they must be able to use at least 1/2 of that time to care for a sick child, parent, spouse, registered domestic partner (RDP), or child of an RDP. While the Kin Care law still exists, it will become much less important as the new sick leave requirements allow the employee to use *any* amount of their sick leave provided in compliance with this law for all family members included under Kin Care plus grandparents, grandchildren, and siblings.



WHAT ARE THE OTHER COMPLIANCE REQUIREMENTS?

This law contains strict posting and documentation requirements. Employers must

- ✓ Give a written notice of sick leave entitlements as part of the Wage Theft Prevention Act notice to employees. This notice, which is an updated version of the old Wage Theft Prevention Notice, details employees' rights in accruing, requesting, and using paid sick leave as well as their right to file complaints and participate in investigations of the employer's non-compliance. Employees hired after January 1, 2015 should be given the notice upon hire. Employees hired before January 1, 2015 will need to receive an updated notice with the sick leave information within 7 days of the new sick leave policy being put into place.
- ✓ Display the Paid Sick Leave poster created by the Division of Labor Standards Enforcement in a place where employees can read it easily. (Posting requirement was effective on January 1, 2015.)
- ✓ Distribute a written accounting of each employee's available sick leave to the employee each pay day.
- ✓ Document each employee's accrual and usage of paid sick leave.
- ✓ Retain the records regarding accrual and use of paid sick leave for at least three years.

Employers who violate this new law may be liable for civil penalties to the employee as well as the attorney fees and costs of the employee and the Labor Commission.

NEXT STEPS

Employers who already have paid sick leave or PTO policies in place should determine if their current policies will meet the requirements of the new plan. Employers who do not currently offer paid sick leave should begin to determine how they plan to implement the new requirements, including whether they plan to incorporate an accrual or lump sum method for providing the required leave. All employers should ensure that they have the appropriate notice and recordkeeping procedures in place prior to July 1, 2015.

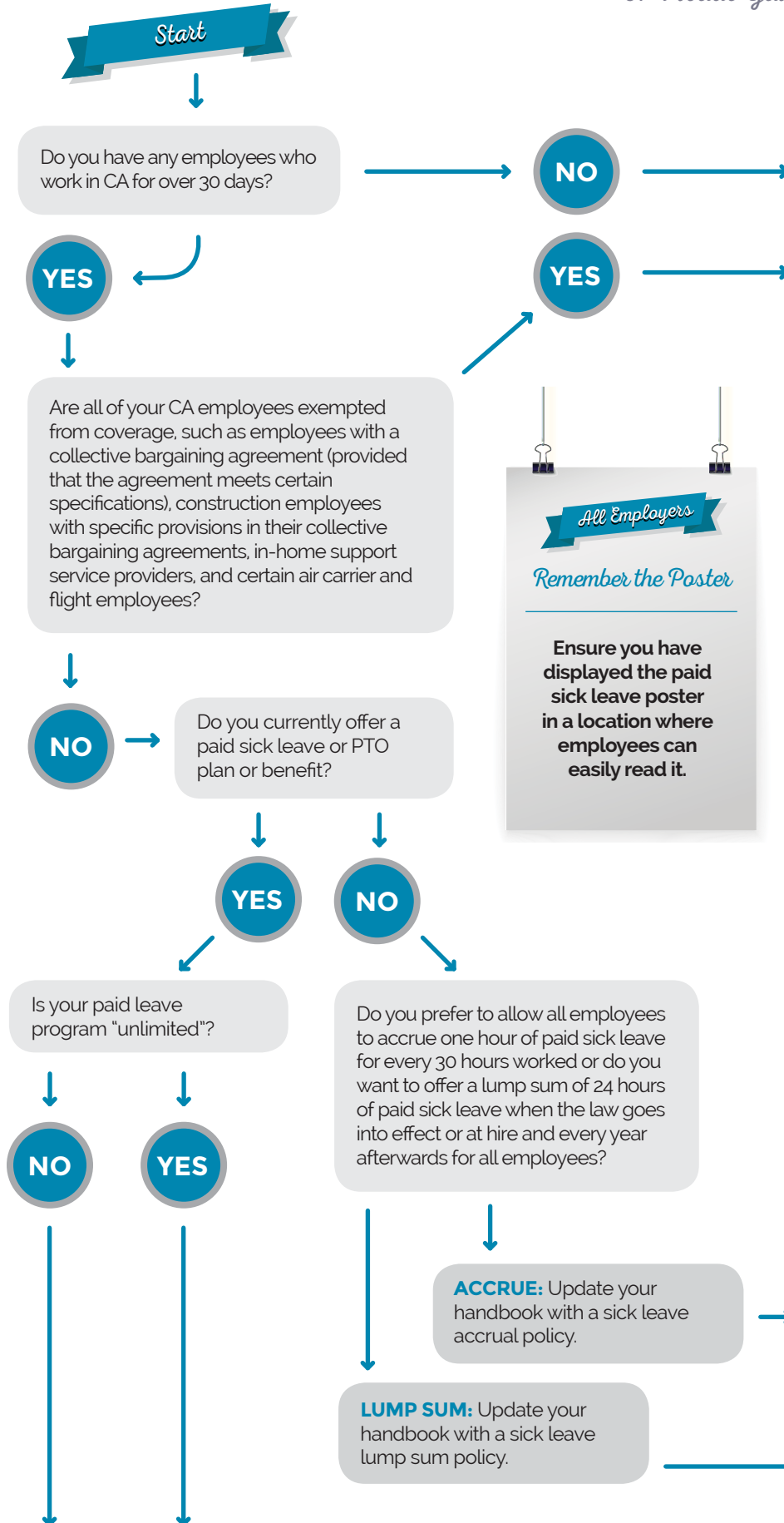
Already have a policy for some employees but not others? Here are some options . . .

1. Make one new compliant policy that applies to all employees.
2. Rework old general policy to be compliant for those to whom it applies and add secondary policy for those who do not qualify for your general policy.
3. Keep old general policy as it is and add secondary sick leave only policy for all employees.

CALIFORNIA SICK LEAVE AND YOUR ORGANIZATION



A Visual Guide on How to Comply



All Employers

Remember the Poster

Ensure you have displayed the paid sick leave poster in a location where employees can easily read it.

California state sick leave likely does not apply.

Please check local ordinances as some California cities and municipalities have enacted their own paid sick leave laws. If you provide sick leave, you should ensure that it is provided on a non-discriminatory basis and in accordance with established policy and practice. Also, if you provide an employee with an indefinite number of paid sick days on an as-needed basis, it must comply with Kin Care obligations.

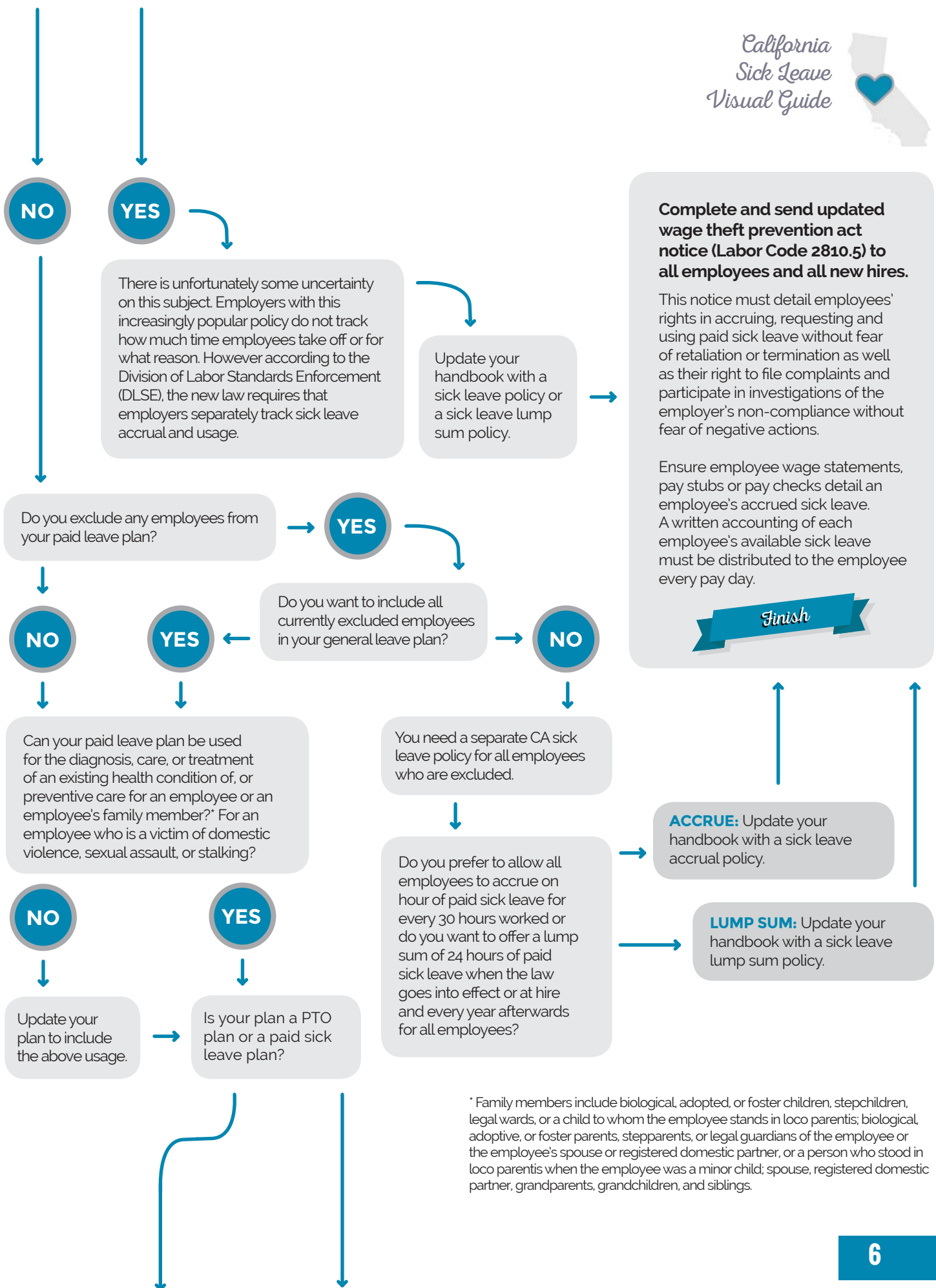
Finish

Complete and send updated wage theft prevention act notice (Labor Code 2810.5) to all employees and all new hires.

This notice must detail employees' rights in accruing, requesting and using paid sick leave without fear of retaliation or termination as well as their right to file complaints and participate in investigations of the employer's non-compliance without fear of negative actions.

Ensure employee wage statements, pay stubs or pay checks detail an employee's accrued sick leave. A written accounting of each employee's available sick leave must be distributed to the employee every pay day.

Finish



* Family members include biological, adopted, or foster children, stepchildren, legal wards, or a child to whom the employee stands in loco parentis; biological, adoptive, or foster parents, stepparents, or legal guardians of the employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child; spouse, registered domestic partner, grandparents, grandchildren, and siblings.



PTO: Do you offer PTO in a *lump sum* or do employees *accrue* the leave?

PAID SICK LEAVE: Do you offer paid sick leave in a *lump sum* or do employees *accrue* the leave?

LUMP SUM: Do you offer every employee at least 24 hours of paid time off at hire and at the beginning of the calendar year or other annual period?

ACCRUAL: Do you offer all employees 1 hour of PTO for every 30 hours worked (a little under 70 hours per year) with an accrual cap & carryover allowance of at least 48 hours?

LUMP SUM: Do you offer every employee at least 24 hour of paid sick leave at hire and at the beginning of every calendar year or other annual period?

ACCRUAL: Do you offer all employees 1 hour of paid sick leave for every 30 hours worked (a little under 70 hours per year) with an accrual cap & carryover allowance of at least 48 hours?

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NO

Will you *update* your policy to comply with the law or *create a separate policy*?

UPDATE: Review the minimum eligibility, accrual, carryover and other requirements of the law and adjust your policies accordingly. Remember your policy must offer at least as much benefit as required under the law.

CREATE SEPARATE POLICY: Update your handbook with a sick leave lump sum policy or a sick leave accrual policy.

YES

Frequently Asked Questions

If we offer three days (24 hours) of paid sick leave, do we meet the requirements of the new law?

In addition to offering the correct number of overall hours, you need to ensure that you are complying with the other requirements such as ensuring that the paid leave accrues at least as quickly as 1 hour for every 30 hours worked, that it accrues upon hire and can be used after 90 days employment, that you allow 48 hours to be accrued and carried over (if using the accrual method), that it can be used for the purposes given in the law and in the required increments, and that you track and document the time as required. In short, even if you have a plan that is overall as, or more generous, than required by the law, you will still need to look at your policy carefully to make sure it includes all the required details.

If we do not use the accrual method, but instead offer a lump sum of 24 hours at the beginning of the year, are we required to roll over the time to the next year?

If you elect the lump sum method of paid sick leave, it does not need to be carried over into a new calendar year or 12 month period that you set or be paid at termination as long as the employee is granted 24 hours of paid sick leave at the start of the new annual period. However your policy should expressly state this. In addition, all employees must receive a new 24 hours of paid sick leave at the start of the new annual period.

Why does the law require the accrual and carryover cap to be at least 48 hours when the actual use can be capped at 24 hours for a year?

While it seems counterintuitive that an employee could earn more time than he or she could use in a year, for the accrual method, having this higher cap and carryover amount will ensure that an employee will have time available even at the beginning of a sick leave year cycle.

Can we offer paid sick leave at the minimum wage instead of at the employee's regular rate?

No, paid sick leave must be offered at the same rate as the employee's regular rate of pay.

How is the year measured?

The statute permits the employer to use the calendar year, a year based on anniversary date, or other 12-month basis. Since the earning provision becomes effective on July 1, 2015 for current employees and upon hire for employees hired after July 1, 2015, we expect that a 12-month basis from July to June and the year based on anniversary date will be popular options for measurement.

How do we calculate sick leave pay for employees with multiple rates or other non-hourly pay?

If an employee is paid on a commission or piece rate basis, then divide the employee's total compensation for the previous 90 calendar days by number of hours worked and pay out sick leave at this rate.

Does an employee accrue extra sick time for overtime?

If you offer paid sick leave according to the accrual method, the employee must accrue one hour paid sick leave for every thirty hours worked including overtime. The accrual rate is not different for overtime hours. For exempt employees, a workweek for accrual purposes will be considered to be the lesser of 40 hours or the actual normal workweek.

We do not want to change our existing PTO/personal leave policies, what should we do?

If you want to keep your existing policy or eligibility unchanged, you would need to offer a separate California paid sick leave policy to all employees who are not eligible for your paid leave programs and employees who are offered a form of paid leave that does not meet the minimum requirements of the law.

Does sick leave need to be paid at termination?

Accrued paid sick time is not required to be paid out at termination unless it is part of a combined paid time off (PTO) plan. If an employee is rehired within a year, however, the previous paid sick leave balance must be restored.

How does the state paid sick leave fit in with local paid sick leave provisions?

Employers who are subject to local city or county sick leave provisions will need to ensure that they are in compliance with both sick leave requirements. When the two requirements differ, employers should always apply the provision that is most generous to the employee. This will often mean that the employer will need to apply some portions of the state policy and other portions of the local policy.