



Labor Commissioner's Office :: California Paid Sick Leave: Frequently Asked Questions

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[en Español](#)

UPDATE

New Questions Concerning the Paid Sick Leave Law Updated March 29, 2017

Questions about An Employer's Use of a "Grandfathered" (Existing) Paid Time Off Plan to Provide Paid Sick Leave

1. **If my employer already had a paid time off plan that employees could use for paid sick leave before this law went into effect in 2015, was my employer required to provide *additional* sick days in response to the new law?**

No. The statute has provisions that allow for what are commonly referred to as "grandfathered" paid time off plans. Basically, in very general terms, and as described in more detail in additional FAQs below, if at the time the law went into effect in 2015, an employer already had an **existing** paid leave policy or paid time off plan, and if that existing policy or plan made an amount of paid leave available that could be used for at least as many paid sick days as required under the new law, and that could be used under the same conditions as specified in the new law, or that had conditions *more favorable* to employees, (i.e., that provided *more* sick days than created under the new law, or that had a *more* favorable accrual rate, etc.), the employer is allowed to continue to use that existing paid time off plan in order to satisfy the paid sick leave requirements of the new law.

2. **If my employer is providing paid sick days through an existing (grandfathered) paid time off policy, does the new law change the rate of pay my employer is required to pay for days that I take off under the existing paid time off policy for reasons *other than* a paid sick day?**

No, the paid sick leave law addresses only the rate of pay that must be paid for time taken off as paid sick leave; it does not address or impact the rate of pay for paid time off taken for other purposes, such as vacation time or personal time.

Under the paid sick leave law, an employer must pay an employee for time taken **for paid sick leave** using **any** of the following calculations:

- (1) Paid sick time for **nonexempt employees** shall be calculated 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.
- (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.

(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.

(Lab. Code § 246, subd. (l), emphasis added.)

In general terms, these provisions mean that time taken off as paid sick leave must be paid at an employee's **regular rate of pay**, either for the workweek in which the paid sick leave was taken, or as determined by averaging over a 90-day period.

An employer using a “grandfathered” (i.e., existing) paid time off policy or plan must ensure that the plan “makes available an amount of leave applicable to employees that may be used for the same purposes [i.e., for paid sick leave] and under the same conditions [i.e., paid at the same rate] as specified in” section 246 of the new law. This means that an employer using a grandfathered paid time off plan must ensure that time that is taken off for paid sick leave must be paid in the manner as specified in the new law (as quoted and summarized above).

The new paid sick leave law, however, does not address in any way, nor impact, how employers must compensate employees under existing paid time off plans for time that is taken off for purposes **other than paid sick leave**, for example, for time that is taken as vacation, or for personal holidays, etc. (Note, however, the provisions of Labor Code section 227.3 concerning the requirements for payment for vested vacation time at termination of employment.) In practical terms, this means that an employer may compensate employees under an existing paid time off plan for vacation or personal holiday time, during employment, at a “base rate” of pay, whereas time taken as paid sick leave must be paid at a higher regular rate of pay (determined for the workweek or by a 90-day average), as described above.

Paid Sick Leave and Employer Attendance Policies

3. Can my employer discipline me for taking a paid sick day or for using paid sick leave for part of a day to go to a doctor’s appointment?

In general, no, an employer may **not** discipline an employee for using accrued paid sick leave. Depending on the circumstances, however, the issue may be more complex and may require more analysis.

The paid sick leave law specifically says the following:

An employer shall not deny an employee the right to use accrued sick days, discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using accrued sick days, attempting to exercise the right to use accrued sick days, filing a complaint with the department or alleging a violation of this article, cooperating in an investigation or prosecution of an alleged violation of this article, or opposing any policy or practice or act that is prohibited by this article.

(Lab. Code § 246.5, subd. (c)(1).)

Separately, Labor Code section 233 (commonly referred to as the “Kin Care” law) requires an employer 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. Labor Code section

234 provides that “[a]n employer absence control policy that counts sick leave taken pursuant to Section 233 as an absence that may lead to or result in discipline, discharge, demotion, or suspension is a per se violation of Section 233.”

This means, in general terms, that if an employee **has accrued sick days available**, an employer may not deny the employee the right to use those accrued paid sick days, including the right to use paid sick leave for a partial day (e.g., to attend a doctor’s appointment), and may not discipline the employee for doing so.

Many employers have attendance policies under which employees may be given an “occurrence” or similar adverse personnel action (which is a form of discipline with potentially negative repercussions) if the employee has an unscheduled absence or provides insufficient notice of an absence. Under the terms of the paid sick leave law (and Labor Code sections 233 and 234), if an employee **has accrued and available sick leave**, and is using his or her accrued paid sick leave for a purpose as specified in the law, it is **not permissible** for an employer to give the employee an “occurrence” for the absence under such an attendance policy because this would constitute a form of discipline against an employee for using his or her paid sick leave as allowed under the paid sick leave law.

If an employee does **not** have any accrued or available paid sick leave, however, (e.g., if the employee has already used all of his or her accrued and available paid sick leave under the employer’s policy, including as consistent with Labor Code section 233), and if the employee has an unscheduled absence that would otherwise violate the employer’s attendance policy, the paid sick leave law does not prohibit the employer from giving the employee an “occurrence” for such absence, even if the employee was actually sick and/or could have used paid sick leave for the absence if he or she had any such leave accrued. The paid sick leave law does not “protect” all time off taken by an employee for illness or related purposes; it “protects” only an employee’s accrued and available paid sick leave as specified in the statute.

Similarly, if an employee has an absence that would otherwise violate the employer’s attendance policy, and if the absence was for a reason **not** covered under the paid sick leave law, the employer is not required to allow the employee to use paid sick leave for that absence, and it is not a violation of the law for the employer to give an “occurrence” for such absence. The paid sick leave law provides that an employer **shall provide paid sick days for the following purposes:**

- (1) Diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee’s family member.
- (2) For an employee who is a victim of domestic violence, sexual assault, or stalking, the purposes described in subdivision (c) of Section 230 and subdivision (a) of Section 230.1.

(Lab. Code § 246.5, subd. (a).) An employer is not required to allow an employee to use accrued paid sick days for reasons other than those listed in the statute (as quoted above).

In addition, if an employee has an unscheduled absence that would otherwise result in an “occurrence” under an employer’s attendance policy, and if the employee elects to use accrued paid sick leave for only **part** of the unscheduled absence (for example, if the employee is absent for a full eight-hour day of work, but elects to use only four hours of his or her accrued paid sick leave for the absence [which the employee is allowed to do], the employer would be allowed to give an “occurrence” (or 1/2 of an “occurrence”) for the one-half day of unscheduled absence for which no paid sick leave was used.

Only time that is properly taken as accrued paid sick leave is protected from disciplinary action. The same would be true if the employee had a full eight-hour unscheduled absence, but only had available four hours of accrued paid sick leave. The portion of the unscheduled absence not covered by accrued paid sick leave could be subject to disciplinary action under the employer's attendance policy.

Governor Jerry Brown signed [Senate Bill 3](#) on April 4, 2016, amending the Healthy Workplaces, Healthy Families Act of 2014. [Subscribe to get email alerts of any updates related to the paid sick leave law](#)

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This document contains answers to questions that are frequently asked about California's new Paid Sick Leave law ([AB 1522](#), operative January 1, 2015, and as amended in AB 304 effective July 13, 2015).

DIR has updated the FAQ list originally posted in February 2015 to reflect new requirements under AB 304. This newer document also clarifies previous responses given in answer to questions received from members of the public.

Eligibility for paid sick leave under the new law

[When does the new law take effect?](#)

[How do I qualify for paid sick leave?](#)

[What if I work less than 30 days in California within a year?](#)

[What if I work more than 30 days in California within a year but less than 90 days?](#)

[When am I entitled to take paid sick leave?](#)

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[Does paid sick leave apply to all employees who work in California?](#)

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How do qualifying employees accrue and take paid sick leave

[If I qualify, how much paid sick leave am I entitled to take and be paid for?](#)

[How is the year measured?](#)

[Can my employer provide or advance paid sick leave to me prior to my accrual of sufficient paid leave time or prior to meeting the 90-day employment requirement?](#)

[Why does the law let me accrue more time than I could use in a year?](#)

What happens if I am a seasonal employee and I only work 60 days one year but return to the same employer within one year and work another 60 days?

What happens if I return to work for the same employer after more than one year?

If I work part time, six hours per day, I have accrued 24 hours of paid sick leave and I take three paid sick days, can my employer refuse to allow me to take any more sick leave in that same year?

Employer policies can provide more paid sick leave but not less

What happens when an employer has its own Paid Time Off (PTO) plan?

How does an employer satisfy the provision for putting the full amount of leave into my leave bank under the alternative “up-front” (or advance) method for providing paid sick leave?

Under the accrual method, can I carry over unused sick leave from one year to the next?

My employer provides paid time off which I can use for vacation or illness. Will my employer have to provide additional sick leave?

My company offers unlimited time off. How does the new law affect me?

For what purposes can an employee take paid sick leave

What can I use sick leave for?

Do I have to notify my employer before taking sick leave?

Payment and tracking of earned and taken leave

When I take paid sick leave, will I get paid as I normally do for the applicable pay period?

How much will I get paid?

How will I know how much sick leave I have accrued?

Does my employer have to document the reason I use paid sick leave?

How does the new law fit in with local sick leave ordinances?

What if I work an alternative work schedule of four 10-hour days and I take paid sick leave. How much should I be paid?

Do I have the right to cash out my unused sick days, like I can with vacation and paid time off?

Required information to be provided to employees

How will I learn of my rights to paid sick leave from my employer?

How will I know if my employer's policy has different terms from the paid sick leave law?

Does my employer have to issue new notices to employees who were hired prior to January 1, 2015?

If I already work under an existing paid leave policy or sick leave policy which is in writing and my employer states it complies with the new law and will not be changed as a result of this law, will I still get individual notice?

May 2016

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