



**FREEMAN FREEMAN &
SMILEY, LLP**

**EMPLOYMENT LAW
BULLETIN**

June 16, 2015

*Specializing in
Employment Law and
Business Litigation*

Bradley D. Ross

310.255.6180

bradley.ross@ffslaw.com

Teresa R. Tracy

310.255.6176

teresa.tracy@ffslaw.com

ffslaw.com

July 1, 2015: A Day of Change for California Employers

(Part 2)

While human resources professionals and counsel typically review “new laws” when a new year begins, this year there are significant changes going into effect on July 1, 2015.

This is the second of two alerts about new requirements that take effect in California on July 1, 2015. To access the first alert, [click here](#).

Paid Sick Leave

This law went into effect January 1, 2015. However, the right to accrue and take sick leave under this law did not take effect until July 1, 2015. Employers who were not aware of the new requirements, or who have not planned to be in compliance should quickly become familiar with the law and implement the appropriate policies and procedures.

The new law requires employers to provide paid sick leave. This can be done either through an accrual procedure or one in which employees are granted three days automatically at the beginning of the leave year. The law contains specific eligibility, payment, tracking, and notification requirements. Among other things, every current and new employee must be provided with notice of how the employer will be implementing the law. For the state-approved notice, [click here](#). In addition, paystubs must now show how many days of sick leave are available.

Paid sick leave can be used for the employee or a family member for preventive care or care of an existing health condition or for specified purposes if the employee is a victim of domestic violence, sexual assault or stalking. Family members include the employee’s parent, child, spouse, registered domestic partner, grandparent, grandchild, and sibling. Preventive care includes annual physicals or flu shots. For partial days, the employer can require an employee to take at least two hours of leave, but otherwise the determination of how much time is needed is left to the employee.

Accrual, carryover, and use are all distinct concepts. Accrual is based on the number of hours an employee works; the amount carried over to the next year may be subject to a cap if the employer establishes a cap by policy; and finally, use may be limited to 3 days per year.

Eligibility

An employee qualifies for paid sick leave by working for an employer on or after January 1, 2015, for at least 30 days within a year in California and by satisfying a 90-day employment period (which works like a probationary period) before an employee can actually take any

freeman | freeman | smiley
ATTORNEYS AT LAW LLP



**FREEMAN FREEMAN &
SMILEY, LLP**

**EMPLOYMENT LAW
BULLETIN**

June 16, 2015

*Specializing in
Employment Law and
Business Litigation*

Bradley D. Ross

310.255.6180

bradley.ross@ffslaw.com

Teresa R. Tracy

310.255.6176

teresa.tracy@ffslaw.com

sick leave. If an employee works less than 30 days in California within a year, then the employee is not entitled to be paid sick leave under this new law. An employee who works at least 30 days within a year in California, including part-time, per diem, and temporary employees, are covered by this new law with some specific exceptions. Providers of publicly-funded In-Home Supportive Services (IHSS) are exempt. Employees covered by collective bargaining agreements with specified provisions are exempt, as are 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 new law. Temporary employees of a staffing agency are covered by the new law. Therefore, whoever is the employer or joint employer is required to provide paid sick leave to qualifying employees.

Although an employee begins to accrue paid sick leave on July 1, 2015, or his/her first day of employment if he/she is hired after July 1, 2015, if the employee works less than 90 days for the employer, the employee is not entitled to take paid sick leave. A qualifying employee begins to accrue paid sick leave beginning on July 1, 2015, or if hired after that date on the first day of employment. An employee is entitled to use (take) paid sick leave only after meeting the qualifications for paid sick leave and accruing enough paid sick leave time to use for one of the stated purposes of the law.

Accruing and Taking Paid Sick Leave

Starting July 1, 2015, employees will *earn* at least one hour of paid leave for every 30 hours worked. That works out to a little more than eight days a year for someone who works full time. But employers can limit the amount of paid sick leave an employee can *take* in one year to 24 hours (three days). Because paid sick leave accrues beginning on July 1, 2015 or the first day of employment if hired after July 1, 2015, the 12 month period will vary by hire date for those employees hired after July 1, 2015. Therefore, the measurement will mostly be tracked by the employee's anniversary date.

An employer may elect to advance sick leave to an employee before it is accrued, but there is no requirement for an employer to do so under this law.

The paid sick leave law requires that an employee's accrued sick leave be restored to him/her if the employee returns to the same employer within 12 months from the previous separation. Although an employer does not have to allow an employee use of the paid sick leave prior to working 90 days, because the law specifically requires that the leave be restored to the employee, in the employee's second year, the employee has met the 90 day restriction on use after 30 days (due to working 60 days in the prior year) and can begin to use paid sick leave after working 30 days in the second year.

If the employee works part-time, six hours/day, has accrued 24 hours of paid sick leave, and takes three paid sick days, the employer cannot refuse to allow the employee to take more sick leave in that same year. This is because the statute provides that an employer may limit the amount of sick leave to 24 hours or three days; because the employee in this situation works 6 hours per day, the employee has only used 18 of his/her 24 hours. For enforcement



**FREEMAN FREEMAN &
SMILEY, LLP**

**EMPLOYMENT LAW
BULLETIN**

June 16, 2015

*Specializing in
Employment Law and
Business Litigation*

Bradley D. Ross

310.255.6180

bradley.ross@ffslaw.com

Teresa R. Tracy

310.255.6176

teresa.tracy@ffslaw.com

ffslaw.com

purposes, DLSE interprets the reference to “three days” to state an equivalent of 24 hours (based on an 8 hour workday) and is not a limitation that can be used to prohibit a part-time employee from using at least 24 hours of accrued leave in a year. Therefore, the minimum amount that the employee has to be allowed to take cannot fall below 24 hours. In this situation, the employee still has 6 hours left to take and be paid for, during the year.

Employers must permit the employee to use the paid sick leave upon an oral or written request, and the law forbids requiring an employee to find a replacement as a condition for using leave. If the need is foreseeable the employee must give reasonable advance notice, but where the need is unforeseeable the employee need only give notice as soon as practicable.

Interplay with Other Employer Time Off Plans

The new law establishes a minimum requirement, but an employer can provide sick leave through its own plan or establish different plans for different categories of workers. However, each plan must satisfy the accrual, carryover, and use requirements of the law or put the full amount of leave into the employee’s leave bank at the beginning of each year in accordance with the PTO policy. If an employer provides a policy which exceeds the minimum requirements, including providing a specific cap, the policy must be clear as to the additional terms that apply to its employees.

An employer must have a paid leave policy that satisfies the same purposes required by the new law and must provide no less than 24 hours or three days of paid sick leave for an employee to use each year. Therefore, the full amount of accrued leave must be available to the employee at the beginning of the 12 month period. For initial hires, however, the employee must still meet the 90 day employment requirement prior to taking any paid sick leave.

Under the accrual method, the employee can carry over unused sick leave from one year to the next, but the employer can limit or cap the amount of sick leave an employee may accrue to 6 days or 48 hours.

If the employer already provides paid time off that an employee can use for vacation or illness, the employer does not have to provide additional paid sick leave under the law *provided* it gives at least 24 hours per year of paid leave that can be used for health care and meets the other requirements in the law. If the employer provides unlimited time off and did not track that time in the past, the new law requires that the employer separately track sick leave accrual and use.

Payment and Tracking

Employers must permit the employee to use the paid sick leave upon an oral or written request, and the law forbids requiring an employee to find a replacement as a condition for using leave. If the need is foreseeable the employee must give reasonable advance notice,

freeman | freeman | smiley
ATTORNEYS AT LAW LLP



**FREEMAN FREEMAN &
SMILEY, LLP**

**EMPLOYMENT LAW
BULLETIN**

June 16, 2015

*Specializing in
Employment Law and
Business Litigation*

Bradley D. Ross

310.255.6180

bradley.ross@ffslaw.com

Teresa R. Tracy

310.255.6176

teresa.tracy@ffslaw.com

ffslaw.com

but where the need is unforeseeable the employee need only give notice as soon as practicable.

The new law requires that an employer provide payment for sick leave taken by an employee no later than the payday for the next regular payroll period after the sick leave was taken. This does not prevent an employer from making the adjustment in the pay for the same payroll period in which the leave was taken, but it permits an employer to delay the adjustment until the next payroll. For example, if an employee did not clock in for a shift and therefore was not paid for it but utilized paid sick leave, the employer would have to pay that employee not later than the following pay period and account for it in the wage stub or separate itemized wage statement for that following regular pay period.

The employee must be paid at his/her regular hourly rate. If the employee's pay fluctuates (e.g., the employee gets commissions or is paid on a piece rate basis), the employer must divide the employee's total compensation for the previous 90 days by the number of hours worked and pay the employee at that rate.

Employers must show, on the employee's pay stub or a document issued the same day as the paycheck, how many days of sick leave the employee has available. Employers also must keep records showing how many hours each employee earned and used for three years. This information may be stored on documents available to employees electronically.

If an employer is going to use an existing policy to comply with the law, the leave under that policy must still comply with the minimum requirements of the law. Where the employer provides additional terms (e.g., creates caps on maximum use or accruals above the minimums), they must inform employees of those additional terms.

For employees subject to local sick leave ordinances, the employer will have to comply with both the local and California laws, which may differ in some respects. For each provision or benefit, the employer will have to provide whichever is more generous to the employee.

The paid sick leave law allows the employee to decide how much paid leave time to take, subject to the employer's ability to set a two hour minimum. Therefore, if the employee works an alternative work schedule of 4/10 and has ten hours in the bank, the employee can request to be paid for ten hours. If the employee decides to take less time than that in paid sick leave, then the employee will not receive his/her full pay but instead, pay for the number of hours that the employee chose to take. If the employee is sick for three days and has accrued 24 hours then the employer will have to pay for 24 hours. However, if the employee has accrued 30 hours then because the minimum requirements of the statute are 3 days or 24 hours, the employee will have to be paid for 30 hours.

If the employee's employment ends, the employer does not have to cash out unused paid sick days unless its policy provides for such a payout. However, if the employee is then rehired by the employer within 12 months, the employee can reclaim what he/she had in the leave bank.

freeman | freeman | smiley
ATTORNEYS AT LAW LLP



**FREEMAN FREEMAN &
SMILEY, LLP**

**EMPLOYMENT LAW
BULLETIN**

June 16, 2015

*Specializing in
Employment Law and
Business Litigation*

Bradley D. Ross

310.255.6180

bradley.ross@ffslaw.com

Teresa R. Tracy

310.255.6176

teresa.tracy@ffslaw.com

ffslaw.com

Informing Employees of Their Rights

Employers must individually notify all employees hired prior to January 1, 2015 of changes to terms and conditions of employment that relate to paid sick leave within 7 days of the actual change. Information concerning any new or previously existing paid sick leave program that includes information required to be given to each employee by Labor Code section 2810.5(a), must be provided to all employees. A revised DLSE notice form, available on the DLSE website and [here](#), may be used for providing individual notice to these existing employees unless the employer chooses an authorized alternative method.

The revised Notice to Employee form has a check box to inform an employee of an employer's own policy that meets or exceeds the requirements of the new law. To avoid misinformation or misunderstanding regarding an employer's specific paid leave policy, employers should ensure that employees are made fully aware of the terms and conditions of their specific policy which provides any additional paid sick leave terms. Although the notice requirements of Labor Code section 2810.5 do not apply to employees who are exempt from the payment of overtime, employees who are exempt from the payment of overtime are covered by this new paid sick leave law.

The specific date by which employees who were hired prior to January 1, 2015 must receive individual notice of the changes of their terms and conditions of employment that relate to paid sick leave will depend on when your employer either establishes a paid sick program under this law or changes an existing paid leave program to be compliant with this law. However, in view of the operative date of the law and the requirement to notify existing employees of changes in certain terms or conditions of their employment, employees hired prior to January 1, 2015, and who were provided a previous notice which was in effect as of December 31, 2014, must be notified of any change between the period from January 1, 2015 to no later than July 8, 2015.

Note: the law provides a 7 day period following the change in employment terms or conditions in which employees must be notified in writing. This makes July 8, 2015, the final date (July 1, 2015 operative accrual date + 7 days) for providing notice of changes relating to paid sick leave to an employee hired before January 1, 2015.

An employer may choose to issue a new notice to all employees. An employer may also elect to provide notice under the alternatives stated in 2810.5 (b)(1) or (b)(2). If an employer chooses an alternative method (e.g., includes notice of change in a pay stub or itemized wage statement), the employer must ensure that the required paid sick leave information (the same paid sick leave information as contained in the revised notice) is contained in the applicable writing and is compliant with an authorized alternative manner for providing such information under subdivision (b).

freeman | freeman | smiley
ATTORNEYS AT LAW LLP



**FREEMAN FREEMAN &
SMILEY, LLP**

**EMPLOYMENT LAW
BULLETIN**

June 16, 2015

*Specializing in
Employment Law and
Business Litigation*

Bradley D. Ross

310.255.6180

bradley.ross@ffslaw.com

Teresa R. Tracy

310.255.6176

teresa.tracy@ffslaw.com

If the employer has an existing paid leave policy or sick leave policy that is in writing and that the employer believes complies with the new law and will not be changed as the result of the new law, each employee hired before July 1, 2015 must still get individual notice. Whether an employer elects to use the DLSE revised form or any other writing to be provided to each employee, such notice of change must contain information about the new paid sick leave law and how the employer intends to meet the requirements of the new law for the particular employee. For example, a writing provided to the employee which refers to or summarizes the existing policy and contains the points of information specified in the revised notice form which is timely provided to each employee would be compliant with the individual notice requirement.

*Written by **Teresa R. Tracy***

* * *

This Bulletin is made available for educational purposes and to provide general information on current legal topics, not to provide specific legal advice. The publication of this Bulletin does not create any attorney client relationship, and this Bulletin should not be used as a substitute for competent legal advice from a licensed professional attorney.