

Insight

IN-DEPTH DISCUSSION

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City of Los Angeles Doubles Employees' Sick Leave Entitlement Effective July 1, 2016

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Like its neighbor Santa Monica and other major California cities including San Francisco and Oakland, the City of Los Angeles approved its own sick leave entitlement ordinance on June 2, 2016. The Los Angeles Ordinance ("Ordinance") will provide employees working in the City of Los Angeles with the ability to accrue and use up to 48 hours of sick leave, twice the amount provided by state law. Enacted as an urgency matter, the new sick leave obligations become effective for employers on July 1, 2016, less than 30 days after being signed by Mayor Eric Garcetti.

Paid Sick Leave: Accrual and Caps Provide Twice the Annual Entitlement Compared to California Law

Under California law, employees are entitled to use 24 hours or three days of sick leave each year. The Ordinance doubles the amount of sick leave for all employees, regardless of the size of the employer, and requires that employees be permitted to use up to 48 hours of accrued sick leave each year. This amount is, however, still substantially less than the 72-hour cap implemented for employers in cities like Santa Monica and San Francisco. However, unlike ordinances in these other cities, Los Angeles' law does not have a lower cap for small employers.

The Ordinance states that employers may provide the entire 48 hours of sick leave in a lump sum, or the employer may use an accrual method. Similar to state law, under the Ordinance, employees will accrue no less than one hour of paid sick time for every 30 hours worked (including overtime hours) within the City of Los Angeles. For employers using the accrual method, employers may implement an accrual cap at 72 hours, although no accrual cap is required. Any unused sick time is then carried over to subsequent years.

Covered Employees and Employers

With some limited exceptions, the Ordinance applies to all employees who work two or more hours during a particular week in the City of Los Angeles. The enhanced sick leave accrual does not yet apply to employees working entirely in neighboring cities or unincorporated sections of Los Angeles County, which would require separate action by each city and/or the County Board of Supervisors. It is unclear, however, how sick time will be calculated for an employee who works both inside and outside of Los Angeles, earning sick time under both state law and this Ordinance.

Current employees will be entitled to accrue this additional sick time as of July 1, 2016. Employees hired after July 1, 2016, will begin to accrue paid sick time under the Ordinance beginning on the date of hire, but, like under California law, cannot use sick time until the 90th day of employment.

Permitted Uses and Other Terms - “Equivalent of a family relationship”

While the Ordinance largely incorporates or mirrors the requirements of California law in terms of usage, notice, and anti-retaliation provisions, it expands those rights in certain key areas. For example, as with state law, sick leave must be provided upon oral or written notice, and prohibits retaliation or interference with rights. The Ordinance expands upon the presumption of retaliation. Under California law, an adverse action taken within 30 days after exercise of rights is presumed to be retaliatory. Under the Ordinance, this window is expanded to 90 days. In one area beneficial to employers, the Ordinance explicitly allows an employer to request “reasonable documentation of an absence from work for which paid sick leave is being used.” It does not define “reasonable documentation” or the appropriate circumstances.

Also, the Ordinance explicitly incorporates the provisions of California law defining family members in Labor Code section 245.5(c) and the provisions defining appropriate usage in Labor Code section 246.5(a). In one interesting twist, the Ordinance expands the definition of a person for whom sick leave can be used, with the following, virtually unlimited, definition:

... for any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

This language goes even beyond the provisions in San Francisco, Oakland, and Emeryville, which allow only for the designation of a single non-family member on an annual basis.

Sick leave must be paid at no less than the newly implemented minimum wage rates set forth in the City’s Minimum Wage Ordinance, i.e., \$10.50 an hour for employers of 26 or more employees.

Impact on Existing Leave Policies

For employers using an accrual method under California law of one hour for each 30 hours worked, the Ordinance raises the cap on annual usage from 24 hours to 48 hours, and increases the cap on total accrual from 48 hours to 72 hours. The Ordinance is written solely in terms of hours, and does not mention sick leave in terms of a number of days.

Employers that provide a lump sum of 24 hours of sick leave will have to determine whether to increase the lump sum to 48 hours, or to convert to an accrual method, keeping in mind the additional administrative burden since available sick time must be reflected on employee paystubs. Further, written notice of any change in existing policy must be provided within 10 days of the implementation of the change, as well as posting notice regarding sick leave entitlement. Notices must be in English, Spanish, Chinese (Cantonese and Mandarin), Hindi, Vietnamese, Tagalog, Korean, Japanese, Thai, Armenian, Russian or Farsi, or any other language spoken by at least 5% of the employees at the workplace or job site.

Employers may continue to maintain other paid leave policies, such as vacation, sick, floating holidays, personal days, or other paid time off (PTO), and satisfy the requirements of the Ordinance if those policies meet or exceed the accrual requirements of the Ordinance and allow employees to use the leave for the same purposes and under the same conditions as paid sick leave under the Ordinance.

The City's Bureau of Contract Administration's Office of Wage Standards may allow an employer's established paid leave or PTO policy or one that provides payment for compensated time off to remain in place and comply with the law even though it does not meet all the requirements, if the agency determines the employer's established policy is overall more generous.

Waivers, Deferrals, and Additional Limitations

The Ordinance provides for fines for violations, with a fine imposed based upon each employee and each day the employer is not in compliance. It also allows for civil enforcement of fines and penalties, with a per-violation penalty of \$120 for each employee per day. The concurrently passed Los Angeles Office of Wage Standards Ordinance further grants authority to the City of Los Angeles Police Commission to deny, revoke or suspend a police permit issued to an entity found to have committed "wage theft," including the failure to comply with the sick leave ordinance.

The Ordinance does not expressly provide for the waiver of the minimum wage and paid sick leave requirements in a collective bargaining agreement, but would allow exemption only if the paid time off provided in the union contract otherwise meets the minimum standards provided. Certain non-profit entities can apply for an exemption from the Ordinance's provisions, including the minimum wage and sick leave provisions.

Recommendations

Employers that have employees who perform work in the City of Los Angeles should consider taking one or more of the following actions:

- Review and revise, if necessary, paid sick time and/or PTO policies and procedures to meet the Ordinance's requirements, including carryover, cap, and all other provisions.
- Consider whether transitioning to a PTO policy that encompasses a number of different types of leaves, including vacation and paid sick time, will make compliance easier.
- Determine whether to use an accrual or lump-sum method, or to comply through the use of another PTO policy.
- Review attendance and other disciplinary policies to avoid potential interference and retaliation claims.
- Audit timekeeping, payroll, and benefits systems to assist compliance with the law's recordkeeping requirements.
- Implement a system to send notices to each impacted employee and post proper notice at each work location.