

CLIENT ALERT

Los Angeles the Latest City to Enact Paid Sick Leave and Minimum Wage More Generous Than State Law

JULY 14, 2016

California has provided paid sick leave to employees since the enactment of the Healthy Workplaces, Healthy Families Act, which took effect in July 2015. Several major cities, including San Francisco and Santa Monica, have enacted local ordinances, which provide more coverage than the state law. Los Angeles has now jumped on the bandwagon with a new paid sick leave ordinance (the Ordinance) that *doubles* the leave provided under state law (*i.e.*, 48 hours per year v. 24 hours per year), regardless of the size of the employer.

The Ordinance also sets new minimum wage requirements for all employees working in Los Angeles. A similar ordinance enacts the same changes for all unincorporated parts of Los Angeles County, making the effect of the minimum wage increase greater than the City of Los Angeles alone. The minimum wage is set to increase at regular intervals, with a final wage of \$15 an hour for all employers by the year 2021.

Effective Date

The Ordinance was passed on June 1, 2016 and the minimum wage and sick leave provisions went into effect less than 30 days later on July 1, 2016 for employers with 26 or more employees. It goes into effect on July 1, 2017 for employers with 25 or fewer employees.

Covered Employees

Under the Ordinance, whether an employer has 26 or more employees (and thus subject to the July 1, 2016 effective date) is based on the average number of employees that were employed in the previous calendar year. The Ordinance applies to all employees who on or after July 1, 2016 have worked within the City of Los Angeles for the same employer for 30 or more days within a year, regardless of where the employer is headquartered. This could be tricky for employers who have salespersons, consultants, or similar employees who, although they do not work *primarily* in Los Angeles, do work within the city for a total of at least 30 days in a year.

There are no exceptions under the Ordinance for small businesses or nonprofit organizations. Additionally, unlike the state sick leave law, there are no exceptions for employers covered by collective bargaining agreements.

Application

The Ordinance requires employers to either (1) grant employees six days (48 hours' worth) of sick leave up front in a lump sum, at the start of employment for each 12-month period, calendar year, or 12-month period (the Lump Sum Method), or (2) allow employees to accrue one hour of paid sick leave for each 30 hours worked (including overtime hours) within the City of Los Angeles (the Accrual Method). For employers using the Accrual Method, employers may implement an accrual cap at 72 hours, although no accrual cap is required.

Although accrual begins immediately upon hire (or on July 1, whichever is later), employers may require employees to wait to use any paid sick leave until they have completed up to 90 days of employment. Employers may shorten this period as they like.

The minimum wage set by the Ordinance is \$10.50 per hour as of July 1, 2016 for employers with 26 or more employees. The same increase schedule takes effect on July 1, 2017 for employers with 25 or fewer employees.

Starting in July of 2022, the minimum wage will increase based on the Consumer Price Index, established by the federal Bureau of Labor Statistics. Increases will be announced in February of each year and will take effect in July.

For employers with 26 or more employees, the Ordinance sets an increase schedule of:

- \$12.00 / hour in July 2017
- \$13.25 / hour in July 2018
- \$14.25 / hour in July 2019
- \$15.00 / hour in July 2020

For employers with 25 or fewer employees, the increase schedule is:

- \$10.50 / hour in July 2017
- \$12.00 / hour in July 2018
- \$13.25 / hour in July 2019
- \$14.25 / hour in July 2020
- \$15.00 / hour in July 2021

Similarities to the State Paid Sick Leave Law

Like the state paid sick leave law, the Ordinance does not require employers to pay out unused sick leave at termination. The Ordinance also retains the requirement that if an employee is re-hired within a year, all previously held sick leave time must be reinstated.

Additionally, employers with paid time off policies, which meet the requirements of the Ordinance are not required to adopt specific paid sick leave policies. The state posting and notice requirements remain in effect, as does the requirement that employers allow employees to use their sick time in at least two hour increments.

More Generous than the State Paid Sick Leave Law

The Ordinance not only provides for twice as much sick leave (48 hours per year v. 24 hours per year under state law), but also requires employers to rollover any unused sick leave, regardless of whether the employer chooses to grant the employee 48 hours of paid sick leave up front. While both the state law and Ordinance grant employers the option to use the Lump Sum Method, state law provides that if an employer uses the Lump Sum Method, then unused sick leave does not carry over and the unused balance is simply replaced by the new lump sum grant. The

Ordinance is different. Unlike state law, the Ordinance states that up to 72 hours must carry over year to year. So, while a Los Angeles employee can use only 48 hours of sick pay in a year, the employee can carry over 72 hours of paid sick leave (or more, if the employer allows it). Thus, there are no “use it or lose it” options under the Ordinance.

The Ordinance covers the same broad range of possible uses as the state paid sick leave law, but adds that sick time may be used to care for “any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.” In practice, this broad category of individuals makes it possible for an employee to claim sick leave time to care for just about anyone the employee selects.

The Ordinance does grant employers the ability to request “reasonable documentation” for the sick leave law, which is absent in the state paid sick leave statute. However, there are no guidelines as to what constitutes “reasonable documentation,” and employers are prohibited under other law from inquiring into the specific nature of an employee’s “serious health condition.” 2 CCR 11087 (a)(2). Accordingly, employers should carefully consider whether it makes sense to ask employees for any documentation when claiming paid sick leave.

Harsher Penalties for Employers

The Ordinance goes further than the state-paid sick leave law to punish employers who do not comply. Employers who do not comply with the Ordinance are responsible for *all* sick leave benefits unlawfully withheld and an *additional penalty* of up to \$120 per day from the day that the violation occurred. Employers are liable for *triple damages* if they retaliate against an employee for claiming sick leave benefits. Employers also face *additional fines* of up to \$500 for failing to post the required notice and for other violations of the Ordinance.

Employers are encouraged to contact counsel immediately to ensure that they are in compliance with the Ordinance.

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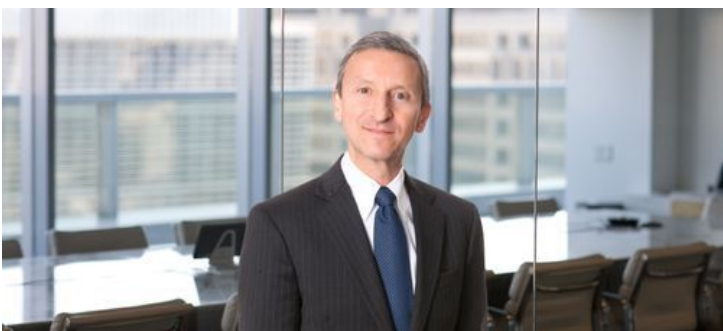
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