



california expands paid sick leave law, increases annual leave amount

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Beginning on January 1, 2024, the amount of annual paid sick leave California employers must provide to employees in the State will increase, depending on the type of sick leave policy an employer utilizes. This upcoming change is a result of Governor Newsom signing Senate Bill 616 ("SB 616"), an amendment to California's Healthy Workplaces, Healthy Families Act, into law last week.

For employers with an upfront, lump-sum paid sick leave policy, SB 616 requires that employees be provided with a lump-sum of five days (40 hours) of sick leave each calendar year or 12-month period, and this entire amount of leave must be available for use in the year (or other 12-month period) that it is provided. There continues to be no carryover requirement if an employer utilizes the lump-sum (vs. accrual) method.

Notably, pursuant to California Labor Code Section 246(b)(1), employers who do not use a lump-sum method may continue to provide paid sick leave at the accrual rate of one hour for every 30 hours worked. Alternatively, employers may use a different accrual rate (i.e. not the standard 1:30 accrual method) so long as employees will accrue 3 days (24 hours) of paid sick leave by their 120th calendar day of employment and at least five days (40 hours) of sick leave by their 200th calendar day of employment.

In addition to increasing the amount of protected paid sick leave California employees will be able to take each year, SB 616 also increases the amount of unused leave employees subject to an accrual policy are allowed to carry over to the next calendar year (or other 12-month period). Beginning next year, employers will be required to permit employees to carry over up to ten days (80 hours) of accrued, unused sick leave from year to year/each 12-month period, however annual usage of this leave may be capped at five days (40 hours).

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However, employers' ability to restrict the use of accrued paid sick leave until employees have completed 90 days of employment remains unchanged. Additionally, the requirement under existing law that employees must work at least 30 days in California for the same employer within a year of commencing employment will not change.

Certain paid sick leave protections will also be provided to employees covered by a valid collective bargaining agreement ("CBA") once SB 616 takes effect. Specifically, unionized employees will be permitted to use paid sick leave for the same reasons as non-unionized employees – i.e. for the diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or family member – regardless of what their CBA states.

Additionally, unionized employees who are domestic violence, sexual assault or stalking victims will be permitted to use paid sick leave in order to obtain relief, safety, medical attention and psychological counseling for themselves and their children to the same extent as non-unionized employees. Finally, the current paid sick leave procedural rule (subject to certain limited exceptions) prohibiting retaliation for paid sick leave use will not only continue once SB 616 takes effect, it will also be extended to unionized employees.

Employers that are subject to local ordinances that already require the same or greater amount of paid sick leave must continue to provide the most generous amount of leave to employees. However, if a local ordinance (1) requires employers to pay out sick leave when employees separate; (2) prohibits employers from voluntarily lending paid sick days to employees in advance of accrual; (3) requires advance use notification, even if the use is unforeseeable; (4) changes the way in which employers calculate paid sick leave, which should be recorded on wage statements; or (5) allows employers to provide payment for paid sick leave later than the payday for the next regular payroll period after the sick leave was taken, then such practices will be preempted by SB 616.

Please do not hesitate to contact your trusted MSK lawyer for questions regarding California's amended sick leave law.