

Beginning July 1, 2016, Employees Working in the City of Los Angeles Will Gain Enhanced Paid Sick Leave Rights

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On June 2, 2016, Los Angeles Mayor Eric Garcetti signed into law Ordinance Nos. [184319](#) and [184320](#) (“Ordinances”), which create enhanced paid sick leave rights for employees working within the City of Los Angeles. Beginning on July 1, 2016, employers covered by both the [California Healthy Workplaces, Healthy Families Act of 2014](#) (“California law”) and the Ordinances will need to comply with the more generous provisions of the Ordinances. As a result, employees working in the City of Los Angeles will be entitled to up to 48 hours of paid sick leave per year, nearly twice the amount as most of their non-Angelino counterparts.

Below is a brief summary of the rights that the Ordinances will give to Los Angeles employees beyond those they currently enjoy under California law, followed by a more detailed discussion of Los Angeles’ new paid sick leave law.

I. The Short List

Here is a quick overview of the primary enhancements that the Los Angeles Ordinances add to the existing California law requirements:

- Los Angeles employees will be entitled to take up to *48 hours* of paid sick time per year—in most cases, twice the amount of time previously required under just the California law.
- The definition of “family member” is expanded to include *any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship*.
- Unlike the California law, the Ordinances do not allow employers to require employees to take sick leave in blocks of at least two hours. If an employee takes one hour of sick time, he or she should be docked for only one hour of sick time.

- The *exemptions* to the California law *do not apply*. Thus, employers exempted from the California law will still need to comply with the Los Angeles Ordinances. This includes providers of publicly funded in-home supportive services, some employees covered by collective bargaining agreements, certain employees of air carriers, and retired annuitants working for governmental entities.

 **IMPORTANT:** The Ordinances apply only within the City of Los Angeles, not the entire County of Los Angeles. However, there are areas of Los Angeles commonly referred to by other names that are actually part of the City of Los Angeles. Examples include Century City, San Pedro, Hollywood, and Studio City, among others. For more information, see this [map of the neighborhoods of Los Angeles](#).

II. The Long Version

What the Ordinances Cover

Employers covered by the Ordinances include any person or business entity, inclusive of corporate officers and executives, who directly or indirectly employ or exercise control over the wages, hours, or working conditions of any employee, including through a temporary service or staffing agency. There is no requirement that an employer be located within Los Angeles, or even in California.

Employees are eligible if they:

- work at least two hours a week within the City of Los Angeles,
- work in the City of Los Angeles for the same employer for 30 or more days within a year from the commencement of employment, and
- qualify as employees entitled to payment of a minimum wage under the California minimum wage laws.

Usage

Paid sick time may be used for the same purposes as time under the California law, and the Ordinances include the same 90-day waiting period for taking time off after hire.

However, employers that have taken advantage of the two-hour minimum usage increment permitted by the California law will need to stop doing so for their Los Angeles employees. There is no provision in the Ordinances that permits employers to impose a minimum increment in which paid sick time must be used, but it seems likely that employers will be permitted to use the lesser of one hour or the minimum increment used for other time off as a minimum increment for paid sick time.

“Family Members” May Include the Extended Family and Then Some

The definition of “family member” includes not only those covered by the California law but also “any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.”

There is no requirement that employees designate a non-family member in advance, as there is under the San Francisco Paid Sick Leave Ordinance, nor is there any requirement that employees limit themselves to a single extra-familial relationship.

Earning Time

Employers have the option of using an accrual-based method or “frontloading” the time each year. This works essentially the same as under the California law, but the totals are different and the accrual options are more limited, as noted below.

Accrual Option

If an employer uses an accrual method, employees must accrue time at the rate of at least one hour for every 30 hours worked. Employers may cap accrual at 72 hours and may limit annual use to 48 hours. There is no provision for different accrual methods as there is under the California law.

Accrual begins on the later of July 1, 2016, or the employee’s date of hire.

Frontloading Option

Alternatively, employers may provide employees with 48 hours of paid sick time at the beginning of each year (as with the California law, this can be a calendar year, run from employees’ dates of hire, or any other 12-month period).

The Ordinances unfortunately do not address how this frontloading option would work for the last half of 2016. Employers were faced with a similar dilemma when the California law went into effect last summer. We conservatively recommend for this first year that employees be provided with at least one hour of leave for every 30 hours worked (up to 48 hours).

“Use It or Lose It” Policies Are Permitted for Standalone Sick Time

Employers that separate paid sick time from vacation and other paid time off (“PTO”) are not required to pay out unused sick leave upon termination of employment (but see *Coordination with Other Paid Time Off Policies* below).

The Ordinances, like the California law, require the reinstatement of unused time to any employee rehired within one year of separation.

Coordination with Other Paid Time Off Policies

As with the California law, employers are free to include employees' paid sick time within an all-inclusive PTO policy.

Employers that do this, however, need to make sure that they are not only providing employees with at least as much time off as required by the Ordinances (up to 48 hours per year) but are also complying with the Ordinances' other requirements. For example, such a policy must, among other things, permit employees to take time for individuals included in the expanded definition of "family member" and not include a two-hour minimum usage increment.

Additionally, all accrued, unused time under the PTO policy would need to be paid out upon termination.

Anti-Retaliation Provision

As with the California law, there is a retaliation provision. Employers are prohibited by the Ordinances from terminating, reducing the compensation of, or otherwise discriminating against an employee for (i) requesting or using paid sick time, (ii) opposing any act proscribed by the Ordinances, or (iii) otherwise asserting rights on behalf of himself, herself, or anyone else under the Ordinances. Also, like the California Law, the Ordinances create a rebuttable presumption that any adverse action taken within 90 days of a protected act was retaliatory. This is three times the length of the 30-day rebuttable presumption period included in the California law.

Potential Consequences for Violation

The Ordinances create an Office of Wage Standards ("OWS") within the Bureau of Contract Administration of the Department of Public Works to enforce "wage theft" violations, including violations of the new paid sick leave provisions. The OWS has broad investigatory power to access payroll records and interview witnesses with "appropriate notice" during business hours to ensure compliance.

If the OWS determines that a violation has occurred, it will issue a Notice of Correction, which may include penalties of up to \$50 per day per violation and administrative fines of up to \$500 per day per violation payable to the City, as well an order of reinstatement of any employees it deems to have been wrongfully discharged. Administrative fines may be doubled for subsequent violations. Employers have a 15-day window to appeal to the OWS as a prerequisite to seeking review in court.

Employees may also institute civil actions to seek unpaid wages and sick time benefits and may collect an additional penalty of up to \$120 per day that a violation continues. In the case of retaliation, employees are entitled to reinstatement and to three times the amount of all wages, sick time benefits, and penalties owed. Prevailing employees are also entitled to reasonable attorneys' fees and costs.

The OWS has the further authority to institute a civil action on behalf of an employee and to collect damages and fines through liens against property owned or operated by any “person who fails to pay wages.”

Finally, any violation of the Los Angeles Municipal Code could lead to a misdemeanor prosecution by the City Attorney.

Because the definition of “Employer” contained in the Ordinance includes “a corporate officer or executive,” there may be individual liability for any of these damages, fines, and penalties.

Potential Exceptions

More Generous Employer Policy

The OWS has the authority to promulgate interpretive guidelines and rules in connection with the Ordinances. It also has the authority to deem an employer’s PTO policy to be in compliance with the Ordinances if the policy is “overall more generous.”

Nonprofit/Transitional Employers

The Ordinances provide a limited exception for certain nonprofit corporations that have been certified by the City as providers of transitional jobs to the long-term unemployed. This exception, however, would only reduce the minimum rate of pay that the employer had to pay to transitional employees during the first 18 months of employment, with a corresponding reduction to the minimum rate at which sick leave would need to be paid out. Transitional employees are not excepted from the requirement to provide employees with paid sick leave.

What Employers Should Do Now

- Determine whether you have any employees covered by the Ordinances. Remember, there are wide swaths of Los Angeles that are known by other names but are still part of the City. See [this map](#) for more information.
- Review your PTO policies, update them as needed, and consider the following questions:
 - Do you provide employees working in Los Angeles with up to 48 hours of PTO per year?
 - Do you allow employees working in Los Angeles to use time off in increments of one hour or less?
 - Do you allow employees to take PTO in connection with the illness/health care of not only family members covered by the California law but also any

blood relative and anyone with whom they have a close affinity akin to a family relationship?

- Are you or some of your employees exempted from the California law? Those exemptions do not apply to the Los Angeles Ordinances. You will need to bring your policies into compliance.
- Confirm that you are paying your employees at least the applicable minimum wage, which will also affect the minimum payout for sick time. As noted in a [schedule](#), which is included in the same Article as the paid sick leave provisions, beginning July 1, 2016, the minimum wage in Los Angeles applicable to employers with at least 26 employees, wherever they are located, will be \$10.50. Be aware that there is a higher minimum wage for certain hotel workers, pursuant to [Ordinance No. 183241](#), and they are also covered by different paid and unpaid time off provisions.

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