

State and Local Sick Leave Compliance

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Most California employers are obligated to provide paid sick leave to their employees under the Healthy Workplaces, Healthy Families Act of 2014. However, many local governments within the state also have ordinances that require employers to provide sick leave—and many of the requirements are not the same as under the California law. How does an employer meet all these sick leave obligations?

Local Governments Requiring Sick Leave

Currently, the cities of Emeryville, Los Angeles, Oakland, San Diego, San Francisco, and Santa Monica have local sick leave ordinances. Berkeley employers must also begin providing paid sick leave in July 2017, in compliance with that city's ordinance.

These local ordinances apply to most private employers with employees working in those locations, although some ordinances do not apply to smaller employers, place lesser obligations on smaller employers, or have delayed implementation dates for smaller employers.

Similarities and Differences Among State Law and the Local Ordinances

There are several basic similarities between the state sick leave law and local ordinances. For example, all require employers to provide sick leave at the rate of one hour for every 30 hours worked. All allow employees to use accrued sick leave for their own illnesses or related care, and also to care for certain family members. And, all include fines, penalties, or other enforcement mechanisms for employers who do not provide sick leave, or discriminate against employees for taking sick leave.

However, beyond these similarities, there are many differences. For example, state law and some of the ordinances permit an employer to meet the sick leave obligation by “frontloading” the time—that is, by providing it in a lump sum of sick leave all at once—or by using a different accrual method (other than one hour for every 30 hours worked). Additionally, the law and ordinances have different maximum accrual amounts, annual use limits, employee notice obligations, and medical certification requirements, among other conditions. And, the ordinances may provide additional reasons for which an employee can take the sick leave, or include more family members than are covered by the state law.

Other Obligations

In addition to the obligation to provide sick leave, the state law and local ordinances also impose other related requirements, including providing advanced notice of the right to sick leave, paying the sick leave at a specified rate, and retaining sick leave-related records for a minimum period of time (which varies).

Employers can find the state and each local government workplace posting requirements (in a variety of languages, depending on whether the employer has employees who speak other languages), on each entity’s website. An employer will have additional notice requirements, at minimum under state law, to include the information in a personalized notice to a new employee, and to include the sick leave balance on the employee’s wage statement.

State law also specifies the rate at which employers must pay employees for sick leave; generally, local ordinances require the same or a lesser rate. As discussed further below, an employer seeking to meet multiple sick leave obligations in one policy must pay the highest required rate.

Compliance Options

An employer subject to state law and one or more local ordinances has several options to comply. First, the employer may have one sick leave policy that includes all the most generous provisions of each law and applicable ordinance. (An existing paid time off policy may also meet this requirement.) An employer with Emeryville employees who chose this option, for example, would permit employees to take leave to care for a guide dog, because the Emeryville ordinance requires it.

Second, an employer may have one or more sick leave policies for employees in different locations. For example, an employer with employees traveling to various locations throughout either southern California or northern California might have policies for each group that meet the requirements of the state law and applicable region (e.g., Los Angeles, San Diego, and Santa Monica in southern California).

Third, an employer may choose to have a state sick leave policy that applies to all California employees, and provide additional, compliant sick leave to employees working in the localities that require it. Each locality generally only requires that sick leave accrue and be used in that locality. So, under this option, an employer could restrict an employee who occasionally worked in Oakland to accruing and using “Oakland sick leave” only when actually working in Oakland.

Special Considerations for Multi-Location Employees and Employers

Employers should also keep in mind that these local ordinances may apply even if employees work few hours in these locations, and multiple ordinances could even apply to the same employee. For example, the Emeryville and Oakland ordinances apply to any employee who works two hours per week in the city’s boundaries. So, an employee who works at an

employer's offices in Emeryville four days of the week and telecommutes from her Oakland home one day a week would be entitled to sick leave under both the ordinances.

Also, multi-state employers must consider sick leave obligations imposed by other states or localities in other states. For example, Arizona and Washington state recently passed sick leave laws; unsurprisingly, these laws are not exactly like the California law, either.

Because multi-location sick leave compliance is so complicated, it will be difficult for most employers to figure out these rules on their own. Employers should weigh the various options and plan to work with their employment counsel to develop a workable, legally compliant policy and practice. Additionally, new ordinances and laws are passed frequently, so multi-location employers must continue to monitor changes that may impact them.

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