

WS&Co. Benefits Alert

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Paid and Unpaid Leave Laws in California: An Update

Not only did the State of California implement its new paid sick leave law as of July 1, 2015, it also amended it on July 13, 2015, retroactively effective July 1, 2015! This Alert discusses how the new state paid sick leave law works with other state and federal leave laws whether paid or unpaid.

The California Amendment

Revisions to the California Paid Sick Leave Law. On July 13, 2015, Governor Brown signed legislation ([AB 304](#)) amending California's new paid sick leave law (Healthy Workplaces, Healthy Families Act). The law requires employers to provide employees with at least three days (24 hours) of paid sick leave per year. Among other changes, the amendments clarify the law in regards to accrual of sick leave, calculation of the rate of pay, and safe harbor status for employers with existing leave plans. The Amendment does the following:

- Makes it clear that the law applies to an employee who works in California “for the same employer” for 30 or more days within a year.
- Allows for additional methods for calculating accrued paid sick leave (originally set at a rate of one hour per 30 hours worked) so long as the accrual is on a regular basis so that an employee has no less than 24 hours of accrued sick leave by the 120th calendar day of employment, or each calendar year, or in each 12-month period.
- Clarifies methods for calculating an employee's pay used to determine accrued paid sick leave:
 - Rate of pay for employees eligible for overtime should be based on each employee's: (1) regular rate of pay for the week in which the employee uses sick leave (i.e., the rate used when calculating the overtime premium rate); or (2) total wages, excluding overtime premiums, divided by total hours worked in the full pay periods of the prior 90 days of employment.
 - Rate of pay for employees not eligible for overtime should be calculated in the same manner as the employer calculates wages for other forms of paid leave time.
- Clarifies that if an employee terminates employment and is paid for his or her unused sick leave (which is not required), and then is rehired, the employer is not required to reinstate accrued sick leave. However, if such sick leave is not paid out and the employee is rehired within one year, previously accrued and unused sick leave must be reinstated.

- Clarifies that an employer is not required to inquire into or record the purpose for which an employee uses paid sick leave.

Upcoming California Leave Bills

The following bills, if signed by Governor Brown, will revise the California Paid Sick Leave, Paid Family Leave (PFL), California Family Rights Act (CFRA), and Kin Care.

- **AB 11** revises the definition of an employee under the California Paid Sick Leave law to include providers of in-home support services.
- **AB 908** increases the level and duration (from six to eight weeks) of benefits provided in the PFL insurance program. The amount of the paid benefit will be based on income instead of a standard 55% wage replacement rate. The bill also removes the 7-day waiting period for these benefits.
- **SB 406** revises the CFRA to amend the definition of “child” to include children of domestic partners and deletes provisions regarding the age and dependent status of a child, expands permissible leave to include leave to care for a sibling, grandparent, grandchild, parent-in-law, or domestic partner with a serious health condition, and removes an exception when both parents are employed by the same employer, thereby requiring the employer to grant each employee up to 12 weeks of leave individually rather than between both parents.
- **SB 579** conforms some of Kin Care’s requirements to those provided for in the California Paid Sick Leave law, including the definition of family members and allowable reasons for using Kin Care’s family leave. The bill also adds school emergencies as an authorized reason to take Kin Care leave.

Interaction Between Kin Care and California Paid Sick Leave Law

The Kin Care law requires employers with sick leave policies to allow employees to use up to one half of accrued sick leave to care for family members. On the other hand, the new California Paid Sick Leave law allows all accrued sick leave to be used for the care of family members. Thus, if an employer’s sick leave policy provides for paid time off beyond the statutory 24 hours/ three days minimum provided by the state law, the balance of that leave still may be usable for Kin Care family leave.

Executive Order Establishing Paid Sick Leave for Federal Contractors

On Labor Day (September 7, 2015), President Obama signed an Executive Order requiring FEDERAL CONTRACTORS and subcontractors to provide up to 7 days of paid sick leave annually to employees on federal government contracts, including paid leave allowing for family care. This law does not apply to state employers or state contractors. The U.S. Department of Labor will issue regulations implementing the order by September 30, 2016. The Order applies to federal contracts initiated on or after January 1, 2017.