

Paid Sick Leave Policy:

July 2016 Minimum Wages and I-9 Violations

Q: We adopted the accrual method of paid sick leave and put that into effect last July and we now want to change to the lump sum method this year. Is that permissible?

- Two of the more common methods that an employer could adopt regarding the mandated state paid sick leave were the accrual method (1 hour of paid sick leave accrued for every 30 hours of regular and overtime hours worked) and the lump sum method (employer provided a minimum of 24 hours or 3 days up front to an employee's sick leave bank).
- There is nothing in the law that would prevent an employer from changing the method used. However, if an employee had any unused paid sick leave at the end of the first 12 months under the accrual method that was in effect, up to 48 hours would need to be carried forward.

Q: I have adopted the lump sum method of paying sick leave and under that method there was no carryover from year to year. I want to adopt a carryover provision to eliminate employees all using that time before it expires. Is that something that I can do?

- Yes, you are able to provide a greater benefit than the law specifies. In this case, with the lump sum option, you were not required by law to allow any carryover.
- If you now choose to provide for carryover, you could do so, but you would still need to continue to provide the lump sum payment at the beginning of the second year as you did when you instituted your paid sick leave policy.

Q: Can I provide more paid sick leave to some employees and not others?

- Yes, an employer may treat different classes of employees differently as long as all employees in that class are treated equally and as long as the minimum paid sick leave provisions are met for each class.
- For example, an employer may elect to provide more paid sick leave to full-time employees than to part-time employees.

Q: Can we choose not to limit the use of paid sick leave during an employee's first 90 days of employment?

- Yes, you may choose not to include the provision limiting new employees from using paid sick leave during the first 90 days of employment.
- If you had adopted that provision last July when your paid sick leave policy needed to go into effect, you could make a change in your policy to not include that provision going forward, as it was an option that an employer could adopt.

Q: Am I required to limit the use of an employee's paid sick leave to 24 hours or 3 days per year?

- The state-mandated minimum amount of paid sick leave that an employer was required to provide to employees was 24 hours or 3 days, whichever was greater. There is nothing in the law that would prevent you from providing more paid sick leave to your employees.
- In fact, many cities in California have adopted their own paid sick leave ordinances that require more than the state law required, and in order to meet a local ordinance, an employer would have to provide more.

Local Laws:

Many of the changes that employers may want to make have not been provided for in the original law or amendment. In addition, many cities in California have passed their own paid sick leave ordinances.

Los Angeles City Issues Sick Leave Law. Starting July 1, 2016, a new Los Angeles City Ordinance doubles the amount of sick leave for all employees as compared with the California state allotment, and requires that employees be permitted to use up to 48 hours of accrued sick leave each year (not the 24 hours specified by state law).

City of San Diego. Starting July 11, 2016 requires allowing paid time off (can combine paid sick leave, vacation and or paid time off) of up to 40 hours a year earned at the rate of 1 hour per every 30 hours worked, however the San Diego City law does not allow for any cap on accrued hours. No payment of accrued sick hours need be paid when employment ends.

This amount is, however, still substantially less than the 72-hour cap implemented for employers in cities like Santa Monica and San Francisco.

Therefore, any changes that an employer might choose to make to an existing paid sick leave policy should be reviewed with legal counsel.

Local Ordinances:

A number of other cities already have minimum wages that differ from the state minimum wage.

Following is a list of the cities (and one county) that will be increasing the required minimum wage on July 1. Eligibility rules may vary from city to city:

- **El Cerrito:** \$11.60/hour.
- **Emeryville:** \$13/hr. for businesses with 55 or fewer employees; \$14.82/hr. for businesses with 56+ employees.
- **Los Angeles (city):** \$10.50/hour for employers with 26 or more employees; \$15.37/hour for hotel workers. Increase delayed until 2017 for employers with 25 or fewer employees.
- **Los Angeles County:** \$10.50/hour for employers with 26 or more employees. Increase delayed until 2017 for employers of 25 or fewer employees.
- **Pasadena:** \$10.50/hr. for employers with 26+ employees. Increase delayed for employers of 25(-) employees.
- **San Diego (city):** \$10.50/hour (effective July 11 or July 18, whenever election results are certified)].
- **San Francisco:** \$13/hour.
- **Santa Monica:** \$10.50/hour for employers with 26 or more employees; \$13.25/hour for hotel workers. Increase delayed to 2017 for employers with 25 or fewer employees.
- **Sunnyvale:** \$11/hour.

Just Announced:

July 2016 Business Immigration Zone: I-9 Compliance Alert: DOJ New Fines For Immigration & Employment Verification Violations

The U.S. Department of Justice has filed a rule that will increase possible penalties for unfair employment practices tied to immigration and employing undocumented individuals.

- The new rule will increase paperwork violations related to I-9 verification documents, increasing the minimum penalty per violation from \$110 to \$216 and the top penalty from \$1,100 to \$2,156. For unfair immigration-related employment practices, an initial violation could pose a new top penalty of \$3,563 per charge
- The minimum penalty for employing undocumented individuals will jump from \$375 to \$539, while the maximum will go from \$3,200 to \$4,313. Employers with multiple violations will face a new maximum penalty of \$21,563 for unlawfully employing immigrants.
- The regulation takes effect on August 1, and the increases will apply to violations that took place after November 2, 2015.

If you have not had an outside firm (such as Don Dressler Consulting) perform an audit of your I-9 forms recently, we strongly encourage you to do so. Contact Don Dressler - Consultant & Attorney at Law - Call: 949-533-3742; or visit: <http://www.calworksafety.com> & www.DonDressler.com