



Attention California Employers: San Francisco's New Paid Sick Leave Law May Apply to You

Insights

12.26.06

Effective February 5, 2007, all employers with employees working within the City and County of San Francisco must comply with a new San Francisco ordinance, which requires employers regardless of size to provide paid sick leave.

Eligibility Requirements

The definition of "employer" is broad and includes "any person . . . including corporate officers or executives, who directly or indirectly or through any agent or any other person, including through the services of a temporary services or staffing agency, employs or exercises control over the wages, hours or working conditions of an employee."

A covered employee is defined as "any person who is employed within the geographic boundaries" of San Francisco. Thus, regardless of where your headquarters may be located, you must provide paid sick leave to all employees who work in the city and county of San Francisco. Note that the ordinance is not limited to non-exempt employees. It applies to exempt employees, including supervisors and managers, as well as temporary and part-time employees, and participants in a Welfare to Work Program (i.e. any public assistance program administered by the Human Services Agency).

Broader Definition Of Sick Leave

The Sick Leave Ordinance incorporates the definition of sick leave under California Labor Code section 233(b)(4), which provides for leave for the employee's own illness, injury, medical condition, need for medical diagnosis or treatment, or medical reason. But there's an added twist: under the Sick Leave Ordinance, sick leave also encompasses time taken off work by an employee for the purpose of providing care or assistance to a child, parent, legal guardian or ward, sibling, grandparent, grandchild, spouse, registered domestic partner or ***other designated person***.

"Other designated person" means any person no particular relationship is required provided the employee has no spouse or registered domestic partner. You must provide employees with the opportunity to make such designation no later than the date upon which sick leave begins to accrue; the employee then has 10 work days to make a designation. Thereafter, on an annual basis, you must provide employees with the same 10-workday window to change their designations.

Although state law only requires that employees be permitted to use *half* of their allotted sick time to care for another family member, the San Francisco ordinance requires that employees may use

all of their paid sick leave to care for another sick person.

Qualifying For The Leave

Under the Sick Leave Ordinance, paid sick leave accrues at the rate of one hour for every 30 hours worked. The time accrues only in full hour increments not in fractions or pro-rated amounts. The maximum amount of sick leave which may accrue depends on the size of the employer. For small business, (fewer than 10 employees, including part time and temporary employees) the sick leave is capped at 40 hours. For all other employers, the cap is 72 hours. The sick leave must carry over from year to year but is subject to the applicable accrual caps.

You may require employees to give "reasonable notification" of an absence from work but may only take "reasonable measures" to verify or document that an employee's use of paid sick leave is lawful. Unfortunately, the Sick Leave Ordinance's enforcement agency the Office of Labor Standards Enforcement has not yet provided any interpretive guidance as to the meaning of reasonable notification or reasonable measures.

One thing the law makes clear is that an employer need not pay accrued but unused sick leave upon termination of employment.

Sick Leave Policies

The law requires that an employer that does not currently have a paid sick leave policy must implement one by February 5, 2007. Sick leave will begin to accrue for current employees as of that date. For those hired after February 5, paid sick leave must begin to accrue 90 days after the commencement of employment.

If you already have a paid sick leave policy that complies with the minimum requirements of the Sick Leave Ordinance, there is no need to modify your policies. And, of course, you are not prohibited from having a more generous sick leave policy than that required by the Sick Leave Ordinance.

Not surprisingly, the ordinance does not apply to employees covered by a collective bargaining agreement, to the extent that such requirements are expressly waived.

Posting And Record-Keeping Requirements

Employers must retain records documenting hours worked and paid sick leave taken for a period of four years. Failure to maintain such records will result in a presumed violation absent clear and convincing evidence otherwise.

There is also a requirement that employers post a compliant notice by the effective date. The Office of Labor Standards Enforcement will publish and make available to employers, in all languages spoken by more than 5% of the San Francisco workforce, the required notice for posting informing employees of their rights under the Sick Leave Ordinance.

Enforcement And Penalties

Employers are prohibited from retaliating against employees for exercising their rights under the Sick Leave Ordinance. Retaliation includes discriminating against or taking any adverse action (such as discharging, threatening to discharge, demoting, suspending, or in any manner discriminating), against employees because they exercised their rights under the Sick Leave Ordinance. Taking adverse action against an employee within 90 days of exercising his or her rights, creates a presumption of unlawful retaliation.

You also may not interfere with, restrain or deny employees the right to use paid sick leave, the right to file a complaint (including a mistaken but good faith complaint), or to cooperate with the Agency in any investigation. Furthermore, you may not count sick leave under the Sick Leave Ordinance as an absence that could lead discipline or other adverse action.

The Ordinance may be enforced through an administrative process before the Agency, or by a civil action. The law provides for a hearing before the Agency. Civil actions may be enforced by the Agency, the City Attorney, any person aggrieved by a violation of the ordinance, or any other person or entity acting on behalf of the public as provided for under applicable state law.

Penalties available include reinstatement, back pay, the payment of any sick leave unlawfully withheld, and the payment of an administrative penalty set by the Agency. If the sick leave was unlawfully withheld, the administrative penalty will include the greater of: 1) three times the dollar amount of the sick leave withheld or \$250, in addition to 2) a penalty of \$50 per day to each person who harmed. If a lawsuit is brought by a person or entity enforcing the ordinance on behalf of the public, that person or entity is entitled to the equitable relief of an injunction, restitution, and reasonable attorney's fees and costs.

Our Advice

1. Review and update your sick leave policies to ensure compliance with the new Ordinance. Be sure to provide that employees may take paid leave to care for another person, including a designated person, where permitted by the ordinance.
2. Post the required notice.
3. Provide a written "designation form" to permit employees to name the "other designated person" if the employee has no spouse or domestic partner.
4. Review your time-keeping systems to ensure that your system allows for the required accrual of paid leave time.
5. Review your document retention policies to ensure that the required documentation will be maintained for 4 years.
6. Advise supervisors and managers of the new law so they may ensure compliance.

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This Labor Alert provides an overview of the important aspects of this new law. It is not intended to be, nor should it be considered as, legal advice for any specific fact situation.