

# THE EVER-EVOLVING OBLIGATIONS OF CALIFORNIA EMPLOYERS TO PROVIDE PAID SICK LEAVE (AND NEW MINIMUM WAGE REQUIREMENTS, TOO!)

Insights  
Jun 9, 2016

This month, the Cities of Los Angeles and San Diego passed paid sick leave and minimum wage ordinances to go into effect soon. While all California employers have been required to provide paid sick leave to employees since July 1, 2015, these new local ordinances create an increasingly complicated web for compliance, particularly for employers with multiple locations.

**Los Angeles** The ordinance in the City of Los Angeles goes into effect on July 1, 2016 in conjunction with the previously passed minimum wage proposal.

The Los Angeles sick leave ordinance covers all employers of employees who work at least two hours in the City of Los Angeles in a particular week. Employees who work in the City of Los Angeles must be employed with the same employer for at least 30 days to be entitled to paid sick leave.

Under the new Paid Sick Time statute in Los Angeles, employers must be prepared for the following:

1. **Use.** Employees must be allowed to use **48 hours** per year for the same purposes as those in the state Paid Sick Leave statute. However, unlike the state law, the Los Angeles City Ordinance does *not* specify that employers may require sick time be taken in two-hour increments. Employees may now begin using Paid Sick Time on July 1, 2016 or the 90th day of employment. Also, the Los Angeles ordinance expands the family member definition to include "any individual related

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by blood or affinity whose close association with the employee is the equivalent of a family relationship.”

**2. Employee’s Notice.** Employers may require employees to give reasonable documentation of an absence from work. However, employers should be cautious in doing so to avoid running afoul of state law.

**3. Accrual.** Employers may use one of two available accrual methods:

- Employees are granted the full 48 hours of paid sick time at the beginning of each year (anniversary, calendar, or other 12-month period); or
- Employees accrue one hour of sick time for every 30 hours worked.

**4. Accrual Cap.** Employers may establish a maximum accrual cap at 72 hours. If there is a PTO or compensated time off policy that allows for 48 hours of annual leave to take care of employee, employee’s family member and anyone of “close association similar to that of a family member,” then no additional time off is required.

**5. On Termination.** Employers are not required to pay employees for accrued but unused paid sick leave at termination.

**6. Reinstatement.** If a terminated employee is re-hired within one year, he or she is entitled to reinstatement of his or her accrued but unused paid sick leave (similar to California law).

Additionally, the Los Angeles Minimum Wage Ordinance sets for the following schedules for minimum wage increases:

For employers with 26 or more employees:

- July 1, 2016: \$10.50/hour
- July 1, 2017: \$12.00/hour
- July 1, 2018: \$13.25/hour
- July 1, 2019: \$14.25/hour
- July 1, 2020: \$15.00/hour

For employers with 25 or fewer employees:



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## Service Focus

Employee Leaves and Accommodations

Wage and Hour

- July 1, 2017: \$10.50/hour
- July 1, 2018: \$12.00/hour
- July 1, 2019: \$13.25/hour
- July 1, 2020: \$14.25/hour
- July 1, 2021: \$15.00/hour

Beginning July 1, 2022, the minimum wage will increase every July 1st based on the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for the Los Angeles metropolitan area. The new rates will be announced each preceding February 1st.

### **San Diego**

On June 7, 2016 the voters in San Diego voted in favor of passing Proposition I, a new Paid Sick Leave and Minimum Wage Ordinance.

The vote must be certified by July 7, 2016. Although we do not have a specific date at this time, this Ordinance is expected go into effect soon after the vote is certified.

The San Diego sick leave ordinance covers all employers of employees who work at least two hours in the City of San Diego in one or more weeks of the year. Employers must be prepared for the following:

**1. Use.** Employees must be allowed to use up to **40 hours** per year. The available reasons to take sick leave match those currently available under state law and also allows sick leave to be used when an employee's place of business or the school or child care provider of a child in the employee's care is closed due to a public health emergency. Employers in San Diego may also require that employees take sick leave in two-hour increments. Employees may begin using Paid Sick Leave after the 90th calendar day of employment.

**2. Employee's Notice.** Employers may require that employees give reasonable notice where the need for leave is foreseeable or notice as soon as practicable where the need for leave is not foreseeable. However, employers cannot require more than one week's notice. The employer may require documentation for absences of **more than three** consecutive work days.

**3. Employer's Notice.** Employers must provide notice of the new Ordinance in two ways: (1) they must post a poster created by the city; and (2) they must provide written notice to each new employee upon hire.

**4. Accrual.** Employees earn one hour of paid sick leave for every 30 hours worked, and earned unused sick leave carries over to the next year. While there is no express advance option, the Ordinance allows employers to meet their obligation through the use of paid time off, paid vacation, or paid personal days.

**5. Accrual Cap.** The ordinance does **not** provide for an accrual cap; employees may accrue indefinitely. However, employers may limit use to **40 hours** per benefit year. A benefit year is any regular and consecutive 12-month period defined by the employer.

**6. Reinstatement.** If a terminated employee is rehired within six months, he or she is entitled to reinstatement of his or her accrued but unused paid sick leave. If an employee is rehired within one year, he or she will be entitled to his or her accrued, but unused sick leave under California state law.

Additionally, the ordinance sets for the following schedule for minimum wage increases for time worked in the City of San Diego:

- Ordinance's Effective Date (TBD): \$10.50/hour
- January 1, 2017: \$11.50/hour

Beginning January 1, 2019, the minimum wage will increase every January 1st based on the CPI-W U.S. City Average. The new rates will be announced each preceding October 1st.

**Enforcement.** The City will create the Enforcement Office, which can impose the following penalties:

- Up to \$1000 per violation for any violation, except notice and posting violations
- Notice and posting: \$100 per employee up to \$2,000

Employees also have a private right of action for back wages and liquidated damages, reinstatement, reasonable attorney fees and costs.

**State Law**As always, these local ordinances do not eliminate an employer's obligations under existing state and federal law, including the California Paid Sick Leave statute. To the extent there are conflicts, the employer must follow the law that provides the greater benefit to the employees.

If you have any questions about these new ordinances, or how they may affect your organization, please contact your Fisher Phillips attorney or one of the attorneys in any of our California offices.

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*This Legal Alert provides an overview of specific new laws in Los Angeles and San Diego. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.*