



CALIFORNIA
Work & Family
COALITION



Frequently Asked Questions about Local Paid Sick Days Laws

Q: What types of leave fall under the category of “paid sick days”?

A: Typically, paid sick days laws ensure that workers don’t lose wages when they must miss work to recover from their own illness, care for a sick family member, or seek out preventive health care for themselves or their family members. Some laws also include “safe days,” for use by survivors of domestic violence, sexual violence, and/or stalking (or by their family members), to deal with issues related to the abuse. Workers earn their sick days by accruing them at rates specified by each law, e.g., 1 hour of sick time for every 30 hours worked.

Paid sick days are typically used for shorter-term illnesses, such as a cold or the flu, rather than major illnesses or hospitalizations.

Q: What types of leave typically *do not* fall under the category of “paid sick days”?

- **Paid family leave:** Compensation for time away from work to bond with a new baby, adopted child, or foster child, or to care for a seriously ill or disabled family member. In contrast to sick days, this type of leave is used for longer-term situations, such as caring for a family member recovering from a stroke or undergoing cancer treatments.
- **Paid medical leave/disability leave:** Compensation for time away from work to recover from one’s own serious illness or disability. This type of leave is typically used for longer-term situations than those covered by paid sick days.
- **Vacation:** Compensation for time away from work for rest, relaxation, and other personal uses.
- **Paid Time Off (PTO) Banks:** See below.

Q: What is the difference between paid sick days policies and PTO (paid time off) banks?

A: PTO banks consolidate multiple types of leave into a single plan or policy. They typically include paid vacation, sick, and personal days. Employers place all or most leave in one “bucket” and employees can use it for any purpose. In contrast to paid sick days policies, which specify circumstances for use, PTO policies are more flexible.

Under many enacted paid sick days laws, employers with existing PTO policies can keep them in place *so long as employees can use their PTO leave under the same circumstances they would use their paid sick days*. For example, if an employer requires notice prior to use of PTO and the local paid sick days law allows employees to take sick time without giving notice when doing so is not practical (as is usually the case under existing sick days laws), the employer would need to change its PTO policy to allow for scenarios where notice is not possible.

No city, county, or state has adopted a law that requires employers to provide PTO.

Q: If the city adopts a paid sick days law, will employers be required to “pay out” employees for any remaining sick time when they leave their jobs?

A: No state has a law that requires employers to pay out unused sick time upon employee separation from a job. Some states have rules that require employers to pay out vacation time. If an employer in a jurisdiction with a sick days law chooses to provide its paid sick time through a PTO bank instead of a “straight” sick time policy, it may be required to pay out unused PTO. *In California, PTO is treated the same as vacation leave for payout purposes, so employers must pay out unused time.*¹ However, under all existing local and state paid sick days policies, **no**

¹ See California Department of Industrial Relations, Division of Labor Standards Enforcement Opinion Letter on Labor Code §233 at <http://www.dir.ca.gov/dlse/opinions/2003-05-21.pdf>

employer is required to offer PTO, and those that are already offering PTO are subject to the payout requirement, independent of any proposed or enacted paid sick days laws.

Q: Can employees carry over unused sick days from one year to the next?

A: Carry-over rules are determined by a jurisdiction's specific legislation and regulations. In the more than two dozen jurisdictions that have passed paid sick days laws, all have adopted provisions that cap the total amount of sick time that a worker can carry over and total amount he or she can use or earn in a given year. For example, in San Francisco, workers in businesses with 10 or more employees can carry over 72 hours of paid sick time from the previous year, but they **may not earn more than 72 hours**. So, until they use some of their accrued 72 hours, they will not continue to accrue additional sick time. Other jurisdictions cap how many hours a worker can **use** in a given year. Finally, a few jurisdictions give employers the option of paying workers for unused sick time *instead* of allowing them to carry it over.

Q: What is the existing California law on paid sick days?

A: California's Healthy Workplaces, Healthy Families Act of 2014 includes the following elements:

Eligibility. Beginning July 1, 2015, all workers in California who have worked for the same employer for 30 days and satisfied a 90 day probation period are eligible to earn paid sick days.

Accrual. Paid sick leave accrues at the rate of 1 hour per every 30 hours worked, paid at the employee's regular wage rate. Accrual begins on the first day of employment. Employers can limit employees' use of sick time to 24 hours or 3 days per year, even if they accrue more time than this. Unused paid sick days can carry over from year to year, but employers can limit carryover to 6 days or 48 hours.

Employee Use. Employees may use sick days for themselves or a family member for the diagnosis, care or treatment of an existing health condition or preventive care, or if they are victims of domestic violence, sexual assault, or stalking. Family is defined as a child, parent, parent-in-law, spouse or registered domestic partner, grandparent, grandchild, or sibling. An employer must provide the paid sick time upon the employee's oral or written request and cannot retaliate or require employees to find their own replacement. Employees must provide notice if the sick leave is planned, e.g. scheduled doctor's visit, but cannot be penalized for lack of early notice in case of unanticipated illness.

Employer Obligations. Employers must post information in the workplace and track accrual on paystubs. Employers cannot deny use of sick days based on "lack of detail" from the employee. When employer violations occur, a worker may recover a penalty equal to three times the paid sick leave or \$250, whichever is greater. A worker may also recover an administrative penalty of \$50 per day for each day the violation occurred or continued, capped at \$4,000. There are additional fines for violation of the posting requirement.

Resources:

- Overview of existing paid sick days statutes from *A Better Balance*: <http://www.abetterbalance.org/web/images/stories/Documents/sickdays/factsheet/PSDchart.pdf>
- An Introduction to PTO Banks from *CLASP* and *IWPR*: <http://www.clasp.org/resources-and-publications/publication-1/PTO-Paper-1-the-basics-FINAL-6-5-12.pdf>
- For additional information on California's Healthy Workplaces, Healthy Families Act: http://www.dir.ca.gov/dlse/Paid_Sick_Leave.htm

Please contact Sophia Cheng, ROC LA, sophia@rocunited.org or Liz Ben-Ishai, CLASP, at lbenishai@clasp.org with questions.