



LAW UPDATE LABOR AND EMPLOYMENT

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SB 616: PAID SICK DAYS ACCRUAL AND USE

SB 616, which expands the right to paid sick leave for certain California employees, was signed into law on October 4, 2023, and became effective on January 1, 2024. The new requirements outlined below apply to California public school employers, who must now permit those employees who are not recognized members of a collective bargaining unit – primarily substitute and seasonal workers – to accrue 40 hours or five days of paid sick leave.

Non-Bargaining Unit Employees

Because the vast majority of collective bargaining agreements applicable to certificated and classified units provide for a greater amount of paid sick leave, SB 616 applies primarily to non-bargaining unit employees, who will now be able to accrue up to 40 hours or five days of paid sick leave in a 12-month period. However, if the collective bargaining agreement provides less than 40 hours or five days of paid sick leave, SB 616 does apply.

Accrual of Paid Sick Leave

There are three accrual options districts can choose for employees, the only caveat being that the accrual method must be applied equally to all employees of the district.

Option 1:

Employees can accrue one hour of paid sick leave for every 30 hours worked.

Option 2:

The district can choose to front-load 40 hours or five days of paid sick leave at the beginning of employment and the start of each 12-month period thereafter. The benefit of front-loading is that no accrual or carryover is required under the law.

Option 3:

Employees can accrue paid sick leave at a rate other than one hour for every 30 hours worked, as long as the accrual is regular and ultimately results in no less than 24 hours or three days of paid sick leave accrued by the 120th day of employment and no less than 40 hours or five days of paid sick leave by the 200th day of employment.

Using and Capping Sick Leave

If employees accrue paid sick leave, i.e. paid sick leave is not front-loaded, employees are not entitled to access accrued sick leave until the 90th day of employment. Additionally, districts may choose to impose a maximum accrual cap of 80 hours or 10 days, and use a limit of 40 hours or five days per year of employment, calendar year, or 12-month period.

Even with the recent amendment to the Labor Code, districts are still not required to provide compensation to an employee for accrued, unused paid sick leave upon separation from employment. If, however, the employee is rehired within a year from the date of separation, the previously accrued and unused paid sick days must be reinstated. The employee is then entitled to use those previously accrued and unused paid sick days and to accrue additional paid sick days, subject to the use and accrual limitations as outlined above.

For your convenience, below please find hyperlinks to the Department of Industrial Relations Paid Leave factsheet (also available in Spanish) and the FAQ published by the Labor Commissioner's Office:

<https://www.dir.ca.gov/covid19/outreach-files/Right-to-Paid-Sick-Leave-English.pdf>
<https://www.dir.ca.gov/covid19/outreach-files/Right-to-Paid-Sick-Leave-Spanish.pdf>
https://www.dir.ca.gov/dlse/Paid_Sick_Leave.htm

As always, please contact us with any questions.

- Julia K. Vlahos

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