

**THIS POSTER MUST BE DISPLAYED WHERE EMPLOYEES CAN EASILY READ IT**

*(Poster may be printed on 8 ½" x 11" letter size paper)*

**HEALTHY WORKPLACES/HEALTHY FAMILIES ACT OF 2014  
PAID SICK LEAVE****Entitlement:**

- An employee who, on or after July 1, 2015, works in California for 30 or more days within a year from the beginning of employment is entitled to paid sick leave.
- Paid sick leave accrues at the rate of one hour per every 30 hours worked, paid at the employee's regular wage rate. Accrual shall begin on the first day of employment or July 1, 2015, whichever is later.
- Accrued paid sick leave shall carry over to the following year of employment and may be capped at 48 hours or 6 days. However, subject to specified conditions, if an employer has a paid sick leave, paid leave or paid time off policy (PTO) that provides no less than 24 hours or three days of paid leave or paid time off, no accrual or carry over is required if the full amount of leave is received at the beginning of each year in accordance with the policy.

**Usage:**

- An employee may use accrued paid sick days beginning on the 90<sup>th</sup> day of employment.
- An employer shall provide paid sick days upon the oral or written request of an employee for themselves or a family member for the diagnosis, care or treatment of an existing health condition or preventive care, or specified purposes for an employee who is a victim of domestic violence, sexual assault, or stalking.
- An employer may limit the use of paid sick days to 24 hours or three days in each year of employment.

Retaliation or discrimination against an employee who requests paid sick days or uses paid sick days or both is prohibited. An employee can file a complaint with the Labor Commissioner against an employer who retaliates or discriminates against the employee.

For additional information you may contact your employer or the local office of the Labor Commissioner. Locate the office by looking at the list of offices on our website <http://www.dir.ca.gov/dlse/DistrictOffices.htm> using the alphabetical listing of cities, locations, and communities. Staff is available in person and by telephone.

### Requesting doctor's notes

Employers can ask employees to provide a doctor's note for absences due to illness. Even if the company does not normally require a doctor's note, it can impose the requirement for suspicious circumstances, such as calling in sick on the same day a request for vacation was denied. However, the note should only verify that the employee had a visit on a particular day. It should not contain medical information or a diagnosis, since requesting that information is likely to be an unlawful medical inquiry under the Americans with Disabilities Act (that is, a request that is not job-related and consistent with business necessity).

Keep in mind that employees may not visit a doctor for illnesses such as a cold, flu, or foodborne illness, even though they may legitimately be absent. The employee might even be able to obtain a note after the fact, or the doctor may simply take the employee's word regarding the illness (such as claiming to have a severe migraine).

A requirement for a doctor's note may inconvenience the employee by requiring a visit to a medical professional, but it may not solve a problem of suspected abuse. Also, a clever employee might claim that he or she was caring for a family member who was ill, which can make the verification more challenging.

Also, don't create the impression that as long as the employee provides a doctor's note, any sick time will be excused. Many employees already have the mistaken impression that their company cannot impose discipline for excessive absences as long as they have a doctor's note. In reality, only certain absences must be excused (such as FMLA absences or time off granted as an accommodation for disability). For instance, an employee might suffer from regular bouts with the flu, but even if the employee provides a doctor's note each time, the company may determine that the absences are excessive.

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### Problems with doctor's notes

Although employers can require a doctor's note, there are some restrictions under the Americans with Disabilities Act (ADA) because that law was written to prohibit employers from obtaining medical information that is not job-related and consistent with business necessity.

For example, it may be acceptable to request a note which says something generic like "[name of employee] visited the doctor on [date]." A doctor might not specifically tell the employee to stay home for a certain number of days, but it could still be reasonable for the employee to do so. If an employee has a severe case of the flu and is suffering from fever and dehydration, a doctor may recommend bed rest and drinking liquids. However, the doctor won't necessarily know whether the individual will recover in one day or three days (or longer).

Even a basic doctor's note might result in the unintentional acquisition of medical information. For example, suppose an employee is suffering from depression and visits a psychiatrist who prescribes a sleeping aid. If the note indicates that the employee visited a psychiatrist, the company probably gained knowledge that the employee has a mental or psychological condition, even if the nature of the condition wasn't described.

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## Employee Relations Essentials

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The other issue to keep in mind is whether a doctor's note is necessary. An employee who suffers from the flu might not visit a doctor and won't be able to provide a note. However, the company may not want that person in the office, potentially spreading the condition. Allowing the person to stay home may actually be better for the team.

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A company could simply declare that paid sick leave is not available in certain cases, and the absences will be unpaid. Many employers have a policy of denying holiday pay if an employee calls in sick on the day before or after the holiday. Similarly, it would be reasonable to deny the use of paid sick leave if the employee calls in on days when vacation requests were denied. The reduced paycheck might be more of a "discouragement" than having to visit a doctor (although a doctor's visit can also impose some "out of pocket" costs for the employee).

In addition, the company might clarify that if the circumstances of an absence are suspicious, the time off will be unpaid and the employee will be subject to discipline (under an assumption of sick leave abuse) unless the employee can verify that the sick leave was legitimate. For example, an absence might be suspicious if the employee:

- Takes the day off before or after a holiday,
- Calls in sick on the same days each year (perhaps during a state festival or opening weekend of fishing season),
- Has a vacation request denied and calls in sick on those days,
- Has an unusual number of sick days on Fridays or Mondays, or
- Otherwise creates suspicion or shows an unusual pattern of sick leave use.

In those cases, the use of paid sick leave could be denied. Further, the company might automatically determine that these suspicious absences are unexcused unless the employee can substantiate the absence. This might mean providing a doctor's note or some other verification, depending on the circumstances.

If the employee can provide verification, the absence would be excused (not subject to discipline) and the employee might even be allowed to use paid sick leave. However, if the employee cannot provide verification, or if the doctor's note is suspicious (e.g., the employee was absent on Thursday and Friday, but the doctor's note was obtained on Sunday afternoon), then a company might still determine that the time is unexcused and unpaid.

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### *Situation analysis*

#### **Catching fraudulent leave**

An employee requests a week of vacation during the busy season, and her request is denied. Mysteriously, when the dates roll around, she calls in sick with the flu. Similar concerns might arise when an employee who has long protested being scheduled on Saturdays suddenly finds religion — one that doesn't allow him to work on Saturdays. In both circumstances, the company may wonder if the employee's requests could be a ploy.

Unfortunately, getting to the bottom of such matters can prove to be a difficult task.

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# Square Payroll: California's New Paid Sick Leave Law

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## The Basics of California's Sick Leave Requirement

Starting July 1, 2015 employees must be offered at least 3 days (24 hours) of sick leave per year, with the option to rollover any unused days to the following year, allowing for a total accrual of at least 48 hours (six days).

- All California employees who work more than 30 days in a year as of 1/1/2015 qualify, including part-time and temporary employees.
- Employees hired before July 1, 2015 will start accruing sick leave on July 1, 2015. Employees hired after July 1, 2015 will start accruing sick leave on their first day of work.
- Employees are entitled to use accrued sick days beginning on the 90th day of employment.

Basically, employers can choose to offer sick leave in one of two ways:

- Incrementally offer at least one hour of paid leave for every 30 hours worked.
- Offer all employees the minimum paid sick leave (3 days) at the beginning of each year.

Sick pay is based on the employee's regular hourly rate. Employers must also show how many days of sick leave employees have available on their pay stub or a document issued the same day as their paycheck.

Please note that this statewide law does not preempt local ordinances. For example, employers with employees working in San Francisco are required to comply with the San Francisco Paid Sick Leave Ordinance (PSLO) [<http://sfgsa.org/index.aspx?page=419>] as well. Check with your local small business administration if you need further guidance.