

One Minute Memo®



L.A. Gets Sick—Paid Sick Leave Coming as Soon as July 1, 2016

By Dana D. Howells

***Seyfarth Synopsis:** The Los Angeles City Council has voted and the Mayor has signed the ordinance. As of July 1, 2016, many employees within the City of Los Angeles will be entitled to accrue 48 hours of paid sick leave per year. The ordinance has a number of unusual and specific provisions that employers need to be aware of, described in detail below. Link to the Ordinance [here](#).*

Not content with California paid sick leave law (discussed [here](#), [here](#), and [here](#)), several California municipalities have piled on. Their local ordinances require employers with employees working within their geographical boundaries to provide paid sick leave over and above what California law requires (California Labor Code Sections 245-249). The City of Angels is now poised to put a peculiar L.A. spin on paid sick time. The state paid sick leave law does not supersede local ordinances, and employers must comply with both the state and the local laws, whichever is more favorable to employees.

By a 13-1 vote on April 19, 2016, the Los Angeles City Council voted in favor of **48 hours of paid sick leave** for Los Angeles employees as an amendment to a L.A. City minimum wage ordinance. **That amount is double the annual amount of paid sick leave available under California's state-wide sick pay law** (24 hours/3 days). Following the initial vote, the City Council asked the City Attorney to draft the ordinance. Two versions of the ordinance were drafted and after confusing repeated voting on June 1, 2016, we are informed that one version has passed. The paid sick leave provisions are found in Article 7 of Chapter XVIII of the Los Angeles Municipal Code, Section 187.04 (A)-(I)).

Coverage. Unlike state law, which contains exceptions for construction workers, certain home health workers, flight crews, and workers covered by union agreements (if certain conditions are met), the L.A. ordinance has no exceptions. The minimum wage provisions of the ordinance distinguish between larger employers (26 or more employees) and smaller employers (25 or fewer employees) for implementation timing—smaller employers have until July 1, 2017. It is uncertain from the text whether a similar grace period before implementation of paid sick leave for exists for smaller employers; at least one City Council member's office confirmed the grace period for small employers applies to sick leave. Employees who work 30 days in Los Angeles within a year "from the commencement of employment" are covered (similar to the California state paid sick leave law).

- "Employee" is defined to include all individuals who perform two or more hours per week within the geographic boundaries of the City.
- "Employer" is defined as including "a corporate officer or executive, who directly or indirectly or through an agent or

any other person, including through the services of a temporary service or staffing agency or similar entity, employs or exercises control over the wages, hours or working conditions of any Employee.” Thus, the ordinance appears to hold corporate officers and executives individually accountable.

Accrual/Grant and Use. Current employees must *begin accruing or receive a grant* of sick leave on July 1, 2016. Employees hired after July 1, 2016, will begin to accrue or will be granted paid sick leave on their date of hire. Employees may use paid sick leave beginning on the 90th day of employment or July 1, 2016, whichever is later. L.A. employees will be entitled to use up to 48 hours of sick leave in “each year of employment, calendar year or 12-month period.” Accrued unused paid sick leave shall carry over to the following year of employment, but may be capped at 72 hours. Employers may set a higher cap or no cap at all (having no cap is not recommended).

Employers have a choice of either (1) providing the entire 48 hours to an employee at the beginning of each year of employment, calendar year, or 12-month period (“lump grant”) or (2) having sick leave accrue at the rate of one hour of sick leave per every thirty 30 hours worked (“accrual”). While both the “lump grant” method and the same accrual rate are allowed by the state law (the state law has additional accrual options not allowed by the L.A. ordinance), state law provides that if an employer uses the “lump grant” design, then unused sick leave does not carry over and unused balance is simply replaced by the new lump grant. L.A. is different. Under the L.A. ordinance, up to 72 hours must carry over year to year. So, while an L.A. employee can use only 48 hours of sick pay in a year, the employee can carry over 72 hours of paid sick leave (or more, if the employer allows it).

L.A. employers need not pay out unused L.A. sick days upon termination. If an employee separates and is rehired within one year, then previously accrued and unused paid sick time must be reinstated. Unlike state law, the L.A. ordinance has no exception to reinstatement of sick time if paid sick leave was paid out on termination (as undifferentiated paid time off or “PTO” must be paid out).

Family Members and Equivalents. Sick leave under the L.A. ordinance can be used on the employee’s written or verbal request for all of the reasons stated in the California state paid sick leave law:

- the employee’s own health care needs (including treatment of an existing health condition and preventative care) or
- a covered family member’s health care needs (includes treatment and preventative care), or
- to seek aid, treatment, or related assistance for domestic violence, sexual assault, or stalking.

The universe of family members is broader under the L.A. ordinance, however. Family includes not only children (biological, adopted, step, loco parentis), siblings, spouses, registered domestic partners, parents (including parents of the spouse or domestic partner), grandparents, or grandchildren, but also “any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.” No clarification is provided about what it takes to be equivalent to family or how an employer can verify family equivalency.

Documentation. The version of the L.A. ordinance which passed states, “An Employer may require an Employee to provide reasonable documentation of an absence from work for which paid sick leave is or will be used.” The other version omits any reference to the employers’ ability to obtain documentation (like the California state law).

Other L.A. Peculiarities. The L.A. ordinance has a number of specific additional provisions, such as:

- It contains an urgency provision that would make the ordinance effective immediately; but provisions in the ordinance start accrual and use of sick leave no earlier than July 1, 2016.

- It also contains a provision that if an employer “has a paid leave or paid time off policy or provides payment for compensated time off, that is equal to or no less than 48 hours, no additional *time* is required.”
- It does not address advance notice for using sick time.
- It has an anti-retaliation provision that appears to apply to employees who mistakenly but in good faith allege noncompliance and to create a rebuttable presumption of retaliation when adverse action is taken against an employee within 90 days of protected activity. A separate article provides for agency enforcement by fines and having to post “a notice of correction,” as well as traditional remedies in civil courts such as restitution, injunctions, reinstatement and back pay.
- It designates an administrative agency, the Office of Wage Standards of the Bureau of Contract Administration, as bearing administrative/enforcement responsibilities and states that this agency “may promulgate guidelines and rules for the implementation” of the ordinance. Worthy of note: this agency may “allow an Employer’s established paid leave or paid time off policy or one which provides payment for compensated time off to remain in place and comply with this article even though it does not meet all the requirements in Section 187.04, if [the agency] determines that the Employer’s established policy is overall more generous.”
- Most existing paid sick leave policies will need significant changes to make them compliant with this new L.A. ordinance. Possibly, more interpretive guidance and rules will be forthcoming from a designated administrative agency.

Questions? Don’t hesitate to reach out to your Seyfarth attorneys if you need assistance bringing your company into compliance with this new ordinance. July 1st is not far away!

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