



## Sick Leave FAQ

The following FAQ generally applies to California's Mandatory Paid Sick Leave Law. Several California cities have implemented their own local ordinances offering more generous allowances. Employers will need to be aware of the specifics and how they may differ from state law and adjust their policies accordingly. Please reference [Minimum Wage and Paid Sick Leave Ordinances by City](#) for more information.

### **If I already provide my staff with sick time, do I have to pay an additional three days?**

If you have an existing policy that meets or exceeds the three days or 24 hours and it can be used for any personal time off (PTO), you do not need to provide three additional days. Simply change the language in your current employee manual indicating that the time meets or exceeds the state requirements for the law. Be certain to place a notice for employees to review prior to implementation of the new policy (provide the date that it becomes effective), meet to discuss and have each employee sign an acknowledgment of the new policy.

**Note:** It's important to understand that while you don't need to add additional days to your existing policy, including paid sick leave (PSL) in your PTO policy subjects all of the time included in the policy to PSL laws. It is recommended as a best practice that you have two separate policies.

### **According to the California Paid Sick Leave Law, does our office have a choice in providing leave on an accrual basis? If it does, what would be the minimum paid leave that we would need to provide in order to comply?**

Yes, your office does have a choice. If you choose to provide the time on an accrual basis, you must provide no less than one hour for every 30 hours worked and can limit the amount of paid sick leave to 24 hours (three days) each year. Any unused time will roll over into the following year. An employer can cap the total accrual banked by an employee to 48 hours (six days) and can limit an employee who has accrued more than 24 hours to only use up to 24 hours in a year under the new law. Keep in mind that both regular and overtime hours are counted toward the employee's accrual rate.

**Note:** An employer should have a defined written policy. A written policy can help you define your company's specific written policy and clearly communicate your company's approach to providing the mandatory benefit. Without clearly defining the "caps" or limits of the policy to 24 hours, the state of California defines it for you and a full-time employee could earn approximately 69 hours (nine days) of PSL.

### **My current policy stipulates that employees provide a physician's note for time off due to illness. Can I still require this?**

Under the new law, you cannot require that employees provide a physician's note for extended leave, unless the need for time exceeds beyond your minimum policy limit for providing leave or three days. For example, if you provide staff with more than the minimum requirement of three days or 24 hours and pay five days of sick leave, then your physician's release note policy must exceed five days.

### **Is this a required benefit for part-time employees as well?**

The new sick leave law applies to all employees, full time, part time and temporary, as long as they have worked in California for 30 days.

**I have a mix of full-time and part-time employees in my practice. How should I provide the leave?**

It is possible with the difference in office hours for you to provide the leave to employees you know will meet or exceed the minimum requirements (24 hours or three days) and “front load” the time in advance. In turn, you can provide the time to part-time staff on an accrued basis (minimum one hour for every 30 hours worked), as they will earn the time at different rates based on the days and hours worked in the practice.

**My hygienist is paid as an independent contractor. Is she eligible for sick leave under this new law?**

We really have two issues at hand here. First, under almost all circumstances, hygienists by definition do not qualify for independent contractor status and therefore are considered W-2 employees. In its simplest form, an independent contractor relationship is a business-to-business relationship and therefore ineligible for the benefit. With this, hygienists are considered employees and must be paid as such, which means they do qualify for the sick leave time.

**Is the sick leave accrued or renewed and available immediately every new benefit year?**

As the practice owner/employer, you can determine if the sick leave time is accrued or provided as front-loaded flat days. If the time provided is accrued (one hour for every 30 hours worked up to 24 hours), it does roll over into the following year and you can “cap” this total time at 48 hours banked overall.

If you front load the time, any unused time is lost at the end of the year and new days are provided at the beginning of the next benefit year.

**I pay out unused sick time at the end of the year. Can I continue to do so?**

Yes, but you are not obligated to do so.\* Unused front-loaded time provided in a lump sum at the beginning of the year is lost at the end of the benefit year. On the other hand, any time provided on an accrued basis (one hour for every 30 hours worked) is rolled over and can be capped at a maximum banked at 48 hours overall.

**Note:** Sick and vacation time *combined* as PTO must be paid out when employment is terminated.

**Will employees who have several employers, such as hygienists who work at several offices, be paid up to or more than 15 days of sick leave each year?**

It is possible for an employee with several employers to earn different amounts of sick time depending on the provided days or accrued hours earned and determined by each employer’s policy. The obligation to provide leave is tied to each individual employer.

**Is there any burden on the employee to prove an actual illness is involved rather than personal or vacation time off? How can I keep my employee from abusing the sick leave time?**

While you can’t keep an employee from abusing the time, we recommend that you add specific language to your employee manual regarding sick leave and its intended use.

See the [Sample Employee Manual](#) for assistance in adding the following language to your policy: “Sick leave is a form of insurance that employees accumulate in order to provide a cushion for incapacitation due to illness. It is intended to be used only when actually required to recover from illness or injury; sick leave is not for ‘personal’ absences. Time off for medical and dental appointments will be treated as sick leave. The practice will not tolerate abuse or misuse of your sick leave privilege.”

**Should the vacation benefit be different from sick leave?**

This is up to you. If an employer provides PTO instead of separate benefits, your policy must indicate that the employee is allowed to use the time for sick leave under the new law.

Keep in mind that unlike vacation time, sick time is not paid out at the time of termination. From an administrative standpoint, separating the benefit might be beneficial.

**Note:** Including paid sick leave (PSL) in your PTO or vacation policy subjects all of the time included in the policy to PSL laws. It is recommended that you have two separate policies.

**Are hygienists and associate dentists (employees who are usually paid “by the day”) eligible for paid sick leave as well? Do I need to start keeping track of their hours?**

Yes, hygienists and associate dentists (unless otherwise contracted) are considered employees of your practice. Each of these positions, while paid by the day, should have an hourly salary related to the workday. This rate must be based on a normal workday (or alternative workweek schedule).

With this, yes, they are eligible for the paid sick leave and it is assumed you will continue to keep track of their hours. You will need to provide each employee with a written notice (pay stub) indicating the amount of sick time available to them at each pay period.

It is up to each individual practice how it would like to provide the leave — lump sum or accrual basis.

**If my hygienist works only one day a week and I don't use the accrual method, does this mean she receives three full days of sick leave like my full-time employees? Or can we grant 1 1/2 days upfront based upon the number of hours to be worked?**

This scenario may work fine, but you should do the calculations based on the stipulation of the law — no less than one hour for every 30 hours worked. Make certain you don't underestimate the time allotted for your employee.

**I have a 90-day probationary period for my new employees. When are they entitled to sick pay?**

Accrual begins on the first day of employment (after July 1, 2015); however, your policy can indicate that your employee isn't eligible to use the time until after satisfying the 90-day probationary period.

**Can an employee request sick pay for past time off or for a time not scheduled to work?**

An employee is entitled to be paid any available earned sick time for a time when they miss scheduled work for a medical appointment or illness for themselves or immediate family member. The intention of the law is to provide time to employees to care for themselves or a loved one and not suffer a loss of wages.

The new law requires that an employer provide payment for sick leave taken by an employee no later than the payday for the next regular payroll period after the sick leave was taken. This does not prevent an employer from making the adjustment in the pay for the same payroll period in which the leave was taken, but it permits an employer to delay the adjustment until the next payroll. For example, if an employee did not clock in for a shift and was not paid for it but utilized their paid sick leave, you would have to pay them no later than the following pay period and account for it in the wage stub or separate itemized wage statement for that following regular pay period.

I would recommend that if you are aware that an employee took time off sick and had accrued sick time available to use at the time of the illness, pay the employee for the time.

For additional frequently asked questions, please visit the Department of Industrial Relations [website](#).