

**PAID SICK LEAVE, MINIMUM WAGE AND  
EXEMPT SALARY THRESHOLD ISSUES:  
California Craft Brewers Association**



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# Untangling Local Paid Sick Leave Ordinances



# Where are the Paid Sick Leave Laws in CA?

- California
- San Francisco
- City of Los Angeles
- City of San Diego
- Oakland
- Emeryville
- Santa Monica (effective 1/1/17)

# Who is Covered? (California)

- Most employees who work 30 or more days within a year in California
  - Includes part-time and temporary employees
- Limited exclusions for:
  - Employees under collective bargaining agreements meeting specific requirements
  - On-site construction workers covered by a valid collective bargaining agreement
  - Airline flight deck or cabin crew members subject to federal labor law
  - Certain employees of municipalities or other public entities
  - Certain providers of in-home support services, until July 1, 2018

# Who is Covered? (Los Angeles)

- Works in the City for the same employer for 30 days
- Performs at least two hours of work in a particular week within the City
- Qualifies as an employee entitled to minimum wage
- Limited exclusions for employees under collective bargaining agreements meeting specific requirements

# Who is Covered?

- San Francisco
  - Works within the geographic boundaries of the City of San Francisco, including part-time and temporary employees. Occasional employees who work 56 hours or more in the city
- Oakland
  - Performs at least two hours of work in a workweek in the City of Oakland
- Emeryville, San Diego and Santa Monica
  - Performs at least two hours of work during calendar week within geographic boundaries of the City of Emeryville, including part-time and temporary employees
  - Qualifies as an employee entitled to payment of a minimum wage from any employer under the California minimum wage law

# How Much Paid Sick Leave?

Jurisdiction	Annual Sick Leave Requirement/Total Accrual Cap
<b>California</b>	24 hours / 3 days for use 48 hours / 6 days for total accrual cap
<b>San Francisco</b>	40 hours (small businesses) 72 hours (all others)
<b>Los Angeles</b>	48 hours for use 72 hours for total accrual cap
<b>San Diego</b>	40 hours for use 80 hours for total accrual cap
<b>Oakland</b>	40 hours (small businesses) 72 hours (all others)
<b>Emeryville</b>	48 hours (small businesses) 72 hours (all others)
<b>Santa Monica</b>	2017: 32 hours (small businesses) 40 hours (others) 2018: 40 hours (small businesses) 72 hours (others)

# Accrual Rate (Accrual Method)

1 hour of paid sick leave earned for every 30 hours worked:

- San Francisco
- Los Angeles
- San Diego
- Oakland
- Emeryville
- Santa Monica



# Other Accrual Rate Options Under State Law

- Paid sick leave begins to accrue on the first day of employment
- 1 hour of paid sick leave for every 30 hours worked
- 24 hours (or 3 days) of paid sick leave by the 120<sup>th</sup> day of employment
- A regular accrual basis so long as 24 hours (or 3 days) of paid sick leave are earned by the 120<sup>th</sup> day of employment or each calendar year or in each 12-month period

# Front Load Available?

Jurisdiction	Annual Sick Leave Requirement/Cap	Front-Load Available?
<b>California</b>	24 hours / 3 days for use 48 hours / 6 days for total accrual cap	Yes, 24 hours
<b>San Francisco</b>	40 hours (small businesses) 72 hours (all others)	Yes, starting Jan. 1, 2017
<b>Los Angeles</b>	48 hours for use 72 hours for total accrual cap	Yes, 48 hours
<b>San Diego</b>	40 hours for use 80 hours for total accrual cap	Yes, 40 hours
<b>Oakland</b>	40 hours (small businesses) 72 hours (all others)	No
<b>Emeryville</b>	48 hours (small businesses) 72 hours (all others)	Yes
<b>Santa Monica</b>	2017: 32 hours (small businesses) 40 hours (others) 2018: 40 hours (small businesses) 72 hours (others)	Yes

# Accrual Cap

Municipality	Total Accrual Cap	Carry-Over Required if Front-Load?
California	48 hours / 6 days	No
San Francisco	40 hours (small businesses) 72 hours (all others)	Yes
Los Angeles	72 hours	Yes
San Diego	80 hours	No
Oakland	40 hours (small businesses) 72 hours (all others)	n/a
Emeryville	40 hours (small businesses) 72 hours (all others)	No
Santa Monica	2017: 32 hours (small businesses) 40 hours (others) 2018: 40 hours (small businesses) 72 hours (others)	No

# Substituting Other Paid Leave

- Generally allowed, as long as provided for use under the same conditions and same purposes
- PTO must be paid out at termination

# When Can Employees Begin Using Paid Sick Leave?

## **On the 90th Day of Employment**

- California
- Los Angeles
- San Diego
- Santa Monica
- Oakland
- Emeryville

## **As Time Accrues**

- San Francisco

# Minimum Increment for Use

## **Not Less Than 2 Hours**

- California
- San Diego
- Emeryville

## **Not Less Than 1 Hour**

- San Francisco
- Oakland

## **No Increment Requirement**

- Los Angeles
- Santa Monica

# Permissible Uses - California

- Diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member.
  - A child (regardless of age or dependency status), parent (including step-parents and parents-in-law), spouse, registered domestic partner, grandparent, grandchild, or sibling
- For an employee who is a victim of domestic violence, sexual assault or stalking to seek aid or medical attention; obtain services or counseling; or participate in safety planning

# Permissible Uses

- Los Angeles
  - Also includes: Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship
- San Diego
  - Also allows use of sick leave when the employee's place of business is closed by order of a public official due to a Public Health Emergency or if the employee is providing care or assistance to a child whose school or child care provider is closed due to a Public Health Emergency
- Santa Monica
  - Consistent with CA



# Permissible Uses

- All 3 Northern California:
  - Definition of “family member” to include a designated individual if employee has no spouse or registered domestic partner.
- San Francisco
  - Effective 1/1/2017, purposes related to employee who is a victim of domestic violence, sexual assault, or stalking
  - Effective 1/1/2017, purposes related to donating the employee’s bone marrow or an organ of the employee to another person, or to care for family member donating bone marrow or organ to another person
- Oakland
  - Medical need of employee or employee’s family member
- Emeryville
  - In addition, may provide care for guide dog, signal dog, or service dog of the employee, employee’s family member, or the person designated by employee.

# Verification Requirements

- Unclear whether documentation can be required under CA law
  - Could be interpreted as interfering with an employee's right to sick leave

# Verification Requirements

- Los Angeles
  - Employee may be required to provide reasonable documentation for use of paid sick leave.
  - BUT must still comply with CA law, which is unclear as to whether documentation can be required
- San Diego
  - Allowed to require documentation for an absence of more than three consecutive work days
- Santa Monica
  - Consistent with CA

# Verification Requirements

- San Francisco
  - Absence for more than three consecutive workdays;
  - Clear pattern of paid sick leave abuse (i.e., taking days when vacation request has been denied, taking days for undesirable shifts, pattern of taking Mondays or Fridays or immediately following a holiday)
  - Doctor appointments
- Oakland
  - Absence for more than three consecutive workdays;
  - Clear pattern of paid sick leave abuse (i.e., taking days when vacation request has been denied, taking days for undesirable shifts, pattern of taking Mondays or Fridays or immediately following a holiday)
- Emeryville
  - Consistent with CA

# Rate of Pay for Sick Leave - California

- Exempt employees – calculated “in the same manner as the employer calculates wages for other forms of paid leave time”
- Nonexempt employees – 2 options
  - 90-day Lookback:  
Total wages earned (excluding OT premium) ÷  
total hours worked in full pay periods of prior 90 days
  - Regular Rate:  
Same manner as the regular rate for calculating overtime in the week the employee takes sick leave, regardless of whether overtime is worked in that week

# Payment Upon Termination & Reinstatement (California)

- Generally, no requirement to pay out accrued, unused sick days upon separation
  - Reinstatement of accrued/unused sick leave is required if separated employee returns within one year of termination
  - Reinstatement not required if paid out at termination

# Payment Upon Termination & Reinstatement

- Los Angeles, San Francisco
  - Consistent with CA, except no provision stating that reinstatement of accrued but unused paid sick leave is not required if paid out at termination
- San Diego
  - Reinstatement of accrued/unused sick leave if separated employee returns within six months of termination
    - But under state law, have to still reinstate unused time if return within one year
- Santa Monica
  - Consistent with CA on no payment upon termination
  - No provisions specific to reinstatement
- Oakland, Emeryville
  - Consistent with California

# Retaliation Prohibited

- Employers are prohibited from discharging, reducing in compensation or otherwise discriminating against an employee for:
  - Opposing any practice proscribed by the sick-leave law,
  - Requesting to use paid sick leave or actually using paid sick leave,
  - Participating in proceedings related to the law,
  - Seeking to enforce or assert rights under the law
- Rebuttable presumption of retaliation exists if an employer does any of the following within 30 days of the employee engaging in protected activity
  - Denies the employee the right to use accrued sick days
  - Discharge/threaten to discharge
  - Demote, suspend, or “in any manner discriminate”



# Notice & Records Required by Employer

Municipality	Notice Requirement
California	<ul style="list-style-type: none"><li>• Poster</li><li>• Written Notice to Employee at Hire (WTPA Notice)</li><li>• Paystub – Available Sick Leave</li></ul>
San Francisco	<ul style="list-style-type: none"><li>• Poster</li><li>• Paystub – Available Sick Leave</li></ul>
Los Angeles	<ul style="list-style-type: none"><li>• Poster</li></ul>
San Diego	<ul style="list-style-type: none"><li>• Poster</li><li>• Written Notice to Employee at Hire</li><li>• Paystub – Sick Leave Accrued <b>and</b> Used</li></ul>
Oakland	<ul style="list-style-type: none"><li>• Written Notice to Employee at Hire</li><li>• Poster</li></ul>
Emeryville	<ul style="list-style-type: none"><li>• Poster</li><li>• Written Notice to Employee at Hire (WTPA Notice)</li><li>• Paystub – Available Sick Leave</li></ul>
Santa Monica	<ul style="list-style-type: none"><li>• Poster</li></ul>

# Enforcement & Penalties - California

- Labor Commissioner
  - Investigations (Lab. Code §1174)
  - Conduct administrative hearings
- DLSE Administrative Hearing
  - Reinstatement, back pay, payment of sick days plus fines (up to \$4,000), administrative penalty
- No direct private right of action
- PAGA may apply
- Some cities impose additional penalties

# New Minimum Wages, Exempt Salary Threshold, Piece-Rate Pay and Other Wage-Hour Issues



**EVERY YEAR WE ASK:**

**IS THIS THE YEAR THINGS GET  
SIMPLER, MORE  
STRAIGHTFORWARD AND LESS  
COMPLICATED FOR EMPLOYERS?**

**For 2016 the answer is ...**

**No.**

# This Year We Saw Changes to All of the Following:

- Changes to the Federal Exemption Standards
- Changes to Minimum Wage
  - California Minimum Wage
  - Los Angeles City Minimum Wage
  - Los Angeles County Minimum Wage
  - San Diego Minimum Wage
  - San Francisco Minimum Wage
  - Oakland Minimum Wages
- Piece Rate Pay Standards
- Protections from PAGA claims
- Equal Pay Claims
- Protections for Employees Wishing to Discuss Their Wages
- And more...

# Federal Exemption Changes Effective December 1, 2016

- Under the FLSA's executive, administrative and professional exemptions, the new required minimum annual salary is \$47,476 (up from \$23,660).
- The total-annual-compensation threshold for the "highly compensated employee" exemption will increase from \$100,000 to \$134,004.

# Federal Exemption Changes Effective December 1, 2016

- These amounts will now be “updated” every three years (meaning that they will likely increase with each “update”), beginning on January 1, 2020. USDOL will announce these changes 150 days in advance.
- Employers will be able to satisfy up to 10% of these new thresholds through nondiscretionary bonuses and other incentive payments, including commissions, provided that the payments are made at least quarterly. *This crediting will not be permitted as to the salaries paid to employees falling under the “highly compensated” exemption.*



# What to do?

- Audit compensation status (and duties status) of all exempt employees.
- Re-classify employees who fall below DOL compensation threshold from exempt to non-exempt.
- Alternatively, increase compensation of exempt employees to meet DOL threshold.



# California Minimum Wage Increase

- California's Minimum Wage increased to \$10 per hour beginning January 1, 2016.
- What else does this affect?
  - Minimum salary for those white collar exemptions is now \$41,600 (until December 1, 2016; then federal minimum will apply).
  - Tool rate is now \$20 per hour.
  - Inside salespersons must earn at least \$15.01 per hour to be eligible for overtime exemption.

# What California Employers Should Look Forward to...

## SB 3

- Ultimately raises minimum wage to \$15 per hour
- Six-year phase-in starting January 1, 2017 (\$10.50/hour)
- One-year delay for employers of 25 or fewer employees
- Can be delayed by act of Governor
- Department of Finance will determine increases after January 1, 2022

# What California Employers Should Look Forward to...

## SB 3

<b>Date</b>	<b>26 or More Employees</b>	<b>25 or Fewer Employees</b>
January 1, 2017	\$10.50	\$10.00 (current rate)
January 1, 2018	\$11.00	\$10.50
January 1, 2019	\$12.00	\$11.00
January 1, 2020	\$13.00	\$12.00
January 1, 2021	\$14.00	\$13.00
January 1, 2022	\$15.00	\$14.00
January 1, 2023	\$15.00	\$15.00

# Local Ordinances

- San Diego
- Los Angeles
  - City
  - County



- San Francisco
- Oakland

# San Diego Minimum Wage Law

- Effective July 11, 2016 = \$10.50 per hour for employees who work in the City of San Diego
- On January 1, 2017, the minimum wage will increase to \$11.50 per hour.
- Beginning January 1, 2019, the minimum wage will increase every January 1st based on the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) U.S. City Average. The new rates will be announced each preceding October 1st.

# Los Angeles Minimum Wage Laws

There are two different ordinances at play:

- 1) The City of Los Angeles Ordinance = applies to those areas within the City.
- 2) The County of Los Angeles Ordinance = only applies to unincorporated areas in the County of Los Angeles.
  - Areas in Los Angeles left out = Incorporated cities that are outside of Los Angeles City [example: Glendale]
  - HOWEVER, regardless of where an employer's place of business is located, an employer must pay an employee who performs at least two hours of work in a particular week within the City of Los Angeles or an unincorporated area for all hours worked in those areas at the applicable increased minimum wage.

# Los Angeles Minimum Wage Law

Date	26 + employees	25 - Employees
July 1, 2016	\$10.50	None
July 1, 2017	\$12.00	\$10.50
July 1, 2018	\$13.25	\$12.00
July 1, 2019	\$14.25	\$13.25
July 1, 2020	\$15.00	\$14.25
July 1, 2021	none	\$15.00

Beginning July 1, 2022, the minimum wage will increase every July 1st based on the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for the Los Angeles metropolitan area.

The new rates will be announced each preceding February 1<sup>st</sup>.



# San Francisco Minimum Wage Laws

- Effective July 1, 2016 = \$13.00.
- It will rise by \$1 on July 1st of the next two years.
- Posters are required to be updated on July 1st of each year for the next two years.
- Posters must be in all languages spoken by at least 5% of the workforce

# Oakland Minimum Wage Laws

- Effective January 1, 2016 minimum wage = \$12.55.
- Increases will be based on the Consumer Price Index for urban wage earners in the greater bay area, and will change accordingly every January 1st of each subsequent year.

# Other Bay Area Minimum Wage Laws

Berkeley, CA	Effective October 1, 2016 = \$12.53
Emeryville, CA	Effective July 1, 2016 = \$13.00 to \$14.82
Mountain View, CA	Increase likely in 2017
Palo Alto, CA	Increase likely in 2017
Richmond, CA	Increase likely in 2017
Santa Clara, CA	Increase likely in 2017
Sunnyvale, CA	July 1, 2016 = \$11.00

# Questions

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