

# Now & Next

## Labor & Employment Alert

January 2, 2024

### California employers required to grant up to 40 hours of sick time in 2024

By Robert H. Pepple, AlejandrRobert H. Pepple, Alejandro "Alex" Castro, and Jonathan Assia

Starting January 1, 2024, California employers will have to either "front-load" employees with 40 hours of sick time annually or let employees accrue up to 80 hours (with a 40-hour yearly usage cap).



#### What's the impact?

- California's sick time entitlements will increase significantly under both the "frontloading" and "accrual" methods.
- The law specifies calculation formulas for both exempt and non-exempt employees, as well as posting and notification requirements.
- Employers do not need separate PTO and sick time policies, but combined policies can create compliance complications with sick time laws.

Starting January 1, 2024, California's sick time entitlements will increase significantly under both the "frontloading" and "accrual" methods.

## What are the new entitlements for 2024?

Method	2023 Entitlement	2024 Entitlement
<b>Frontloading</b> = Greater of...	3 days or 24 hours	5 days or 40 hours
<b>Accrual</b> = Greater of...	6 days or 48 hours	10 days or 80 hours

As was the case in 2023 (and before), these state sick leave laws only apply to employees who work at least 30 days a year, which is mirrored by some municipal ordinances (e.g., Los Angeles) but not by others (e.g., Berkeley), both of which—and other cities—may also have different accrual rates, usage rules, and other important distinctions.

## What is the difference between accrual and frontloading?

An employer who chooses to “frontload” must make the full amount of sick time available at the beginning of each year, with an exception for new hires, whose usage (not accrual) can be delayed according to the below:

- / Twenty-four hours (or 3 of 5 days) = by 120th calendar day of employment.
- / Remaining 16 hours (remaining 2 of 5 days) = by 200th calendar day of employment.

In other words, a frontloading policy is one where the full allotment resets each year.

Under an “accrual” policy, employees must earn at least one hour of paid sick leave for each 30 hours of work (i.e., a ratio of 1 to 30). Employers may use a different accrual paradigm, provided that 24 hours (or 3 days) are accrued and available by the 120th calendar day of employment and that the remaining 16 hours (for a total of 40 hours or 5 days) are accrued and available by the 200th calendar day of employment.

Employees under an accrual plan can “bank” more than 40 hours (5 days), up to 80 hours (10 days) in a year. However, an employer can limit the amount of sick time used to 40 hours (5 days) a year.

## Does “each year” mean the calendar year?

Not necessarily. The employer can determine how the year will be calculated, which can be:

- / The calendar year;

- / The fiscal year; or
- / Other 12-month period.

Absent a clear articulation, such as in a policy, notice, or handbook, the measurement will often be tracked by the employee's anniversary date.

## What is the sick time pay rate?

The purpose of the California sick time law is to provide employees with replacement compensation for when they are sick or otherwise not available to work for another qualifying reason—e.g., care for self or a family member or a victim of domestic violence, sexual assault, or stalking. So, if an employee earns more than just hourly pay, employers must pay an adjusted rate of pay for sick time, according to one of the below formulas:

### / Non-Exempt Employees:

- **Method 1:** At the “regular rate” of the workweek where the sick time is used (i.e., the same rate used for overtime and meal and rest premiums)
- **Method 2:** A 90-day look back (i.e., divide compensation for the previous 90 days (excluding overtime premium pay) by the number of non-overtime hours)

### / Exempt Employees: At the same rate for other paid leave (e.g., vacation pay, paid time off (PTO))

## Can an employer advance sick time?

Yes. An employer may advance sick time before it is accrued, but that’s not required under the law.

## Does an employer need separate PTO and sick time policies?

No. An employer may satisfy its obligations through a “combined” sick time/PTO policy, provided the policy complies with the minimum requirements of the paid sick leave law. Such policies can be problematic in practice, however, because most PTO policies require advance notice and approval for usage, whereas employees do not have to give advanced notice of sick time usage where it is not “practicable,” among other things.

## Do rehires get the benefit of old sick time?

Under two conditions, yes—if the employee was (i) not paid out earned sick time under a *combined* sick-time/PTO policy and (ii) the employee returns within 12 months. If either condition is not met, no.

# What information do employers have to provide to employees about sick time?

Generally speaking, there are three informational/posting requirements required by the law:

## WORKPLACE POSTING (ONGOING)

Employers must display this [poster](#) in an area where employees can easily view and read it during the workday.

## NOTICE TO EMPLOYEE (TIME-TO-TIME)

Employers are also required to provide most employees with an individualized [Notice to Employee](#) (required under Labor Code section 2810.5) that includes paid sick leave information.

## PAY STUB LINE ITEM (EACH PAY PERIOD)

Employers must also reflect the amount of sick leave available on each pay stub (or on a document issued the same day as their paychecks).

Employers also must keep accurate records showing the amount of sick time earned and used for three (3) years, which may be stored on documents available to employees electronically.

# What must employers do to comply?

Generally speaking, the obligations can be summarized by the acronym—PLANS:

- / **Pay:** Ensure you are *paying* employees at the proper rate when they use sick time.
- / **List:** Ensure you're properly *listing* the amount of sick time on pay stubs.
- / **Adjust:** Ensure you *adjust* sick time accrual rates and your document retention policies internally or with your payroll provider.
- / **Notice:** Ensure your policies (e.g., handbook) properly *notify* employees of how sick time is calculated and paid and the reasons for which it can be used.
- / **Signage:** Post the required workplace *sign* (i.e., this [poster](#)).

## Final notes

Nixon Peabody's lawyers have extensive experience counseling employers on California sick time rules. If you have questions regarding how to comply with sick time obligations or any other aspect of California's complicated web of labor and employment laws, please contact your Nixon Peabody attorney or:

**Robert H. Pepple**

213.629.6140

[rpepple@nixonpeabody.com](mailto:rpepple@nixonpeabody.com)

**Alejandro "Alex" Castro**

213.358.6236

[acastro@nixonpeabody.com](mailto:acastro@nixonpeabody.com)

**Jonathan Assia**

213.629.6162

[jassia@nixonpeabody.com](mailto:jassia@nixonpeabody.com)