

[Paid Sick Leave Policies Checklist \(Best Drafting Practices for Employers\)](#)

This checklist provides issues to consider when you assist employers with drafting paid sick leave policies. While no federal statute requires that employers provide paid sick leave for employees, [Executive Order 13706](#) mandates that, effective January 1, 2017, covered federal contractors give employees up to seven days of paid sick leave each year. See [80 FR 54697](#). In addition, recent legislation at the state and local level has increasingly driven employers in affected jurisdictions to implement and maintain paid sick leave policies.

Generally, paid sick leave policies should (1) conform with applicable laws, (2) define employee eligibility, (3) explain how sick leave will be accrued, and (4) describe how sick leave may be used.

Because paid sick leave laws vary by jurisdiction, check the state and local laws where the employer is located to ensure your policy fully complies with applicable law. For more information on state and local sick leave statutes, see [Paid Sick Leave State and Local Law Survey \(Private Employers\)](#) and the Family, Medical, Sick, Pregnancy, and Military Leave column of [Attendance, Leaves, and Disabilities State Practice Notes Chart](#).

For more information on paid sick leave, see [Sick Leave Policies: Key Drafting Tips](#). For sample sick leave policies, see [Sick Leave Policy](#) and [Paid Time Off \(PTO\) and Sick Days Policy](#).

Conform Policy with Applicable Laws

Follow these steps to ensure that any paid sick leave policy is legally enforceable in your jurisdiction:

- **Meet the minimum requirements of current laws.** Before drafting or revising an employer's paid sick leave policy, familiarize yourself with any applicable laws (including [Executive Order 13706](#); see [80 FR 54697](#)) and determine whether they apply to the employer. You may find that the employer is exempt from the law if, for example, the statute only applies to employers with a certain number of employees, and the employer falls below that threshold. If a paid sick leave law applies to the employer, review the statute to ensure the employer's policy adheres to the law's requirements. For more information on individual state and local paid sick leave laws, see [Attendance, Leaves, and Disabilities State Practice Notes Chart](#).
- **Discuss pending legislation with the employer.** Find out whether a new state or local paid sick leave law will be enacted in the near future, or whether there is a pending proposal to amend a current law. Discuss the pending legislation and legal trends with the employer to alert it to the need to implement a new or updated policy.
- **Consider multiple jurisdictions.** If the employer has employees located in more than one location, different paid sick leave laws may apply to its various employees. Consider how applicable paid sick leave laws diverge and to which employees they apply. In doing so, decide whether the employer should have multiple paid sick leave policies or one company-wide policy. Because a company-wide policy must meet the minimum requirements of all jurisdictions, it could increase the employer's costs compared with having separate policies for each jurisdiction. On the other hand, it is easier to manage and update a single policy than several jurisdiction-specific policies.

Determine Employee Eligibility for Benefits

Ascertain whether the company's employees are eligible for paid sick leave as follows:

- **Determine minimum hours.** Ascertain whether employees need to work a minimum number of hours to qualify for paid sick leave. For example, under California's Healthy Workplaces / Healthy Families Act (HWHFA) of 2014, individuals are only eligible for paid sick leave if they work for the same employer for at

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least 30 days within one year from the first date of employment. [Cal. Lab. Code § 246\(a\)](#). See [Leave Law \(CA\) — Sick Leave](#).

- **Assess eligibility based on job duties.** Consider whether the employer must offer paid sick leave to all employees or just employees in certain roles. For example, Connecticut's paid sick leave law only applies to "service workers," a term defined by a list of work classifications in that law. [Conn. Gen. Stat. § 31-57r](#). See [Leave Law \(CT\) — Sick Leave](#). If the applicable law allows you to apply the policy only to certain roles, however, weigh the effect this will have on the morale of those employees who will not receive the benefit.

Decide How Sick Time Accrues

Determine how employees should accrue paid sick time by taking the following measures:

- **Decide on incremental accrual versus lump sum.** Employees can accrue paid sick leave in many ways: an employer may elect to have the leave accrue gradually or as a lump sum at the beginning of a benefit year. Consider what method will work best for the employer. Providing the full benefit lump sum at the start of the year avoids the need to track accrual and ensures compliance with any state or local law requiring a minimum accrual rate. On the other hand, incremental accrual avoids the possibility of employees using all of their annual sick leave immediately after it is provided.
- **Determine accrual rates.** If the employer uses an accrual system, ensure that the rate meets or exceeds any accrual rates required by law.
- **Analyze accrual for new employees.** Review whether the applicable paid sick leave law mandates that sick days begin to accrue on the first day of employment or at a later date, and decide the best option for the employer given its business needs. While the employer cannot preclude new employees from accruing sick leave as provided by the relevant statute, an employer with a strong need for new hires may want to offer a greater rate of accrual for new employees as a recruitment tool. Consider whether the employer can and should apply the policy for new employees to reinstated employees as well. Reinstatement provisions are discussed in more detail below.
- **Set an appropriate 12-month period.** The accrual and use of paid sick time is typically measured over a 12-month cycle. Decide whether the employees' 12-month accrual period should be a calendar year or based on each employee's hiring anniversary date. If you use the calendar year, determine how to pro-rate paid sick leave during an employee's first year of employment.
- **Determine maximum accrual.** Decide on the maximum number of hours of paid sick leave that an employee may accrue. Further, state whether the maximum is an annual limit or a cap on the amount of sick leave an employee may bank at any given time. For example, if the policy states that employees may never have more than 40 hours of paid sick leave at any given time, but does not set an annual limit on accrual, employees may end up accruing more than 40 hours per year by consistently using enough sick leave to keep themselves below the hours ceiling.
- **Decide on a carryover policy.** Determine what will happen to paid sick leave hours that an employee accrues but does not use by the end of the benefit year. Options include:
 - Allowing employees to carry the hours over to the next benefit year
 - Eliminating the hours —or—
 - Paying out the value of those hours to the employees

In making this decision, consider the legal requirements as well as the impact on the employer's business. If the hours are lost at the end of the year, employees may be motivated to find ways to use paid sick leave, particularly in the final month of the benefit year. Further, while paying out the value of employees' accrued hours increases payroll costs, such a policy may increase productivity by incentivizing employees to abstain from using sick leave.

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- **Determine whether to pay out accrued time at termination.** Decide what to do with employees' accrued but unused paid sick leave when their employment terminates. Depending on what the law permits, the employer could either pay out the remaining paid sick leave or deem it forfeited. If the applicable law allows forfeiture and the employer prefers the forfeiture option, advise the employer to include a section in its written sick leave policy stating that employees will forfeit all accrued but unused paid sick time when employment terminates.
- **Decide on a reinstatement policy.** Check applicable laws to determine whether former employees who are reinstated within a certain period of time must receive their previously accrued paid sick leave upon rehire. Generally, employers do not need to reinstate sick leave that the employer paid out at the employee's termination.

Consider Employee Usage of Sick Time

Determine how employees should use paid sick time by following these measures:

- **Determine the allowable circumstances for taking paid sick leave.** Include a list of qualifying conditions for using paid sick leave. For sample language, see [Sick Leave Policy](#) and [Paid Time Off \(PTO\) and Sick Days Policy](#).
- **Set a pay rate.** The policy should provide that employees taking sick leave will earn the same pay rate they would have received had they worked those hours. The policy should also state that the employer does not consider sick leave to be hours worked for the purpose of calculating overtime.
- **Decide whether to limit usage.** If the employer's policy allows employees to attain more paid sick leave than the statute mandates (e.g., due to carryover from the previous year), consider limiting the amount of paid sick leave employees may use annually to the minimum statutory amount.
- **Set increments for usage.** Determine the minimum number of hours that an employee must use when taking paid sick leave. Lower increments allow employees more flexibility in using the time but could also be disruptive to the employer's business. Check applicable laws to determine if a minimum or maximum increment is required.
- **Include a non-discrimination / anti-retaliation provision.** The policy should state that no employee will face discrimination, harassment, or retaliation as a result of the employee's use of paid sick leave consistent with the employer's policy.
- **Require reasonable documentation.** Determine what documentation the employer can and should require from employees who take sick leave (e.g., a doctor's note for absences of a certain length). Consider drafting a provision stating that the employer will not pay sick leave until the employee has provided such documentation, to the extent permitted by law.
- **Decide whether to require employees to use paid sick leave when taking medical leave.** If an employee's time off is also covered by the Family and Medical Leave Act (FMLA) or state equivalents, consider requiring that employees use up all accumulated paid sick time for qualifying leaves before utilizing unpaid medical leave. Further, consider requiring the unpaid leave to run concurrently with the employee's paid sick leave, so that the employee does not get to use the leaves cumulatively. See [29 C.F.R. § 825.207\(a\)](#). Check state and local laws to ensure that the employer may implement these policies in its jurisdiction.
- **Prohibit misuse of paid sick leave.** State that employees who use paid sick leave fraudulently may incur discipline up to and including termination.
- **Set a notice period.** Determine how much notice an employee must provide before taking paid sick leave, within the confines of applicable law. State who the employee should notify (e.g., a supervisor, another upper management employee, and/or the Human Resources department) and that the notice should be in writing if practicable. If the leave is unexpected, ask that the employee give notice as soon as possible.

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- **Assess leave usage by new employees.** Decide when new employees should become eligible to use their leave. Some state and local laws allow for a 90-day window where employees accrue paid sick leave but cannot use it.
- **Create a process for questions, complaints, and appeals.** Include information about who employees should contact if they have questions about the policy, feel they have not received proper leave, have been denied the opportunity to use accrued paid sick leave, or have faced discrimination, harassment, or retaliation as a result of taking paid sick leave. This may be the Human Resources department, a supervisor, another upper management position, and/or an anonymous hotline.

Make Any Required Postings

Some paid sick leave laws require employers to make postings concerning applicable paid sick leave requirements in a prominent place (some laws may provide an option for making an electronic posting). For example, under [Executive Order 13706](#), covered contractors have to post a [notice provided by the U.S. Department of Labor](#) in a conspicuous place (or electronically). See [80 FR 54697](#).

Draft, Distribute, and Retain the Policy

Adhere to these final steps in the drafting process, including distributing the policy and complying with recordkeeping requirements:

- **Write and distribute the policy.** Clearly delineate the provisions of the employer's sick leave policy in a written document, and have the employer distribute it to all employees to whom it applies. Should the employer make any changes to the policy, the employer should do so in writing and redistribute the updated policy. The employer should not apply any changes retroactively.
- **Ascertain recordkeeping requirements.** Advise the employer what documents the employer must maintain and for how long. Consider what legal actions the employer may face and the applicable statutes of limitations.