

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
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SUSAN A. DOVI
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August 7, 2015

David D. Blaine, Esq.
5100 California Ave., Suite 101
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Re: Request for Opinion Re: Paid Sick Leave

Dear Mr. Blaine,

Thank you for your email dated June 30, 2015. You have requested a clarification from the Labor Commissioner concerning the requirements of the Healthy Workplaces, Healthy Families Act of 2014, AB 1522, codified at Labor Code section 245 et seq. We note that this statute was recently amended by AB 304, which passed as urgency legislation, and was effective July 13, 2015.

Your question, as we understand it, is if an employee currently works a regular 10 hour shift, and if the employer elects to proceed under a “no accrual or carry over” system in the manner specified in Labor Code section 246, subdivision (d), does the employer have to “front load” that employee at the beginning of the year with 30 hours of leave (three days at 10 hours per day) or only with 24 hours of leave on the theory that a “day” is limited to a maximum of eight hours?

The new law establishes *minimum* standards for paid sick leave for all covered employees in California. (See, e.g., Labor Code section 249, subdivision (d) (“This article establishes minimum requirements pertaining to paid sick days . . .”)) Because the statute was enacted to regulate wages, hours and working conditions for the protection and benefit of employees, its provisions must be “liberally construed with an eye to promoting such protection.” *Industrial Welfare Com. v. Superior Court* (1980) 27 Cal.3d 690, 702; *Ramirez v. Yosemite Water Company, Inc.* (1999) 20 Cal.4th 785, 794; *Martinez v. Combs* (2010) 49 Cal.4th 35, 61; *Murphy v. Kenneth Cole Prod.* (2007) 49 Cal.4th 1094, 1103. Secondly, the statute defines “paid sick days” as “time that is compensated at the same wage as the employee *normally earns* during *regular work hours*.. . .” (Labor Code §245.5(e).) This provision reflects and embodies the Legislature’s overall express intent that employees be entitled to take sick days without losing any of the compensation they would otherwise normally have earned for that day.

Under Section 246, subdivision (d), an employer that elects to proceed under the “no accrual or carry over” option must provide a minimum of 24 hours or three days of paid sick leave for employees, and the “full amount of leave” must be received at the beginning of the year (i.e.,

“front loaded” or provided “up front”).¹ Note that subdivision (d) was recently amended in AB 304 to include the following sentence: “The term ‘full amount of leave’ means three days or 24 hours.” Because this statutory language specifies a minimum labor standard, and in order to give effect to this minimum standard for all employees, including those that may work more or less than eight hours per day, the language must necessarily be interpreted as requiring “24 hours or three days” of paid sick leave, whichever is *more* for an employee. In other words, “24 hours or three days” must be interpreted as alternative but equally applicable standards, and an interpretation must be applied that would not undercut *either* standard for any employee. Any other interpretation would result in less than the minimum required amount of paid sick leave for some employees.

With respect to your specific question, this means that if an employee’s regular work hours are 10 hours per day, a “paid sick day” for that employee (under the definition in section 245.5(e)) would be the normal full day, which if translated into hours, would be 10 hours. The “full amount of leave” for this employee would need to be front loaded at the beginning of the year, meaning that three 10 hour days (which, if translated into hours would be 30 hours) must be front loaded at the beginning of the year. Any other interpretation would mean that these employees who have “regular work hours” of 10 hour days would receive less than the minimum of three days of paid sick leave required under the statute. Likewise, for employees who regularly work six hour days, and if the employer chooses the no accrual or carry-over system, the “full amount of leave” the employer would need to front load for these employees would be a minimum of 24 hours (not three six-hour days). If the employer front loaded only three six hour “days” for these employees, it would undercut the mandatory minimum standard of 24 hours for these employees.

This interpretation of “24 hours or three days” as a minimum standard, for which neither component may be undercut for any employee, ensures that all employees receive paid sick leave in a manner that complies with the mandatory minimum standard in the statute and that satisfies the Legislature’s express intent that employees be entitled to take a minimum amount of paid sick leave without losing any compensation that they would normally earn during their regular work hours.

The same analysis discussed above in connection with the “24 hours or three days” minimum standard would also apply with respect to what constitutes a paid sick day when an employer elects to proceed under an accrual system, but also elects to “limit an employee’s use of accrued paid sick days to 24 hours or three days in each year of employment, calendar year, or 12-month period,” as is also allowed by subdivision (d) of section 246.² When an employee is working under the accrual and carry over method and has accrued 30 hours in his or her sick leave “bank,” and has “regular work hours” of 10 hours per day, then we interpret the language in section 246(d) as meaning that the employee must be able to use and be paid for the full three days at 10 hours per day. Under an accrual scenario, if the employee has earned 30 hours of paid sick leave, a use limitation of 24 hours would not only undercut the accrual system (one hour for every 30 hours worked), but would also undercut the Legislature’s intent that employees be entitled to

¹ Labor Code section 246(b)(4) allows the 24 hours or 3 days to be available for initial hires by the 120th day of employment. Thereafter, subdivision (d) requires that the full amount of leave be received at the beginning of each 12 month period.

² This permissible limitation on yearly use should not be confused with an employer’s ability to establish an overall cap on accrual of leave time to not exceed 6 days or 48 hours, which is independent of the yearly limitation on use of leave time.

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take a minimum of three days of paid sick leave, without losing any compensation they would normally earn during their regular work hours.

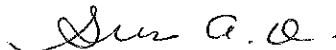
Similarly, under the accrual system, when an employee has regular work hours of less than eight hours per day (e.g., four or six hours per day), and when the employee has actually accrued 24 hours or more of paid sick leave, the employer may not limit the employee's use of accrued sick leave to only "three days." Doing so would undercut the alternate standard of 24 hours of paid sick leave for that employee, and furthermore would undermine the accrual system when the employee has actually accrued 24 or more hours of paid sick leave.³

This interpretation of "24 hours or three days" of paid sick leave, for either the front load requirement or the use limitation, as specifying alternative but equally applicable minimums, neither of which may be undercut for any employee (i.e., the employee is entitled to either 24 hours or three days, whichever is more), protects all employees, including those that may work a regular work schedule of more than eight hours per day, as well as those who regularly work less than eight hours per day. Each class of employee must be treated fairly under the law. To limit a part-time worker who works four hour days to only 12 hours of paid sick leave, based on a "three day" standard, disregards the statutory reference to a minimum of 24 hours and would defeat the legislative objective of providing low wage workers with at least a minimum of 24 hours of paid sick leave per year.

Lastly, we note again that the specifications as to the amount of paid sick leave that must be provided by an employer, and which the employee must be allowed to use in a year, are, by express definition in the statute, *minimums*. An employer is always free to elect to provide sick leave in greater amounts, and the legislative and public policy intent underlying the statute reflects that it is often in the best interests of both the employer and the employee to do so.

Thank you for your inquiry.

Sincerely,



Susan A. Dovi

Attorney for the Labor Commissioner

³ See the question concerning the worker who works a six hour day on the Department's Frequently Asked Questions (FAQ) page for the Paid Sick Leave law. (http://www.dir.ca.gov/DLSE/Paid_Sick_Leave.htm)