

Admin.

December 15, 2017

Memorandum 2018-2

Commissioner Suggestions

At each meeting, the Commission¹ opens the floor to suggestions from the Commission's members. Suggestions may address any aspect of the Commission's business, including the proposal of a new study topic.

At the Commission's December 1, 2017, meeting, Commissioner Miller-O'Brien proposed that the Commission study issues relating to the Healthy Workplaces, Healthy Families Act of 2014.² Commissioner Miller-O'Brien agreed to provide a written description of the issues, for consideration at a future meeting. That letter is attached.³

The Healthy Workplaces, Healthy Families Act of 2014 (hereafter, "the Act"), which is codified at Labor Code Sections 245-249,⁴ generally provides that employees in California are entitled to a minimum of three paid sick days per year.

Commissioner Miller-O'Brien indicates that since the Act was enacted, numerous cities and counties have enacted their own paid sick leave laws. She believes that the resulting patchwork of requirements complicates employment law in problematic ways and that legislative clarification would be helpful.⁵ She also suggests creating new exceptions to the application of the law (e.g., limiting the law so that it only applies to businesses with five or more non-family-member employees).

As noted at the Commission's December meeting, the Commission currently lacks authority to study labor and employment law. If the Commission were to

1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. 2014 Cal. Stat. ch. 317; AB 1522 (Gonzalez).

3. See Exhibit pp. 1-14.

4. See also Labor Code § 2810.5 (notice of rights under the act).

5. See Exhibit p. 1.

express interest in studying the Act, the Legislature would first need to authorize the study (by concurrent resolution or statute).⁶

The staff is unsure that the Legislature would do so. Legislative history shows that the Act was a recent piece of major legislation that was politically controversial and thoroughly vetted. The Act was the product of years of legislative effort. Prior to its introduction in 2014, the Legislature had considered similar paid sick leave laws in 2008, 2009, and 2011.⁷ The Act was heard in seven committee hearings and there were eleven floor analyses. That is an unusually high degree of legislative scrutiny.

Advocates and opponents were well-represented in the legislative process. Supporters included a large number of labor organizations and related groups.⁸ Opponents included numerous business organizations and related groups.⁹

6. See Gov't Code § 8293.

7. See AB 2716 (Ma) (2008), AB 1000 (Ma) (2009), AB 400 (Ma) (2011).

8. See Senate Judiciary Committee Analysis of AB 1522 (June 24, 2014), p. 12. (listing support as Alameda Labor Council, AFL-CIO; American Federation of State, County and Municipal Employees, AFL-CIO; American Civil Liberties Union; Breathe California; California Catholic Conference of Bishops; California Conference Board of the Amalgamated Transit Union; California Conference of Machinists; California Employment Lawyers Association; California Federation of Teachers; California Latino Legislative Caucus; California Medical Association; California Nurses Association; California Partnership to End Domestic Violence; California Professional Firefighters; California School Employees Association; California Teachers Association; California Teamsters Public Affairs Council; Consumer Federation of California; Engineers and Scientists of California; Glendale City Employees Association; Hollywood Remembers, Inc.; International Longshore & Warehouse Union; International Longshore & Warehouse Union Southern California District Council; National Association of Social Workers – California Chapter; Organization of SMUD Employees; Professional & Technical Engineers, Local 21; San Bernardino Public Employees Association; San Luis Obispo County Employees Association; Santa Rosa City Employees Association; UNITE HERE!; Utility Workers Union of America, Local 132; Young Invincibles).

9. *Id.* at pp. 12-14 (listing opposition as Acclamation Insurance Management Services; Air Conditioning Trade Association; Alhambra Chamber of Commerce; Allied Managed Care; Associated Builders and Contractors - San Diego Chapter; Associated Builders and Contractors of California; Associated General Contractors; Association of California Healthcare Districts; Automotive Services Councils of California; Brawley Chamber of Commerce; Brea Chamber of Commerce; California Asian Chamber of Commerce; California Association for Health Services at Home; California Association of Joint Powers Authorities; California Association of Licensed Security Agencies, Guards and Associates; California Association of Winegrape Growers; California Attractions and Parks Association; California Beer & Beverage Distributors; California Business Properties Association; California Business Roundtable; California Chamber of Commerce; California Chapter of American Fence Association; California Concrete Contractors Association; California Employment Law Council; California Fence Contractors' Association; California Grocers Association; California Hotel & Lodging Association; California Independent Grocers Association; California Manufacturers and Technology Association; California New Car Dealers Association; California Newspaper Publishers Association; California Professional Association of Specialty Contractors; California Restaurant Association; California Retailers Association; California Special Districts Association; California State Association of Counties; California State Council of the Society for Human Resource Management; California Travel Association; California Trucking Association; CAWA – Representing the Automotive Parts Industry; Chambers of Commerce Alliance of Ventura & Santa Barbara Counties; City of La

Opposition concerns were discussed repeatedly in committee analyses and resulted in significant amendments, including the creation of specific exceptions for certain types of employees.¹⁰

Given the intensity of the legislative efforts on this subject, it seems unlikely that the policies established in the Act, including its scope of application, were inadvertent. In particular:

- The precision with which the Legislature crafted exceptions to the application of the Act, in response to opposition concerns, suggests that the decision to apply the Act to all other employers was an intentional policy choice.
- It seems clear that the Legislature anticipated that local jurisdictions might adopt their own, more generous, paid sick leave laws. Labor Code Section 249(d) expressly provides that the Act “does not preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for greater accrual or use by employees of sick days, whether paid or unpaid, or that extends other protections to an employee.” Moreover, committee analyses of the Act acknowledge that San Francisco had already enacted its own paid sick leave law.

Mirada; Consolidated Communications (formerly SureWest); Dana Point Chamber of Commerce; Desert Hot Springs Chamber of Commerce and Visitors Center; El Centro Chamber of Commerce; Engineering Contractors’ Association; First Choice Business Brokers; Flasher Barricade Association; Fountain Valley Chamber of Commerce; Fullerton Chamber of Commerce; Greater Bakersfield Chamber of Commerce; Greater Conejo Valley Chamber of Commerce; Greater Fresno Area Chamber of Commerce; Greater Riverside Chambers of Commerce; Greater San Fernando Valley Chamber of Commerce; Higher Power SEO; HOCOA; Huntington Beach Chamber of Commerce; Independent Energy Solutions; James M. Morrison Insurance Services, Inc.; Kennedy & Associates; League of California Cities; Lodi Chamber of Commerce; Long Beach Area Chamber of Commerce; Marin Builders Association; National Federation of Independent Business; National Right to Work Committee; North Coast Signs; North County Administrative Services Incorporated; Orange County Business Council; Oxnard Chamber of Commerce; Palm Desert Area Chamber of Commerce; Plenums Plus; Plumbing-Heating-Cooling Contractors Association of California; Porterville Chamber of Commerce; Premierhire; R & L Alvarez-Malo, Inc.; Redondo Beach Chamber of Commerce; Reiker Machine; Rural County Representatives of California; San Diego East County Chamber of Commerce; San Gabriel Valley Coalition; San Jose Silicon Valley Chamber of Commerce; Santa Clara Chamber of Commerce and Convention-Visitors Bureau; Simi Valley Chamber of Commerce; Society for Human Resource Management; Southwest California Legislative Council; Tahoe Chamber of Commerce; The Gardens; Torrance Area Chamber of Commerce; The Joint Encinitas; The Joint Oceanside; Turlock Chamber of Commerce; Urban Counties Caucus; Visalia Chamber of Commerce; Visiting Angels; Western Electrical Contractors Association; Wine Institute; Three Individuals).

10. See Labor Code § 245.5(a)(1) (employee under collective bargaining agreement that satisfies specified paid sick leave rights); (a)(2) (employee in construction trade under collective bargaining agreement that meets specified requirements); (a)(3) (provider of in-home supportive services under specified laws); (a)(4) (individual employed by an air carrier as a flight deck or cabin crew member under specified laws).

The question of whether the Act should be reformed along the lines suggested by Commissioner Miller-O'Brien might well involve the kind of fundamentally political choices that are best made by the People's elected representatives. Even if the Legislature were inclined to invite study and input from an outside body, it probably would look first to an entity with special expertise in labor and employment policy. Also, if there are substantive problems with the application or operation of the Act, any of the business groups listed above would be in a position to understand the nature and practicalities of the issues and sponsor legislation to make needed reforms.

How would the Commission like to proceed?

Respectfully submitted,

Brian Hebert
Executive Director

Dear Chair, Commissioners, and Staff,

Please allow this letter to supplement my proposal to study California's Paid Sick Leave Law (AB1522) or the Healthy Workplaces, Healthy Families Act of 2014 as a new CLRC topic. This law is relatively new in that it was enacted on September 14, 2014, and became effective in January 2015.

In a nutshell, this law affords California employees and their families with a minimum number of paid hours to use each year to care for themselves and close family members when sickness falls on a regularly scheduled workday. This law, I believe, originated from the City of San Francisco's Paid Sick Leave Ordinance which was drafted to assure that larger employers (of 10 or more), operating within the City and County of San Francisco, provided at least 24 hours of paid sick time benefits to established¹ employees. Like San Francisco's law, AB1522 also began by furnishing "at least" three (3) sick leave days each year but which employers were impacted, which employees (sole employees or one of many), and whether non-exempt or exempt employees, and more was never specified by the statute. In fact, the law was primarily drafted with the duty shifted to the Labor Commission to clarify the details.

Since this law was promulgated, numerous cities and counties have adopted iterations of the same, many adding more benefits imposed indiscriminately on private and public-sector employers. While this may sound helpful in theory, the unintended consequences are quite stark. There is a hodge-podge of laws (and therein causes of action) that color California's already very complicated labor law scheme, and borne out of what was intended to inject as mere fairness in the way of workers' minimum rights. The result will undoubtedly tax the Department of Industrial Relations charged with clarifying these laws and enforcing the same.

Since 2015, Paid Sick Leave Law has expanded to include conceivably every California employer, in every city and county, and rights to guarantee more paid time off expand nearly every six months. Clarity from the Legislature is needed.

As is, the hodge-podge of expectations and regulations mounts each year.² Currently, many AB1522 beneficiaries are eligible for up to **48 hours** of guaranteed wages (potentially calculated at the highest average daily rate earned in a year, or more), at the start of each year, while potentially working for small businesses, and as the sole employee. Exceptions under this law are unclear, and there is no deference given to employers of 'Mom and Pop' shops or high-wage earning, large investment firms whose employees traditionally work strictly on commissions. Surely, this is not what our Legislature contemplated. Moreover, in practice, this law runs counter to policies favoring retaining businesses in our state.

Naturally, the question then becomes: what can be done to revise current law? Perhaps, clarifying the definition of who is an "Employer" under AB1522 to include only businesses with five (5) or more, non-family member employees. This standard borrows from the well-established statutory scheme of

¹ Only employees who were employed over a specific time, regularly scheduled to work a specific time, and generally in "good standing" with their employer were intended to be eligible for paid leave benefits.

² To illustrate this point, please see the attached matrix from Tyreen Torner of Fox Rothschild, LLP.

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California’s Paid Sick Leave Law
December 7, 2017**

the California Fair Employment and Housing Act, Gov. Code §§ 12900 et seq., and would likely alleviate some of the economic burden and confusion caused by the law in its current state. I will defer to the Commission for considering other possible exemptions (e.g., businesses that provide at least 3 sick leave days, etc.). I am sure other stakeholders would also provide more imaginative and creative fixes than myself.

Nonetheless, I thank the Commission for this opportunity to discuss what I am observing those within my practice area grapple with and look forward to providing more discussion regarding this topic at our February CLRC meeting.

Best regards,



Commissioner Crystal Miller-O'Brien,

Attachment: Matrix of Current PSL Laws

California State and City Paid Sick Leave Laws

Tyreen Torner, Esq.
Fox Rothschild LLP
Updated October, 2017

1. Summary..... 1	10. Accrual Methods..... 4	19. Requiring Advance Notice of PSL Use 8
2. Interaction of Laws 1	11. Accrual Caps 4	20. Requiring Documentation to Verify PSL Use... 8
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6. Permitted Uses..... 3	15. When PSL Pay Is Due 5	24. Record Retention 11
7. Covered Family Members 3	16. Cash Out of PSL..... 6	25. Enforcement..... 11
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	California Paid Sick Leave¹	Berkeley Paid Sick Leave²	Emeryville Paid Sick Leave³	Los Angeles City Paid Sick Leave⁴	Oakland Paid Sick Leave⁵	San Diego City Paid Sick Leave⁶	San Francisco Paid Sick Leave⁷	Santa Monica Paid Sick Leave⁸
1. Summary	Accrual Cap: • 48 hours or 6 days per year Annual Use Cap: • 24 hrs. or 3 days Accrual Methods: • One hour per 30 worked • Front load 24 hrs. or 3 days • Other accrual method resulting in the employee having no less than 24 PSL hrs. by the 120 th calendar day of employment.	Accrual Cap: • 48 or 72 hours, depending on employer size Annual Use Cap: • Small employers may limit use to 48 hours per calendar year. Accrual Methods: • One hour per 30 worked in the City	Accrual Cap: • 48 or 72 hours, depending on employer size Annual Use Cap: • Not permitted. Accrual Methods: • One hour per 30 worked in the City • Front load annual accrual cap • Any lump sum at the start of the year, with accrual at one hour for every 30 worked after lump sum has been earned	Accrual Cap: • 72 hours Annual Use Cap: • 48 hours Accrual Methods: • One hour per 30 worked in the City • Front load 48 hours at the start of each year	Accrual Cap: • 40 or 72 hours, depending on employer size Annual Use Cap: • Not permitted. Accrual Methods: • One hour per 30 worked in the City	Accrual Cap: • 80 hours Annual Use Cap: • 40 hours Accrual Methods: • One hour per 30 worked in the City • Front load 40 hours at the start of each year	Accrual Cap: • 40 or 72 hours, depending on employer size Annual Use Cap: • Not permitted. Accrual Methods: • One hour per 30 worked in the City • Any lump sum at the start of the year, with accrual at one hour for every 30 worked after lump sum has been earned	Accrual Cap: • 1/1/2017: 32 or 40 hours, depending on employer size • 1/1/2018: 40 or 72 hours, depending on employer size Annual Use Cap: • Not permitted. Accrual Methods: • One hour per 30 worked in the City • Front load annual accrual cap
2. Interaction of Laws	Employers subject to state and local paid sick leave laws must follow the stricter standard or the law that is most beneficial to the employee when there are conflicting requirements in the laws.							
3. Effective Date	July 1, 2015	October 1, 2017	July 2, 2015	July 1, 2016 ⁹	March 2, 2015	July 11, 2016	February 5, 2007	January 1, 2017

	California Paid Sick Leave ¹	Berkeley Paid Sick Leave ²	Emeryville Paid Sick Leave ³	Los Angeles City Paid Sick Leave ⁴	Oakland Paid Sick Leave ⁵	San Diego City Paid Sick Leave ⁶	San Francisco Paid Sick Leave ⁷	Santa Monica Paid Sick Leave ⁸
4. Covered Employers	All employers regardless of size.							
5. Covered Employees	<p>Employees who work at least 30 days in California for the employer.</p> <p>Includes:</p> <ul style="list-style-type: none"> Employees who are exempt from overtime requirements <p>Excludes:</p> <ul style="list-style-type: none"> Union workers who explicitly waive the law's benefits in their union contract Airline flight deck or cabin crew Providers of publicly-funded in-home support services Certain public sector workers 	<p>Employees who:</p> <ul style="list-style-type: none"> In a calendar week work at least 2 hours in the City; and Are entitled to be paid a minimum wage. <p>Excludes:</p> <ul style="list-style-type: none"> Union workers who explicitly waive the ordinance's benefits in their union contract 	<p>Employees who:</p> <ul style="list-style-type: none"> In a calendar week work at least 2 hours in the City; and Are entitled to be paid a minimum wage <p>Includes:</p> <ul style="list-style-type: none"> Learners as defined by the California Industrial Welfare Commission. <p>Excludes:</p> <ul style="list-style-type: none"> Union workers who explicitly waive the city ordinance's benefits in their union contract 	<p>Employees who:</p> <ul style="list-style-type: none"> In a particular week work at least 2 hours in the City; Are entitled to be paid a minimum wage; and On or after 7/1/16, work in the City for the same employer for at least 30 days within a year from the start of employment. <p>Excludes:</p> <ul style="list-style-type: none"> Employees who are exempt from the California minimum wage Government employees 	<p>Employees who:</p> <ul style="list-style-type: none"> In a particular week work at least 2 hours in the City; and Are entitled to be paid a minimum wage. <p>Excludes:</p> <ul style="list-style-type: none"> Union workers who explicitly waive the city's benefits in their union contract 	<p>Employees who:</p> <ul style="list-style-type: none"> In one or more calendar weeks work at least 2 hours in the City; and Are entitled to be paid a minimum wage, or participate in a state Welfare-to-Work Program. <p>Excludes:</p> <ul style="list-style-type: none"> Employees who are exempt from the California minimum wage Paid a sub-minimum wage under a specific license Who work for a publicly subsidized summer or short-term youth employment program Who work as student employees, camp counselors, or program counselors of an organized camp as defined in California Labor Code § 1182.4. 	<p>Employees who work in the City.</p> <p>Includes:</p> <ul style="list-style-type: none"> Participants in Welfare-to-Work Programs who are engaged in work activity that would be considered "employment" under federal law. <p>Excludes:</p> <ul style="list-style-type: none"> Union workers who explicitly waive the city ordinance's benefits in their union contract Those who work in the City on an occasional basis not exceeding 55 hours in a calendar year 	<p>Employees who:</p> <ul style="list-style-type: none"> In a particular week, work at least 2 hours in the City; and Are entitled to be paid a minimum wage. <p>Excludes:</p> <ul style="list-style-type: none"> Employees who are exempt from the California minimum wage Government employees

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6. Permitted Uses	<ul style="list-style-type: none"> Medical need of the employee or the employee's family member Purposes related to domestic violence, sexual assault or stalking suffered by the employee 	<ul style="list-style-type: none"> Medical need of employee or employee's family member 	<ul style="list-style-type: none"> Medical need of employee or employee's family member To provide care for a guide dog, signal dog or service dog of the employee or family member 	Same as California law.	<ul style="list-style-type: none"> Medical need of employee or employee's family member 	Same as California law, plus: <ul style="list-style-type: none"> Public health emergencies resulting in the closure of the employee's worksite, child-care provider, or child's school. 	<ul style="list-style-type: none"> Medical need of employee or family member Purposes related to domestic violence, sexual assault or stalking suffered by the employee Bone marrow or organ donation 	Same as California law.
7. Covered Family Members	Children, parents, spouse or registered domestic partner, grandparents, grandchildren, and siblings.	Same as California law, plus a designated person if the employee does not have a spouse or registered domestic partner.	Same as California law, plus a designated person if the employee does not have a spouse or registered domestic partner.	Same as California law, plus those related to the employee by blood or affinity equivalent to a family relationship.	Same as California law, plus a designated person if the employee does not have a spouse or registered domestic partner.	Same as California law.	Same as California law, plus a designated person if the employee does not have a spouse or registered domestic partner.	Same as California law.
8. First Day PSL Can Be Used	On the 90th calendar day of employment.	Same as California law.	Same as California law.	On the 90th day of employment, or 7/1/2016*, whichever is later. * 7/1/2017 for employers with 25 or fewer covered employees.	Same as California law.	On the 91st day of employment, or 7/11/2016, whichever is later.	Same as California law.	Same as California law.
9. Start of Accrual	First day of work or 7/1/2015, whichever is later.	First day of work or 10/1/2017, whichever is later.	First day of work or 7/2/2015, whichever is later.	Employers with 26 or more covered employees: <ul style="list-style-type: none"> First day of work or 7/1/16, whichever is later. Employers with 25 or fewer covered employees: <ul style="list-style-type: none"> First day of work or 7/1/17, whichever is later. 	First day of work.	First day of work or 7/11/2016, whichever is later.	90 days after start of employment. For employees hired on or after 1/1/2017, on the first day of work. ¹⁰	First day of work.

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10. Accrual Methods	<p>Option 1: One PSL hour for every 30 hours worked.</p> <p>Option 2: Front load 24 PSL hours or 3 days at the start of each year.</p> <p>Option 3: PSL accrues on a regular basis, resulting in the employee having no less than 24 hours of accrued PSL by the 120th calendar day of employment.</p>	One hour of PSL for every 30 hours worked in the City.	<p>Option 1: One hour of PSL for every 30 hours worked in the City.</p> <p>Option 2: At the start of each year, front load a PSL amount equal to the applicable accrual cap (see Row 11).*</p> <p>Option 3: A combination of Options 1 and 2.</p>	<p>Option 1: One hour of PSL for every 30 hours worked in the City.</p> <p>Option 2: Front load 48 PSL hours at the start of each year.* Employers front-loading PSL on a calendar-year basis can provide 24 PSL hours on 7/1/16 or 7/1/17, depending on which effective date applies (see Row 9), and the full 48 hours starting January 1 of the following year.</p>	One hour of PSL for every 30 hours worked in the City.	<p>Option 1: One hour of PSL for every 30 hours worked in the City.</p> <p>Option 2: Front load 40 PSL hours at the start of the year.*</p>	<p>Option 1: One hour of PSL for every 30 hours worked in the City.</p> <p>Option 2: Front load any sum of PSL at the start of each employment year, calendar year, or 12-month period, so long as the employee can accrue additional PSL after working enough hours to have accrued the amount allocated upfront.</p>	<p>Option 1: One hour of PSL for every 30 hours worked in the City.</p> <p>Option 2: At the start of each year, front load a PSL amount equal to the applicable accrual cap (see Row 11).*</p>
11. Accrual Caps	Employers may cap the amount of PSL an employee can accrue in a year to no less than 48 hours or 6 days, whichever is greater.#	<p>Accrued, unused PSL is capped according to the number of employees the employer has in any location.</p> <ul style="list-style-type: none"> • 24 or fewer employees: 48 hours • 25 or more employees: 72 hours 	Employers may cap the amount of accrued, unused PSL, depending on the number of employees it has working in the City.#	Employers may cap accrued, unused PSL at 72 hours.	Employers may cap the amount of accrued, unused PSL, depending on the number of employees in any location.*	Employers may cap an employee's total PSL accrual at no less than 80 hours.	<p>Accrued, unused PSL is capped according to the number of employees the employer has in any location.*</p> <ul style="list-style-type: none"> • 9 or fewer employees: 40 hours[†] • 10 or more employees: 72 hours 	<p>Employers may cap the amount of accrued, unused PSL, depending on the number of employees in the City.</p> <ul style="list-style-type: none"> • 25 or fewer employees: 2017: 32 hours[†] 2018: 40 hours[†] • 26 or more employees: 2017: 40 hours[†] 2018: 72 hours

* Employers can use either the employment year, calendar year, or other 12-month period for purposes of PSL accrual or frontloading of PSL.

Annual cap - the law clearly allows a limit on how many hours of PSL an employee may accrue in a year.

% Rolling cap - the ordinance clearly allows only a limit on how many hours of PSL an employee may have "in the bank" at any given time. Employers cannot limit how much PSL is accrued in a year.

† Caution: This accrual cap is lower than what is required under the state law (48 hours or 6 days). See Row 12 regarding interactions of laws.

	California Paid Sick Leave¹	Berkeley Paid Sick Leave²	Emeryville Paid Sick Leave³	Los Angeles City Paid Sick Leave⁴	Oakland Paid Sick Leave⁵	San Diego City Paid Sick Leave⁶	San Francisco Paid Sick Leave⁷	Santa Monica Paid Sick Leave⁸
12. Carry Over	Accrued, unused PSL carries over into the next year but is limited by the employer's accrual cap.	Accrued, unused PSL carries over into the next year but is limited by the accrual cap.	Accrued, unused PSL carries over into the next year but is limited by the employer's accrual cap, if any. If PSL is provided up front, roll over is not required.	Accrued, unused PSL (including unused front-loaded PSL) carries over year to year but may be capped at a minimum of 72 hours.	Accrued, unused PSL carries over into the next year but is limited by the employer's rolling accrual cap, if any.	Accrued, unused PSL carries over year to year. If PSL is provided up front, roll over is not required.	Accrued, unused PSL carries over into the next year but is limited by the employer's rolling accrual cap.	Accrued, unused PSL carries over year to year but is limited to the employer's accrual cap. If PSL is provided up front, roll over is not required.
13. Use Caps	PSL use may be limited to 24 hours or 3 days per year (whichever is more for the employee).	Employers with 24 or fewer employees may limit PSL use to 48 hours per calendar year. Larger employers cannot limit PSL use; their employees may use any PSL they have in their PSL banks. PSL banks are limited by the accrual cap. See Row 11.	Not permitted. Employees may use the PSL they have in their PSL banks. Employers may set accrual caps or use the frontload method to limit PSL banks. See Rows 10-12.	Annual use of PSL may be limited to 48 hours per year.	Not permitted. Employees may use the PSL they have in their PSL banks. Employers may set accrual caps to limit PSL banks. See Row 11.	PSL use may be limited to 40 hours per year.	Not permitted. Employees may use the PSL they have in their PSL banks. Accrual caps limit PSL banks. See Row 11.	Not permitted. Employees may use the PSL they have in their PSL banks: employers may set accrual caps or use the frontload method to limit PSL banks. See Row 11.
14. Use Increments	Employers cannot require that PSL be used in increments larger than 2 hours.	Not addressed.	Employers cannot require that PSL be used in increments larger than 2 hours.	Employers cannot require that PSL be used in increments larger than 2 hours.	Employers cannot require that PSL be used in increments larger than 1 hour.	Employers cannot require that PSL be used in increments larger than 2 hours.	Employers cannot require that PSL be used in increments larger than 1 hour.	Not addressed.
15. When PSL Pay Is Due	On the payday for the next regular payroll period after PSL is taken.	On the payday for the next regular payroll period after PSL is taken.	On the payday for the next regular payroll period after PSL is taken.	Not addressed.	On the payday for the next regular payroll period after PSL is taken.	Not addressed.	On the payday for the next regular payroll period after PSL is taken.	Not addressed.

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16. Cash Out of PSL	An employer is not required to cash out PSL or pay for accrued or unused PSL at separation.							
17. Paid Time Off Policies	<p>No additional benefits are required if, as of 1/1/2015, the employer already had an existing paid leave or paid time off policy meeting the following requirements:</p> <ul style="list-style-type: none"> Made available paid leave that could be used for at least as many paid sick days and under the same conditions required by the state PSL law; or Had conditions more favorable to employees (e.g., more sick days or a more favorable accrual rate than required under the state PSL law). 	No additional benefits are required if the paid time off can be used for the same purposes required by the ordinance, and the policy meets the City's accrual and use requirements.	If an employer has a paid leave policy, such as a PTO or vacation policy, that makes available to employees paid time off that may be used for the same purposes specified in the ordinance, and the policy is sufficient to meet the ordinance's requirements for making PSL available, then an employer is not required to provide additional PSL.	No additional benefits are required if the policy provides at least 48 hours of paid time off. Where the policy does not meet all requirements of the ordinance, the City may still determine that additional benefits are not required if the policy is overall more generous to employees.	No additional benefits are required if the paid time off can be used for the same purposes and meets the minimum accrual requirements of the ordinance.	No additional benefits are required if the paid time off can be used for the same purposes and meets the minimum accrual requirements of the ordinance. Nor are additional benefits needed if the paid time off policy provides an enhanced benefit in at least one of the following categories and otherwise meets the minimum requirements for the remaining two: <ul style="list-style-type: none"> Accrual rate; Rate of pay; or Allowable purposes for PSL use. 	No additional benefits are required if the paid time off can be used for the same purposes and meets the minimum accrual requirements of the ordinance.	Other paid time off plans will comply with the ordinance if the benefits are equal to or more generous than the Ordinance.

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18. Rate of Pay	<p>When used, PSL must be paid by one of following methods:</p> <p>Exempt employees:</p> <ul style="list-style-type: none"> For employees who are exempt from the minimum wage under the Professional, Executive, or Administrative exemptions, PSL is paid using the same method as any other form of paid leave provided by the employer.¹¹ <p>Other employees:</p> <ul style="list-style-type: none"> Regular rate of pay for the workweek in which PSL is used; or Divide the total wages (excluding any overtime premiums) by the total hours worked in the full pay periods of the prior 90 days of employment. 	<p>When used, PSL must be paid by one of following methods:</p> <ul style="list-style-type: none"> The hourly wage; or If an employee, in the 90 days of employment before taking PSL, had different hourly pay rates, was paid by piece rate or commission, or was a non-exempt salaried employee, the rate of pay is calculated by dividing the employee's total wages (excluding any overtime premium pay) by the employee's total hours worked in full pay periods of prior 90 days. 	<p>PSL is paid at the regular hourly rate of pay for workweek in which PSL is used.</p> <p>If an employee has more than one pay rate, PSL is paid at the rate equal to the scheduled pay rate(s) for the job during which PSL is taken.</p>	<p>When used, PSL must be paid by one of following methods:</p> <ul style="list-style-type: none"> The regular hourly rate of pay for the workweek in which PSL is used; or Divide total wages (excluding overtime premiums) by total hours worked in the full pay periods of the prior 90 days of employment. If an employee has more than one pay rate, PSL is paid at the rate equal to the scheduled pay rate(s) for the job during which PSL is taken. 	<p>PSL is paid at the regular hourly rate of pay for the time PSL is taken.</p> <p>For salaried employees, divide the annual salary by 52 weeks, then divide by 40 hours or by the actual hours worked during a regular workweek if less than 40 hours.</p>	<p>PSL is paid at the regular hourly rate of pay for the workweek in which PSL is used.</p> <p>If an employee has more than one pay rate, PSL is paid at the rate equal to the scheduled pay rate(s) for the job during which PSL is taken.</p>	<p>When used, PSL must be paid by one of following methods:</p> <p>Non-exempt employees:</p> <ul style="list-style-type: none"> Regular rate of pay for the workweek in which PSL is used; Total wages (excluding overtime premiums) divided by total hours worked in the full pay periods of the prior 90 days of employment; or Divide annual salary by 52 weeks, then divide by the actual hours worked during a regular workweek, not to exceed 40 hours. <p>Exempt employees:</p> <ul style="list-style-type: none"> Same as any other paid leave provided by the employer; or Divide annual salary by 52 weeks, then divide by the actual hours worked during a regular workweek. 	Not addressed.

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19. Requiring Advance Notice from Employees of PSL Use	<p>If the need for PSL is foreseeable, the employee must provide reasonable advance notice.</p> <p>If the need is unforeseeable, the employee must provide notice as soon as practicable.</p>	<p>Same as California. Employees cannot be required, as a condition of taking PSL, to search for a replacement worker.</p>	<p>Employers may require reasonable notice of a PSL absence, but cannot require such advance notice that would deter valid use of PSL.</p> <p>If reasonable notice is required, employers must have a procedure for employees to communicate absences.</p>	<p>Employees must give advance notice if PSL is planned, such as a scheduled medical appointment.</p> <p>If the need is unforeseeable (such as an unanticipated illness or medical emergency) the employee must give notice as soon as practicable.</p>	<p>Employers may require no more than two hours' notice before the start of shift, but greater flexibility is necessary for emergencies or sudden illnesses.</p> <p>If reasonable notice is required, the employer must have a procedure for employees to communicate absences.</p> <p>Employees cannot be required, as a condition of taking PSL, to search for a replacement worker.</p>	<p>If need for PSL is foreseeable, an employer may require reasonable advance notice not to exceed seven days.</p> <p>If need is unforeseeable, notice must be provided as soon as practicable.</p> <p>Employees cannot be required, as a condition of taking PSL, to search for a replacement worker.</p>	<p>Employers may require at least 2 hours' notice of an absence before the start of a shift, except for emergencies or sudden illnesses for which advance notice would be unreasonable.</p> <p>Employees cannot be required, as a condition of taking PSL, to search for a replacement worker.</p>	<p>Not addressed.</p>
20. Requiring Documentation from Employees to Verify PSL Use	<p>Requiring documentation is not permitted under the California Labor Commissioner's interpretation of the law.</p>	<p>An employer may only take reasonable measures to verify or document that PSL use is lawful and cannot require employees to incur expenses in excess of \$15 in order to show their eligibility for PSL.&</p>	<p>Employers may adopt a policy of verifying and/or documenting that employees' use of accrued PSL is lawful. If the employer adopts such a policy, it need not pay PSL for the time in question until the employee complies with the verification requirement.&</p>	<p>Employers may request reasonable documentation. What is reasonable depends on the situation, but a requirement should never be so difficult that it deters legitimate PSL. Documentation may be required after more than three consecutive days of PSL use.&</p>	<p>It is presumptively reasonable to require documentation for PSL use exceeding three consecutive work days, or to verify a subsequent absence if abuse is reasonably suspected.& Employers cannot require employees to incur expenses in excess of \$5 to obtain required documentation.</p>	<p>Requiring documentation is permitted for absences exceeding three consecutive work days.&</p>	<p>It is presumptively reasonable to require documentation in the following circumstances:</p> <ul style="list-style-type: none"> • PSL absences exceeding three consecutive work days; • Medical appointments; or • Where there is a pattern or clear instance of PSL abuse.& 	<p>The ordinance is silent as to the type of documentation that an employer may request to verify PSL use. Employers should follow applicable state and federal law.</p>

& Caution: On this issue, the city ordinance is inconsistent with the California Labor Commissioner's interpretation of the California law.

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21. Employers' Posting and Notice Obligations	<p>Employers must:</p> <ul style="list-style-type: none"> • Display the state's official poster in a conspicuous place at the worksite; • Include PSL information on non-exempt employees' wage notices (a template is available at www.dir.ca.gov/dlse/LC_2810.5_Notice.pdf); and • Include the amount of available PSL in employees' wage statements. 	<p>In addition to the notice requirements under the state law, employers must:</p> <ul style="list-style-type: none"> • Display the City's official notice of rights in a conspicuous place at all worksites in the City, in all languages spoken by at least 5% of workers at the worksite; • Include the amount of PSL hours accrued to date in records provided to employees at the end of each pay period (e.g., wage statements); and • At the time of hire, provide employees written notice of the employer's name, address, and telephone number. 	<p>In addition to the notice requirements under the state law, employers must:</p> <ul style="list-style-type: none"> • Display the City's official notice of rights in a prominent location in the workplace; • Provide a copy of the City's official notice of rights to current and new employees; and • At the time of hire, provide covered employees written notice of the employer's name, address, and telephone number. <p>Notices must be provided in all languages spoken by 10% or more of employees.</p>	<p>In addition to the notice requirements under the state law, employers must:</p> <ul style="list-style-type: none"> • Display the City's official notice of rights in a clearly visible place at any workplace of a covered employee; and • At the time of hire, provide covered employees written notice of the employer's name, address, and telephone number. <p>Notices must be provided in English and any other language spoken by at least 5% of covered employees at the workplace or job site.</p>	<p>In addition to the notice requirements under the state law, employers must:</p> <ul style="list-style-type: none"> • Display the City's official notice of rights in a prominent location in the workplace; • Provide a copy of the City's official notice of rights to current and new employees at the time of hire; and • At the time of hire, provide covered employees written notice of the employer's name, address, and telephone number. <p>Notices must be provided in all languages spoken by 10% or more of employees.</p>	<p>In addition to the notice requirements under the state law, employers must:</p> <ul style="list-style-type: none"> • Display the City's official notice of rights in a conspicuous place at any workplace where any covered employee works; • At the time of hire, provide written notice of the employer's legal name and any fictitious business name, address, and telephone number, and information on how the employer complies with the ordinance. <p>Notices must be provided in all languages spoken by 5% or more of employees.</p>	<p>In addition to the notice requirements under the state law, employers must:</p> <ul style="list-style-type: none"> • Display the City's official notice of rights in a conspicuous place in the workplace; and • Include amount of available City PSL in employees' wage statements. <p>The notice of rights must be posted in English, Spanish, Chinese, and any other language spoken by at least 5% of employees at the workplace.</p>	<p>In addition to the notice requirements under the state law, employers must:</p> <ul style="list-style-type: none"> • Display the City's official notice of rights in a conspicuous place at the workplace in English, Spanish and any other language spoken by 5% or more of the employer's workforce; and • At the time of hire, provide covered employees written notice of the employer's name, address, and telephone number.

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22. Effect of Rehiring	If the employee is rehired within one year from the date of separation, any previously accrued and unused PSL must be reinstated and can be used immediately upon rehire. However, if the employee is compensated for accrued, unused PSL upon separation, the employer is not required to reinstate the paid out PSL if the employee is subsequently rehired.	Not addressed.	Same as California law.	Same as California law.	Same as California law.	If the employee is rehired within six months from the date of separation, any previously accrued and unused PSL must be reinstated and can be used immediately upon rehire.	Same as California law.	Not addressed.
23. Retaliation Prohibited	Employers cannot retaliate against employees for exercising rights under the law. There is a rebuttable presumption of retaliation if an employer takes a negative employment action against an employee within 90 days of that employee engaging in a protected activity.	Employers cannot retaliate against employees for exercising rights under the law. There is a rebuttable presumption of retaliation if an employer takes a negative employment action against an employee within 90 days of that employee engaging in a protected activity.	Employers cannot retaliate against employees for exercising rights under the law. It is unlawful to discharge an employee within 120 days of the employer learning of the employee's protected activity, unless the employer has clear and convincing evidence of just cause for such discharge.	Employers cannot retaliate against employees for exercising rights under the law. There is a rebuttable presumption of retaliation if an employer takes a negative employment action against an employee within 90 days of that employee engaging in a protected activity.	Employers cannot retaliate against employees for exercising rights under the law. It is unlawful to discharge an employee within 120 days of the employer learning of the employee's protected activity, unless the employer has clear and convincing evidence of just cause for such discharge.	Employers cannot retaliate against employees for exercising rights under the law. There is a rebuttable presumption of retaliation if an employer takes a negative employment action against an employee within 90 days of that employee engaging in a protected activity.	Employers cannot retaliate against employees for exercising rights under the law. There is a rebuttable presumption of retaliation if an employer takes a negative employment action against an employee within 90 days of that employee engaging in a protected activity.	Employers cannot retaliate against employees for exercising rights under the law. There is a rebuttable presumption of retaliation if an employer takes a negative employment action against an employee within 90 days of that employee engaging in a protected activity.

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24. Record Retention	Employers must retain for three years records showing each employee's hours worked, and PSL accrual and use.	Employers must retain for four years records showing each covered employee's hours worked in the City, and PSL accrual and use. If the employer fails to maintain or retain adequate records documenting accrued PSL, the City will presume the employee's account of PSL owed is accurate, absent clear and convincing evidence otherwise.	Employers must retain for four years records showing each covered employee's hours worked in the City, pay rates, and PSL accrual and use. Employers must provide employees copies of these records upon their reasonable request.	Employers must retain for four years records showing each covered employee's hours worked in the City, and PSL accrual and use.	Employers must retain for three years records showing each covered employee's names, hours worked, pay rates, and PSL accrual and usage. A copy of the records must be provided to an employee upon reasonable request.	Employers must retain for three years records showing each covered employee's wages paid, hours worked in the City, and PSL accrual and use. Failure to maintain or retain adequate records documenting accrued PSL creates a rebuttable presumption that the employer has violated the ordinance and the City may rely on an employee's reasonable estimate regarding PSL earned and used.	Employers must retain for four years records showing each covered employee's hours worked in the City, and PSL accrual and use.	Employers must retain for three years records showing each covered employee's hours worked in the City, and PSL accrual and use. If the employer fails to maintain or retain adequate records documenting hours worked by the employee and PSL taken by the employee, the City will presume the employer has violated the ordinance absent clear and convincing evidence otherwise.
25. Enforcement	The law does not directly permit a private right of action by an aggrieved employee. It remains unclear, however, if an aggrieved employee can file suit under the California Private Attorney General Act of 2004 (PAGA).	The City is authorized to investigate potential violations, and to impose penalties and fines. The City or an aggrieved employee can bring a civil action in court to enforce the ordinance.	The City is authorized to investigate potential violations, and to award the same relief in its proceedings as a court of law could. The City or an aggrieved employee can bring a civil action in court to enforce the ordinance.	The City is authorized to investigate potential violations, settle complaints, and impose fines and penalties. The City or an aggrieved employee can bring a civil action in court to enforce the ordinance.	The City is authorized to investigate potential violations, and to award the same relief in its proceedings as a court of law could. The City or an aggrieved employee can bring a civil action in court to enforce the ordinance.	The City is authorized to investigate potential violations, settle complaints, and impose fines and penalties. The City or an aggrieved employee can bring a civil action in court to enforce the ordinance.	The City is authorized to investigate potential violations, settle complaints, and impose fines and penalties. The City or an aggrieved employee can bring a civil action in court to enforce the ordinance.	The City contracts with Los Angeles County to process and investigate claims. Violations can result in fines, penalties and criminal liability. Employees have the right to file civil claims, and employers violating the law can be subject to administrative or criminal penalties.

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26. Los Angeles and Long Beach Hotel Workers	<p>This chart does not include two laws applicable to hotel workers only.</p> <p>In 2007, the City of Los Angeles adopted an ordinance requiring hotels with 150+ rooms within the Airport Hospitality Enhancement Zone to provide employees at least 96 paid hours off per year for any purpose, and a proportional amount of hours to part-time hotel workers. (L.A. Mun. Code §186.02.) The L.A. ordinance is available at http://www.foxrothschild.com/content/uploads/2015/05/Citywide-Hotel-Worker-Minimum-Wage-Ordinance.pdf.</p> <p>In 2012, Long Beach voters approved Measure N, which requires hotel employers to provide at least five days of PSL to certain employees. (Long Beach Mun. Code § 5.48.020.) The Long Beach Ordinance is available at http://www.foxrothschild.com/content/uploads/2015/05/Citywide-Hotel-Worker-Minimum-Wage-Ordinance.pdf.</p>							

- ¹ See the California Department of Industrial Relations' Healthy Workplace Healthy Family Act of 2014 (AB 1522) website, www.dir.ca.gov/dlse/ab1522.html, and Frequently Asked Questions at www.dir.ca.gov/dlse/paid_sick_leave.htm.
- ² See Berkeley Ordinance No. 7,505-N.S., Minimum Wage Ordinance, www.cityofberkeley.info/Clerk/City_Council/2016/08_Aug/Documents/2016-08-31_Item_01_Ordinance_7505.aspx.
- ³ See Emeryville's Minimum Wage and Paid Sick Leave Ordinance website, www.ci.emeryville.ca.us/1024/Minimum-Wage-Ordinance/. Information on Emeryville's geographical boundaries can be found here: www.ci.emeryville.ca.us/DocumentCenter/Home/View/678.
- ⁴ See City of Los Angeles's Minimum Wage and Paid Sick Leave website: www.wagesla.lacity.org. Information on City of Los Angeles' geographical boundaries can be found here: www.zimas.lacity.org/; www.laalmanac.com/LA/lamap2.htm; and www.neighborhoodinfo.lacity.org.
- ⁵ See Oakland's Minimum Wage and Paid Sick website: www2.oaklandnet.com/Government/o/CityAdministration/d/MinimumWage/index.htm. Information on Oakland's geographical boundaries can be found here: www.zipmap.net/California/Alameda_County/Oakland.htm.
- ⁶ See the City of San Diego's Paid Sick Leave and Minimum Wage website: www.sandiego.gov/treasurer/minimum-wage-program. Information on the City of San Diego's geographical boundaries can be found here: <http://gis.sandag.org/boundary/viewer.htm>, and <https://www.sandiego.gov/sites/default/files/legacy//planning/programs/mapsua/pdf/cplancd2.pdf>.
- ⁷ See San Francisco's Paid Sick Leave Ordinance website: <http://sfgov.org/olse/paid-sick-leave-ordinance-pslo>. Information on San Francisco's geographical boundaries can be found here: http://www.zipmap.net/California/San_Francisco_County.htm.
- ⁸ See the City of Santa Monica's Paid Sick Leave and Minimum Wage website: <http://beta.smgov.net/strategic-goals/inclusive-diverse-community/minimum-wage-ordinance>.
- ⁹ City of Los Angeles Effective Date: The effective date of the ordinance depends on the size of the employer. Employers with 26 or more employees must comply by July 1, 2016. Employers with 25 or fewer employees ("small businesses") have until July 1, 2017 to comply.
- ¹⁰ Caution: As it applies to employees hired before 1/1/2017, the San Francisco ordinance is inconsistent with the state law, which requires PSL to begin to accrue on the first day of employment.
- ¹¹ California Department of Labor Standards Enforcement, Opinion Letter 2016.10.11, "Calculating Payment of Paid Sick Leave," <http://www.dir.ca.gov/dlse/opinions/2016-10-11.pdf>.

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