

Oakland, CA – Sick Leave Policy

Who is entitled to paid sick leave?

Any employee who performs at least two (2) hours of work in a “workweek” within the geographic boundaries of Oakland is entitled to accrue paid sick leave. The Paid Sick Leave Measure does not apply to properly classified independent contractors.

What is a “workweek”?

An employer may implement or use its current definition of “workweek” to determine employees’ eligibility under Measure FF as long as this definition is not designed to knowingly make employees ineligible for Oakland’s paid sick leave. Advantis Medical follows a Monday through Friday workweek.

How much paid sick leave must an employer provide to their employees?

Employees accrue one (1) hour of paid sick leave for every thirty hours (30) hours they work. This includes any overtime hours worked by the employee. Employees accrue paid sick leave in hour-unit increments.

When do employees start accruing paid sick leave?

Employees who are hired after March 2, 2015 commence accruing leave on their first day of work but shall not be entitled to use any accrued paid sick leave until after ninety (90) calendar days of employment.

Can an employer cap the amount of paid sick leave that an employee accrues during their employment?

Yes. Advantis Medical caps paid sick leave earned by an employee at seventy-two (72) hours. If an employee uses paid sick leave and falls below the cap, even during the same year, he/she starts accruing paid leave again.

Does paid sick leave accrue on overtime hours worked by eligible employees?

Possibly. Whether an employee accrues paid sick leave on overtime hours worked depends on whether the employee is exempt under the Fair Labor Standards Act (FLSA) and California law. For employees who are not exempt from the overtime provisions of the FLSA

and California law, paid sick leave accrues on all hours worked, including overtime hours. If an employee is properly classified as exempt from the overtime provisions of the FLSA and California law, paid sick leave accrues based on a forty (40) hours workweek absent clear and convincing evidence that the exempt employee's regular workweek is less than forty (40) hours. In this situation, paid sick leave accrues based upon the hours worked in that particular workweek.

How do exempt employees accrue paid sick leave?

Employees who are properly classified as exempt under the Fair Labor Standards Act and California law accrue sick leave based on a forty (40) hour workweek absent clear and convincing evidence that the exempt employee regularly works less than forty (40) hours in a workweek. In such instances, paid sick leave will accrue based on the regular workweek for that exempt employee.

Does accrued, paid sick leave carryover into the next year?

Yes. Accrued, unused paid sick leave carries over into the next year but is limited if an employer implements a cap. Advantis Medical will allow employees to carry over up to 40 hours of accrued, unused sick leave.

For what reasons can an employee use paid sick leave?

Employers must allow employees to use accrued paid sick leave in their "bank" in the following instances:

- When an employee is physically or mentally unable to perform his/her duties due to illness, injury, pregnancy or medical condition;
- To obtain a professional diagnosis or treatment of his/her medical condition or undergo a physical examination; and
- To aid or care for a child, parent, legal guardian or ward, sibling, grandparent, grandchild, spouse, registered domestic person or a "Designated Person" who is ill, injured, or receiving medical care, treatment or diagnosis.

What is a "Designated Person" under Oakland's Paid Sick Leave Measure?

If an employee has no spouse or registered domestic partner, he/she may designate one individual that they will aid or care for under the Paid Sick Leave Measure.

Do employers have an obligation to take affirmative steps to offer employees without a spouse or registered domestic partner an opportunity to identify a “Designated Person?”

Yes. Employers must provide an employee an opportunity to make a designation. The opportunity to designate shall be offered to an employee no later than thirty (30) days after he/she begins to accrue paid sick leave. Employers must provide the employee with no less than ten (10) workdays to make the designation. Thereafter, employees may change a designation or make a designation for the first time on an annual basis with a window of ten (10) workdays.

Is a step-child or foster child included as a family member for whom an employee can use paid sick leave?

Yes. Employees may use paid sick leave to aid of care for a child, parent, legal guardian or ward, sibling, grandparent, grandchild and spouse or registered domestic partner under any state or local law. These relationships include not only biological relationships but also relationships resulting from adoption, step-relationships and foster care relationships.

Can an employer require its employees to use paid sick leave in one-hour increments?

Yes. Advantis Medical permits employees to use paid sick leave in no less than one-hour increments.

Can an employer require employees to use paid sick leave while out on a family medical leave under California or federal law?

This question involves an interpretation of the Family Medical Leave Act (“FMLA”), the California Family Rights Act (“CFRA”), and in some circumstances California’s Pregnancy Disability Leave Act (“PDL”). Employers and employees should consult with the Federal Department of Labor regarding FMLA issues and with the California Department of Fair Employment and Housing regarding CFRA/PDL issues. Employers and employees can also review administrative regulations implementing these leave laws.

Can employee who is receiving paid sick leave also get State Disability Insurance (SDI) or Workers' Compensation (WC) benefits?

Possibly. An employee who is receiving paid sick leave may be eligible for SDI and WC benefits at the same time. However, whether an employee is eligible for SDI or WC benefits is governed by the California Unemployment Insurance and California Labor Codes. For more information about SDI benefits, consult the Employment Development Department and for additional information regarding WC benefits, consult the Division of Compensation.

Can an employer require an employee to give advanced notice of the need to take paid sick leave?

Yes. Employers can require employees to give reasonable notice of the need to take paid sick leave. What is reasonable depends on the specific situation. An employer's policies or practices should not be so onerous that they deter employees from legitimate use of paid sick leave. Policies that require advanced notification "as soon as practicable" for an unforeseeable absence from work for which paid sick will be used are, in principle, reasonable, and thus, presumptively lawful. Employers may define "as soon as practicable" as two hours, or a time period less than two hours, prior to the start of an employee's shift, as long as the employer recognizes that there are instances such as accidents, emergencies, or sudden illnesses, for which such a requirement of advanced notice is unreasonable.

What must an employer do if it requires advanced notice of the need to use paid sick leave?

An employer must establish a reasonable procedure for an employee to communicate absences to the employer.

Is an employer allowed to request medical documentation to ensure the time off work was due to illness or the need to care for a family member or designated person who was ill?

Employers may take only reasonable measures to verify or document that an employee's use of paid sick leave is lawful. A policy that requires a doctor's note or other Measure FF medical documentation for the use of paid sick leave of three or more consecutive workdays (whether full or partial days) is presumptively reasonable under Measure FF.

At what rate does an employer pay out paid sick leave when he/she chooses to use it?

For hourly employees, employers pay out sick leave at their regular hourly rate.

When must an employee be paid for the use of paid sick leave?

Sick leave must be paid to employees no later than the payday for the next regular payroll period after the sick leave was taken by the employee. However, if the employer has a reasonable verification requirement, the employer is not required to pay sick leave until the employee has complied with the verification requirement.

What may an employer do if it suspects an employee is or has engaged in paid sick leave abuse?

If an employer reasonably suspects an abuse of its paid sick leave policy, the employer may require a doctor's note for subsequent use of paid sick leave even if the use of paid sick leave was for fewer than three (3) consecutive workdays and even if the cost of obtaining such documentation exceeds five dollars (\$5.00). If an employer's reasonable suspicions of paid sick leave abuse are not confirmed, the employer shall comply going forward with Oakland Municipal Code section 5.92.030 and Interpretive Regulations Section 8(A). On the other hand, if an employer's reasonable suspicions of paid sick leave abuse are confirmed, the employer may discipline in accordance with state and federal law and its disciplinary policies. Employers should take caution because if they unreasonably or unlawfully accuse an employee of sick leave abuse, they violate Oakland Municipal Code sections 5.92.030 and 5.92.050.

What are some possible examples of a reasonable suspicion of sick leave abuse?

Examples of suspected sick leave abuse could include but are not limited to the following:

- a) taking paid sick leave on days when the employee's request for vacation leave was denied;
- b) a pattern of taking paid sick leave on days when the employee is scheduled to work a shift that may be perceived as undesirable, and
- c) a pattern of taking paid sick leave on Mondays or Fridays or immediately following a holiday.

Does an employer need to pay out accrued, unused paid sick leave to an employee at the time of separation of employment?

No.

May an employee waive his/her right to paid sick leave?

No. Any request to waive the right to paid sick leave constitutes a violation of Oakland's Paid Sick Leave law. However, employees shall not be barred from entering into a written valid collective bargaining agreement waiving such a right as long as the waiver is set forth in clear, unambiguous terms in the contract.

Retaliation Prohibited by Law

No employer shall take retaliatory personnel action or discriminate against an employee because the employee requests or uses earned sick leave either in accordance with this act or the employer's own earned sick leave policy, as the case may be, or files a complaint alleging the employer's violation of any provision of this act, or informs any other person of their rights under this act. No employer shall count earned sick leave taken under this act as an absence that may result in the employee being subject to discipline, discharge, demotion, suspension, a loss or reduction of pay, or any other adverse action.

What can an employee do if an employer does not provide him/her with paid sick leave or retaliates against an employee for exercising his/her rights under the law?

Employees can seek advice from an attorney and/or file a lawsuit in a court of law against their employer. Employees are entitled to all remedies available to correct a violation of this law, including back pay, reinstatement, injunctive relief, and/or attorneys' fees and expert witness fees and expenses. Additionally, any person who negligently or intentionally violates this law shall be liable for civil penalties for each violation to a maximum amount of \$1,000.00 per violation, the amount to be determined by a court. Employees may also contact Contracts and Compliance, Office of the City Administrator at (510) 238-6258 or email at minwageinfo@oaklandnet.com. Information may also be found at <http://www2.oaklandnet.com/Government/o/CityAdministration/d/MinimumWage/OAK0514>

Does an employer need to provide notice of an employee's rights under the Paid Sick Leave Measure?

Yes. Employers must give written notice to current employees and to new employees at the time of hire of his/her rights. The notice must be in all languages spoken by more than ten percent (10%) of the employees and shall be posted prominently in work areas that can be seen by all employees.

Does an employer need to retain records regarding employee use of paid sick leave?



Yes. Employers must retain records for at least three (3) years that document an employee's name, hours worked, pay rate and paid sick leave accrual and usage. An employer must provide an employee a copy of the records upon a reasonable request.

Contact Information

Employees with questions about this paid sick leave policy may contact
HR@advantisglobal.com