

EMPLOYMENT DETERMINATION GUIDE

Purpose:

This worksheet is to be used by the proprietor of a business to determine whether a worker is most likely an employee or an independent contractor.

General Information:

Generally, whether a worker is an employee or an independent contractor can be determined through the application of the factors contained in common law or employment and statutory provisions of the [California Unemployment Insurance Code](#).

If a worker is an employee under common law, the business that employs the worker must report the worker's earnings to the Employment Development Department (EDD) and must pay employment taxes on those wages. If the worker is an independent contractor and the business pays the worker \$600 or more in payments, the business must file a Form 1099-MISC with the Internal Revenue Service (IRS). The business must also file a *Report of Independent Contractor(s)* (DE 542) with the EDD within 20 days of either making payments totaling \$600 or more, or entering into a contract for \$600 or more with an independent contractor in any calendar year. For more detailed information regarding your independent contractor reporting requirements, view the latest revision of the *California Employer's Guide* (DE 44) available on the EDD website at www.edd.ca.gov/Payroll_Taxes/Forms_and_Publications.htm.

The basic test for determining whether a worker is an independent contractor or an employee is whether the principal has the right to control the manner and means by which the work is performed. When the principal has the "right of control," the worker will be an employee even if the principal never actually exercises the control. If the principal does not have the right of control, the worker will generally be an independent contractor.

If, on the face of the relationship, it is not clear whether the principal has the "right of control," there are secondary factors that are considered to determine the existence or nonexistence of the right of control.

The enclosed worksheet addresses the basic test and secondary factors through a series of questions. If use of the worksheet clearly demonstrates that a worker is an employee, you should contact the EDD and arrange to report the worker and pay the relevant taxes. You may also want to contact the IRS and your workers' compensation insurance carrier to ensure that you are in compliance with federal tax laws and with state workers' compensation statutes.

If after completing the worksheet you are not sure whether the worker is an independent contractor or employee, you may request a written ruling by completing a *Determination of Employment Work Status* (DE 1870) or contact the Taxpayer Assistance Center for advice by calling 888-745-3886. The DE 1870 is designed to analyze a working relationship in detail and serves as the basis for a written determination from the EDD on employment status.

WORKSHEET ON EMPLOYMENT STATUS

Questions 1 – 3 are significant questions. If the answer to any of them is "Yes," it is a strong indication that the worker is an employee.

1. Do you instruct or supervise the person while he or she is working? Yes _____ No _____

Independent contractors are free to do jobs in their own way, using specific methods they choose. A person or firm engages an independent contractor for the job's end result. When a worker is required to follow company procedure manuals and/or is given specific instructions on how to perform the work, the worker is normally an employee.

2. Can the worker quit or be discharged (fired) at any time? Yes _____ No _____

If you have the right to fire the worker at will and without cause, it indicates that you have the right to control the worker.

Independent contractors are engaged to do specific jobs and cannot be fired before the job is complete unless they violate the terms of the contract. They are not free to quit and walk away until the job is complete. For example, if a shoe store owner hires a licensed painter to paint the store, and the work had started, the store owner would not be able to just terminate the painter without there being a good reason or just cause for doing so.

3. Is the work being performed part of your regular business? Yes _____ No _____

Work which is a necessary part of the regular trade or business is normally done by employees. For example, a sales clerk is selling shoes in a shoe store. A shoe store owner could not operate without sales clerks to sell shoes. On the other hand, a plumber engaged to fix the pipes in the bathroom of the store is performing a service on a one-time or occasional basis that is not an essential part of the purpose of the business enterprise. A certified public accountant engaged to prepare tax returns and financial statements for the business would also be an example of an independent contractor.

A "No" answer to questions 4 – 6 indicates that the individual is not in a business for himself or herself and would, therefore, normally be an employee.

4. Does the worker have a separately established business? Yes _____ No _____

When individuals hold themselves out to the general public as available to perform services similar to those performed for you, it is evidence that the individuals are operating separately established businesses and would normally be independent contractors. Independent contractors are free to hire employees and assign the work to others in any way they choose. Independent contractors have the authority to fire their employees without your knowledge or consent. Independent contractors can normally advertise their services in newspapers and/or publications, the Internet, yellow page listings, radio, television, and/or seek new customers through the use of business cards.

5. Is the worker free to make business decisions which affect his or her ability to profit from the work? Yes _____ No _____

An individual is normally an independent contractor when he or she is free to make business decisions which impact his or her ability to profit or suffer a loss. This involves real economic risk, not just the risk of not getting paid. These decisions would normally involve the acquisition, use, and/or disposition of equipment, facilities, and stock in trade which are under his or her control. Further examples of the ability to make economic business decisions include the amount and type of advertising for the business, the priority in which assignments are worked, and selection of the types and amounts of insurance coverage for the business.

6. Does the individual have a substantial investment in their job which would subject him or her to a financial risk of loss? Yes _____ No _____

Independent contractors furnish the tools, equipment, and supplies needed to perform the work. Independent contractors normally have an investment in the items needed to complete their tasks. To the extent necessary for the specific type of business, independent contractors provide their own business facility.

Questions 7 – 13 are additional factors that should be considered. A "Yes" answer to any of the questions is an indication the worker may be an employee, but no one factor by itself is deciding. When those factors are considered, a determination of whether an individual is an employee will depend upon a grouping of factors that are significant in relationship to the service being performed. However, the greater the number of "Yes" answers to questions 7 – 13, the greater the likelihood the worker is performing services as an employee.

7. Do you have employees who do the same type of work? Yes _____ No _____

If the work being done is basically the same as work that is normally done by your employees, it indicates that the worker is an employee. This applies even if the work is being done on a one-time basis. For instance, to handle an extra workload or replace an employee who is on vacation, a worker is hired to fill in on a temporary basis. This worker is a temporary employee, not an independent contractor.

(Note: If you contract with a temporary agency to provide you with a worker, the worker is normally an employee but may be an employee of the temporary agency. You may refer to the EDD *Information Sheet: Temporary Services and Employee Leasing Industries* [DE 231F] on the subject of temporary service and leasing employers.)

8. Do you furnish the tools, equipment, or supplies used to perform the work? Yes _____ No _____

Independent contractors furnish the tools, equipment, and supplies needed to perform the work. Independent contractors normally have an investment in the items needed to complete their tasks.

9. Is the work considered unskilled or semi-skilled labor? Yes _____ No _____

The courts and the California Unemployment Insurance Appeals Board have held that workers who are considered unskilled or semi-skilled are the type of workers the law is meant to protect and are generally employees.

10. Do you provide training for the worker? Yes _____ No _____

In skilled or semi-skilled work, independent contractors usually do not need training. If training is required to do the task, it is an indication that the worker is an employee.

11. Is the worker paid a fixed salary, an hourly wage, or based on a piece rate basis? Yes _____ No _____

Independent contractors agree to do a job and bill for the service performed. Typically, payments to independent contractors for labor or services are made upon the completion of the project or completion of the performance of specific portions of the project.

12. Did the worker previously perform the same or similar services for you as an employee? Yes _____ No _____

If the worker previously performed the same or similar services for you as an employee, it is an indication that the individual is still an employee.

13. Does the worker believe that he or she is an employee? Yes _____ No _____

Although belief of the parties is not controlling, intent of the parties is a factor to consider when making an employment or independent contractor determination. When both the worker and principal believe the worker is an independent contractor, an argument exists to support an independent contractor relationship between the parties.

Interpretations of Answers

Depending on the services being performed and the type of occupation, this questionnaire may produce a variety of results. There may be some factors which lean toward employment and some which lean toward independence. The answers to questions 1 – 6 provide a strong indication of the presence or absence of right to control. The answers to questions 7 – 13 when joined with other evidence may carry greater weight when indicating the presence or absence of direction and control.

1. If all of the answers to questions 1 – 3 are "No" and all of the answers to questions 4 – 6 are "Yes," there is an indication of independence. When this is the case, there are likely to be a number of "No" answers to questions 7 – 13 which add to the support of the determination.
2. If all of the answers to questions 1 – 3 are "Yes" and all of the answers to questions 4 – 6 are "No," it is very strong indication that the worker in question is an employee. When this is the case, there are likely to be a number of "Yes" answers to questions 7 – 13 which add to the support of the determination.
3. If the answer to question 1 or 2 is "Yes" or the answer to any one of questions 4 – 6 is "No," there is a likelihood of employment. At the very least, this pattern of answers makes the determination more difficult since the responses to questions 7 – 13 will probably be mixed. In such situations, the business owner would be well advised to complete a DE 1870, giving all of the facts of the working relationship and requesting a ruling from the EDD.
4. If the answer to question 3 is "Yes" and the answer to question 4 is "No," there is a likelihood of employment. Given this pattern of answers, it is probable that the answers to questions 5 and 6 will also be "No." When this happens you may also see more "Yes" answers to the last group of questions (7 – 13). This scenario would support an employment determination.

These four scenarios illustrate only a few combinations of answers that could result from the use of this Employment Determination Guide, depending on the working relationship a principal may have with a worker and the type of occupation. The more the pattern of answers vary from the above four situations, the more difficult it is to interpret them. In situations 1 and 2, there is a greater chance that the interpretation will be accurate, and they present the least risk to the business owner of misclassifying the worker. With other combinations of answers, the EDD recommends that business owners complete a DE 1870, giving a complete description of the working relationship and requesting a ruling from the EDD.

NOTE: Some agent or commission drivers, traveling or city salespeople, homeworkers, artists, authors, and workers in the construction industry are employees by law even if they would otherwise be considered independent contractors under common law. If you are dealing with workers in any of these fields, access *Information Sheet: Statutory Employees* (DE 231SE) from the EDD website at www.edd.ca.gov/Payroll_Taxes/Forms_and_Publications.htm or contact the Taxpayer Assistance Center at 888-745-3886.

SOME EXAMPLES OF INDEPENDENT CONTRACTORS AND COMMON LAW EMPLOYEES

Independent Contractors

An attorney or accountant who has his or her own office, advertises in the yellow pages of the phone book under "Attorneys" or "Accountants," bills clients by the hour, is engaged by the job or paid an annual retainer, and can hire a substitute to do the work is an example of an independent contractor.

An auto mechanic who has a station license, a resale license, buys the parts necessary for the repairs, sets his or her own prices, collects from the customer, sets his or her own hours and days of work, and owns or rents the shop from a third party is an example of an independent contractor.

Dance instructors who select their own dance routines to teach, locate and rent their own facilities, provide their own sound systems, music and clothing, collect fees from customers, and are free to hire assistants are examples of independent contractors.

A repairperson who owns or rents a shop, advertises the services to the public, furnishes all of the tools, equipment, and supplies necessary to make repairs, sets the price for services, and collects from the customers is an example of an independent contractor.

NOTE: Payroll tax audits conducted by the EDD have disclosed misclassified workers in virtually every type and size of business. However, certain industries seem more prone to have a higher number of misclassified workers than others. Historically, industries at higher risk of having misclassified workers include businesses that use:

- Construction workers
- Seasonal workers
- Short-term or "casual" workers
- Outside salespersons

Employees

An attorney or accountant who is employed by a firm to handle their legal affairs or financial records, works in an office at the firm's place of business, attends meetings as needed, and the firm bills the clients and pays the attorney or accountant on a regular basis is an example of an employee.

An auto mechanic working in someone's shop who is paid a percentage of the work billed to the customer, where the owner of the shop sets the prices, hours, and days the shop is open, schedules the work, and collects from the customers is an example of an employee.

Dance instructors working in a health club where the club sets hours of work, the routines to be taught and pays the instructors from fees collected by the club are examples of employees.

A repairperson working in a shop where the owner sets the prices, the hours and days the shop is open, and the repairperson is paid a percentage of the work done is an example of an employee.

CALIFORNIA LAW PROHIBITS WORKPLACE DISCRIMINATION AND HARASSMENT

The California Department of Fair Employment and Housing (DFEH) enforces laws that protect you from illegal discrimination and harassment in employment based on your actual or perceived:

- **Ancestry**
- **Age** (40 and above)
- **Color**
- **Disability** (physical and mental, including HIV and AIDS)
- **Genetic information**
- **Gender, gender identity, or gender expression**
- **Marital status**
- **Medical condition** (genetic characteristics, cancer or a record or history of cancer)
- **Military or veteran status**
- **National origin** (includes language use and possession of a driver's license issued to persons unable to prove their presence in the United States is authorized under federal law.)
- **Race**
- **Religion** (includes religious dress and grooming practices)
- **Sex** (includes pregnancy, childbirth, breastfeeding and/or related medical conditions)
- **Sexual orientation**

The California Fair Employment and Housing Act (Government Code sections 12900 through 12996) and its implementing regulations (California Code of Regulations, title 2, sections 11000 through 11141):

- **Prohibit harassment** of employees, applicants, unpaid interns, volunteers, and independent contractors by any persons and require employers to take all reasonable steps to prevent harassment. This includes a prohibition against sexual harassment, gender harassment, harassment based on pregnancy, childbirth, breastfeeding and/or related medical conditions, as well as harassment based on all other characteristics listed above.
- **Require that all employers provide information** to each of their employees on the nature, illegality, and legal remedies that apply to sexual harassment. Employers may either develop their own publications, which must meet standards set forth in California Government Code section 12950, or use a brochure from the DFEH.
- **Require employers with 50 or more employees and all public entities to provide sexual harassment and abusive conduct prevention training** for all supervisors.
- **Prohibit employers from limiting or prohibiting the use of any language** in any workplace unless justified by business necessity. The employer must notify employees of the language restriction and consequences for violation. Also prohibits employers from discriminating against an applicant or employee because he or she possesses a driver's license issued to a person who is unable to prove his or her presence in the United States is authorized under federal law.
- **Require employers to reasonably accommodate** an employee, unpaid intern, or job applicant's religious beliefs and practices, including the wearing or carrying of religious clothing, jewelry or artifacts, and hair styles, facial hair, or body hair, which are part of an individual's observance of his or her religious beliefs.
- **Require employers to reasonably accommodate employees or job applicants with a disability** to enable them to perform the essential functions of a job.

• **Permit job applicants, unpaid interns, volunteers, and employees to file complaints** with the DFEH against an employer, employment agency, or labor union that fails to grant equal employment as required by law.

• **Prohibit discrimination** against any job applicant, unpaid intern, or employee in hiring, promotions, assignments, termination, or any term, condition, or privilege of employment.

• **Require employers, employment agencies, and unions** to preserve applications, personnel records, and employment referral records for a minimum of **two years**.

• **Require employers to provide leaves** of up to four months to employees disabled because of pregnancy, childbirth, or a related medical condition.

• **Require an employer to provide reasonable accommodations** requested by an employee, on the advice of her health care provider, related to her pregnancy, childbirth, or a related medical condition.

• **Require employers of 50 or more persons to allow eligible employees to take up to 12 weeks leave** in a 12-month period for the birth of a child; the placement of a child for adoption or foster care; for an employee's own serious health condition; or to care for a parent, spouse, or child with a serious health condition. The law also requires employers to post a notice informing employees of their family and medical leave rights.

• **Require employment agencies to serve all applicants equally**, refuse discriminatory job orders, and prohibit employers and employment agencies from making discriminatory pre-hiring inquiries or publishing help-wanted advertisements that express a discriminatory hiring preference.

• **Prohibit unions from discriminating** in member admissions or dispatching members to jobs.

• **Prohibit retaliation** against a person who opposes, reports, or assists another person to oppose unlawful discrimination.

The law provides for remedies for individuals who experience prohibited discrimination or harassment in the workplace. These remedies include hiring, front pay, back pay, promotion, reinstatement, cease-and-desist orders, expert witness fees, reasonable attorney's fees and costs, punitive damages, and emotional distress damages.

Job applicants, unpaid interns, and employees: If you believe you have experienced discrimination or harassment you may file a complaint with the DFEH.

Independent contractors and volunteers: If you believe you have been harassed, you may file a complaint with the DFEH.

Complaints must be filed within one year of the last act of discrimination/harassment or, for victims who are under the age of 18, not later than one year after the victim's eighteenth birthday.

For more information contact (800) 884-1684; TTY (800) 700-2320; videophone for the hearing impaired (916) 226-5285; contact.center@dfeh.ca.gov; or www.dfeh.ca.gov.

Government Code section 12950 and California Code of Regulations, title 2, section 11013, require all employers to post this document. It must be conspicuously posted in hiring offices, on employee bulletin boards, in employment agency waiting rooms, union halls, and other places employees gather.

In accordance with the California Government Code and ADA requirements, this publication can be made available in Braille, large print, computer disk, or voice recording as a disability-related accommodation for an individual with a disability. To discuss how to receive a copy in an alternative format, please contact the DFEH at the telephone numbers or e-mail address above.

NOTICE TO EMPLOYEE
Labor Code section 2810.5

EMPLOYEE

Employee Name: _____

Start Date: _____

EMPLOYER

Legal Name of Hiring Employer: _____

Is hiring employer a staffing agency/business (e.g., Temporary Services Agency; Employee Leasing Company; or Professional Employer Organization [PEO])? ☐ Yes ☐ No

Other Names Hiring Employer is "doing business as" (if applicable):

Physical Address of Hiring Employer's Main Office:

Hiring Employer's Mailing Address (if different than above):

Hiring Employer's Telephone Number: _____

If the hiring employer is a staffing agency/business (above box checked "Yes"), the following is the other entity for whom this employee will perform work:

Name: _____

Physical Address of Main Office: _____

Mailing Address: _____

Telephone Number: _____

WAGE INFORMATION

Rate(s) of Pay: _____ Overtime Rate(s) of Pay: _____

Rate by (check box): ☐ Hour ☐ Shift ☐ Day ☐ Week ☐ Salary ☐ Piece rate ☐ Commission

☐ Other (provide specifics): _____

Does a written agreement exist providing the rate(s) of pay? (check box) ☐ Yes ☐ No

If yes, are all rate(s) of pay and bases thereof contained in that written agreement? ☐ Yes ☐ No

Allowances, if any, claimed as part of minimum wage (including meal or lodging allowances):

(If the employee has signed the acknowledgment of receipt below, it does not constitute a "voluntary written agreement" as required under the law between the employer and employee in order to credit any meals or lodging against the minimum wage. Any such voluntary written agreement must be evidenced by a separate document.)

Regular Payday: _____

WORKERS' COMPENSATION

Insurance Carrier's Name: _____
Address: _____
Telephone Number: _____
Policy No.: _____
☐ Self-Insured (Labor Code 3700) and Certificate Number for Consent to Self-Insure: _____

PAID SICK LEAVE

Unless exempt, the employee identified on this notice is entitled to minimum requirements for paid sick leave under state law which provides that an employee:

- a. May accrue paid sick leave and may request and use up to 3 days or 24 hours of accrued paid sick leave per year;
- b. May not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and
- c. Has the right to file a complaint against an employer who retaliates or discriminates against an employee for
 1. requesting or using accrued sick days;
 2. attempting to exercise the right to use accrued paid sick days;
 3. filing a complaint or alleging a violation of Article 1.5 section 245 et seq. of the California Labor Code;
 4. cooperating in an investigation or prosecution of an alleged violation of this Article or opposing any policy or practice or act that is prohibited by Article 1.5 section 245 et seq. of the California Labor Code.

The following applies to the employee identified on this notice: *(Check one box)*

- ☐ 1. Accrues paid sick leave only pursuant to the minimum requirements stated in Labor Code §245 et seq. with no other employer policy providing additional or different terms for accrual and use of paid sick leave.
- ☐ 2. Accrues paid sick leave pursuant to the employer's policy which satisfies or exceeds the accrual, carryover, and use requirements of Labor Code §246.
- ☐ 3. Employer provides no less than 24 hours (or 3 days) of paid sick leave at the beginning of each 12-month period.
- ☐ 4. The employee is exempt from paid sick leave protection by Labor Code §245.5. (State exemption and specific subsection for exemption): _____

ACKNOWLEDGEMENT OF RECEIPT

(Optional)

(PRINT NAME of Employer representative)

(PRINT NAME of Employee)

(SIGNATURE of Employer Representative)

(SIGNATURE of Employee)

(Date)

(Date)

The employee's signature on this notice merely constitutes acknowledgement of receipt.

Labor Code section 2810.5(b) requires that the employer notify you in writing of any changes to the information set forth in this Notice within seven calendar days after the time of the changes, unless one of the following applies: (a) All changes are reflected on a timely wage statement furnished in accordance with Labor Code section 226; (b) Notice of all changes is provided in another writing required by law within seven days of the changes.



City of Los Angeles Minimum Wage Frequently Asked Questions

11/2/15

Los Angeles Minimum Wage Ordinance

1. When does the City of Los Angeles Minimum Wage Ordinance take effect?

The ordinance takes effect on July 1, 2016.

2. Where can I find the Los Angeles Minimum Wage rate?

The wage rates will be posted at bca.lacity.org.

3. What City department is implementing the Ordinance?

The Department of Public Works, Bureau of Contract Administration, is the Designated Administrative Agency (DAA) for the Ordinance and has the administrative responsibilities to implement the guidelines and rules. Information is available at bca.lacity.org.

4. What is the definition of employee?

An employee is an individual who performs at least two hours of work in a particular week within the City of Los Angeles for an employer, and who qualifies as an employee entitled to payment of a minimum wage from any employer under the California minimum wage law.

5. Does the Los Angeles Minimum Wage apply to all employers who have employees performing work in the City of Los Angeles?

Yes. Regardless of where an employer's place of business is located, an employer must pay an employee who performs at least two hours of work in a particular week within the City of Los Angeles for all hours worked in the City of Los Angeles.

6. Does the Los Angeles Minimum Wage apply to full time and part time employees?

Yes. Any employee who performs at least two hours of work in a particular week within the City of Los Angeles is entitled to be paid the Los Angeles Minimum Wage.

7. Does the Los Angeles Minimum Wage apply to temporary employees?

Yes. Any employee who performs at least two hours of work in a particular week within the city of Los Angeles is entitled to be paid the Los Angeles Minimum Wage.

8. Does the Los Angeles Minimum Wage cover employees who work in Los Angeles but are not City residents?

Yes, any employee who performs at least two hours of work in a particular week within the City of Los Angeles is entitled to be paid the Los Angeles Minimum Wage regardless of the employee's city of residence.

9. What are the Los Angeles city boundaries? What zip code areas are within the Los Angeles city boundaries?

We recommend visiting <http://zimas.lacity.org/> as a reference.

10. Can tips be counted toward the minimum wage?

No.

11. How will the City enforce the Los Angeles Minimum Wage Ordinance?

The Los Angeles City Council enacted the Wage Enforcement Division Ordinance creating a division to enforce the Los Angeles Minimum Wage Ordinance. Responsibilities will include investigating potential violations, issuing

determinations of compliance or non-compliance, and obtaining restitution, fines, penalties, and/or interest where violations have occurred.

12. What impact will the Los Angeles Minimum Wage Ordinance have on the Living Wage or Citywide Hotel Worker Minimum Wage?

If the Los Angeles Minimum Wage conflicts with Living Wage or Citywide Hotel Workers Minimum Wage, the Living Wage or Citywide Hotel Worker Minimum Wage will supersede the Los Angeles Minimum Wage. However, an employer who is officially exempted from the Living Wage or Citywide Hotel Worker Minimum Wage requirements may still be required to adhere to the Los Angeles Minimum Wage.

Non-Profit Corporations

13. Are non-profits covered by the Los Angeles Minimum Wage Ordinance?

Yes, non-profit employers must abide by the Ordinance. Certain Non-Profit Corporation employers with 26 or more employees may qualify for the deferral rate schedule.

14. What are the requirements for a non-profit corporation to qualify for the deferral rate schedule?

Non-Profit Corporations with a valid 501(c)(3) status and with 26 or more employees may qualify for a year deferral from the July 1st 2016 start date if the non-profit corporation provides satisfactory evidence of one of the following requirements:

- A. The chief executive officer earns a salary which, when calculated on an hourly basis, is less than five times the lowest wage paid by the corporation; or*
- B. It is a Transitional Employer as defined in Section 10.31.1(h) of the Los Angeles Administrative Code; or*
- C. It serves as a child care provider; or*
- D. It is funded primarily by City, County, State or Federal grants or reimbursements*

A deferral application from BCA will be available at BCA.lacity.org.

15. What are the employer wage rate implementation schedules?

Employers with 26 or more employees shall pay a wage of no less than the hourly rates set forth:

1. *On July 1, 2016, the hourly wage shall be \$10.50.*
2. *On July 1, 2017, the hourly wage shall be \$12.00.*
3. *On July 1, 2018, the hourly wage shall be \$13.25.*
4. *On July 1, 2019, the hourly wage shall be \$14.25.*
5. *On July 1, 2020, the hourly wage shall be \$15.00.*

Employers with 25 or fewer employees shall pay a wage of no less than the hourly rates set forth:

1. *On July 1, 2017, the hourly wage shall be \$10.50.*
2. *On July 1, 2018, the hourly wage shall be \$12.00.*
3. *On July 1, 2019, the hourly wage shall be \$13.25.*
4. *On July 1, 2020, the hourly wage shall be \$14.25.*
5. *On July 1, 2021, the hourly wage shall be \$15.00.*

16. How is the size of an employer's business or Non-Profit Corporation determined?

The size of an employer's business or Non-Profit Corporation shall be determined by the average number of employees employed during the previous calendar year.

17. Does the size of an employer's business or Non-Profit Corporation include employees working outside of Los Angeles?

Yes.

Los Angeles Wage Enforcement Division Ordinance

18. What are employees' rights under the Wage Enforcement Division Ordinance?

Employees have the following rights:

- *Right to be provided the employer's name, address, and telephone in writing at the time of hire.*
- *Right to file a complaint or inform any person about any party's alleged noncompliance with the Ordinance.*

- *Right to inform any person of his or her potential rights under the Ordinance and to assist him or her in asserting such rights.*
- *Right against retaliation when the employee mistakenly, but in good faith, alleges noncompliance with the Ordinance.*

Any adverse action against an employee within 90 days of the employee's exercise of protected rights may be construed as retaliation for the exercise of such rights.

19. What are the notice and posting of the minimum wage requirements?

- *Every employer must post in a clearly visible place at any workplace or job site where any employee works, the notice published each year by the Division informing employees of the current minimum wage rate and of their rights under the Ordinance.*
- *Notices must be in English, Spanish, Chinese (Cantonese and Mandarin), Hindi, Vietnamese, Tagalog, Korean, Japanese, Thai, Armenian, Russian, and Farsi, and any other language spoken by at least five percent of the employees at the workplace or job site.*
- *Every employer must provide each employee at the time of hire, the employer's name, address, and telephone number in writing.*

20. What are the Notice of Determination posting requirements once it is issued?

Employer must, within 24 hours after receipt of a Notice of Determination, post the Notice of Determination in a clearly visible place on the property that is:

- 1) the Employer's principal place of business in the City;*
- 2) if the Employer's principal place of business is outside the City, the fixed location within the City from or at which the Employer conducts business in the City; or*
- 3) if the Employer does not regularly conduct business from a fixed location in the City, one of the following:*
 - a. the location where the Employer maintains payroll records if the Notice of Determination is for a violation of payroll access and retention requirements; or*
 - b. the jobsite or other primary location where the Employees perform services in the City.*

21. How long must employers retain payroll records?

Payroll records must be retained for a period of four years.

22. Does my employer need to give me a meal break?

Please see <http://www.dir.ca.gov/dlse/>.

23. Does my employer need to give me a rest break?

Please see <http://www.dir.ca.gov/dlse/>.

24. Should I receive overtime pay?

Please see <http://www.dir.ca.gov/dlse/>.

25. Who can report a suspected violation?

An employee or any other person may report a suspected violation of the Ordinance.

26. Will the City allow a complainant to remain anonymous?

To encourage reporting of a violation, the City shall keep confidential, as permitted by applicable laws, the name and other identifying information of the employee or person reporting the violation unless authorized by the employee or person reporting the violation.

27. Do you need a social security number or photo identification to file a claim?

No.

28. Do I need a lawyer to file a claim?

No.

29. Can I file a claim if I don't speak English?

Yes, the BCA will make an effort to provide an interpreter in your language. Be sure to request an interpreter when you file.

30. What can I do if my employer doesn't pay me at least the Los Angeles Minimum Wage?

You may report a violation to the BCA to open an investigation.

31. What can I do if my employer retaliates against me because I question her/him about not being paid the Los Angeles minimum wage?

Retaliation is prohibited under the Ordinance. You may report a violation to the BCA to open an investigation.

32. What if my boss fires or punishes me for reporting a problem?

Retaliation is prohibited under the Ordinance. You may report a violation to the BCA to open an investigation.

33. What type of violation will be investigated?

The BCA will investigate the following violations:

- *Failure to pay the Los Angeles Minimum Wage.*
- *Failure to comply with notice, posting, or payroll records requirements.*
- *Retaliation.*

34. Where else can a wage claim be filed?

The California Department of Industrial Relations, Division of Labor Standards Enforcement, also accepts and investigates wage claims. Please see <http://www.dir.ca.gov/dlse/> for more details.

35. What private right of action is available to an employee?

Any employee or any other person acting on the behalf of the public as provided for under applicable state law may bring a civil action in court against an employer for violations of this Ordinance.

36. If the BCA determines an employer violated the Los Angeles Minimum Wage Ordinance, what relief can the employee receive?

An employer who violates minimum wage requirements is liable to the employee for payment of back wages and an additional penalty of \$100 for each day that the violation occurred or continued. Where retaliation has occurred, the employee is entitled to reinstatement and a trebling of all back wages and penalties.

37. What can an employee do if an employer does not cooperate with the BCA's investigation into the employee's complaint?

An employee may bring a civil action and petition the court for an order requiring the employer to cooperate with the BCA's investigation and seek an order compelling payment of back wages and other amounts owed to the employee.

38. What happens if an employer does not cooperate with an investigation?

The BCA has the authority to issue administrative fines, payable to the City of Los Angeles, by means of a Notice of Determination.

ADMINISTRATIVE FINES

<i>Failure to post notice of the Los Angeles Minimum Wage rate</i>	<i>\$500 per day per employee</i>
<i>Failure to allow access to payroll records</i>	<i>\$500 per day per employee</i>
<i>Failure to maintain payroll records or to retain payroll records for four years</i>	<i>\$500 per day per employee</i>
<i>Failure to allow access for inspections of books and records or to interview employees</i>	<i>\$500 per day per employee</i>
<i>Retaliation for exercising rights under the ordinance</i>	<i>\$1000 per day per employee</i>
<i>Failure to provide employer's name, address, and telephone number in writing</i>	<i>\$500 per day per employee</i>
<i>Failure to cooperate with the Division's investigation</i>	<i>\$500 per day per employee</i>
<i>Failure to post Notice of Determination to employees</i>	<i>\$500 per day per employee</i>

*Maximum administrative fine paid to the City for **each type** of violation will be \$5,000 per employee per year, with the exception of a retaliation violation (\$10,000 per employee per year).*

39. Can undocumented workers file a complaint with the BCA?

Yes, the BCA investigates complaints regardless of an individual's legal status.

This fact sheet is intended as general information only and does not carry the force of legal opinion.

The BCA is providing this information as a public service. This information and related materials are presented to give the public access to information on the Los Angeles minimum wage law. You should be aware that while we try to keep the information timely and accurate, there would often be a delay between official publications of the materials and the modification of these pages. Therefore, we make no express or implied guarantees. We will make every effort to correct errors brought to our attention.

The City of Los Angeles can only advise employers how to comply with the Los Angeles Minimum Wage Ordinance. It cannot advise an employer how to comply with state law. Please contact the California State Labor Commissioner for information on compliance with state law.

Post in a Conspicuous Place at any Workplace or Job Site.
Violators Shall be Subject to Penalties.



OFFICIAL NOTICE
Los Angeles Minimum Wage

Rate Effective July 1, 2016

\$10.50 PER HOUR



Starting July 1, 2016, all employers will be required to pay employees a new minimum wage according to the Los Angeles Minimum Wage Ordinance. The minimum wage rate will be adjusted every year according to the Los Angeles Minimum Wage Ordinance Section 187.02. Certain exemptions and deferrals may be available.

Employers with 26 or more employees:	
7/1/2016	\$10.50
7/1/2017	\$12.00
7/1/2018	\$13.25
7/1/2019	\$14.25
7/1/2020	\$15.00

Employers with 25 or fewer employees or Non-profit corporations with 26 or more employees with approval to pay a deferred rate:	
7/1/2017	\$10.50
7/1/2018	\$12.00
7/1/2019	\$13.25
7/1/2020	\$14.25
7/1/2021	\$15.00

The Los Angeles Office of Wage Standards Ordinance grants authority to the Bureau of Contract Administration, Office of Wage Standards to investigate possible violations, inspect workplaces, interview employees, and review the payroll records. The Office of Wage Standards will enforce the City's Minimum Wage Ordinance for violations including, but not limited to: 1) failure to pay the Los Angeles minimum wage; 2) failure to comply with notice, posting, and payroll records requirements; and 3) retaliation. The Los Angeles Municipal Code Section 188.04 protects employees from any discrimination or retaliation for exercising their rights to receive the City's minimum wage.

Los Angeles Paid Sick Leave

Effective July 1, 2016

Starting July 1, 2016, all Employers, except for Employers with 25 or fewer Employees, will be required to provide paid sick leave according to the Los Angeles Minimum Wage Ordinance. The paid sick leave will be provided to all Employees who work at least two hours in a particular week in the City of Los Angeles for the same Employer for 30 days or more within a year. Employers with 25 or fewer Employees begin providing sick leave benefits on July 1, 2017.

Entitlement	
Front Loading	At least 48 hours provided either at the beginning of each year of employment, calendar year, or 12 month period ; OR-
Accrual	One hour of paid sick leave for every 30 hours worked.
72 Hour Cap	Accrued unused paid sick leave shall carry over to the following year of employment and must be capped at a minimum of 72 hours , however, an Employer may choose no cap or a higher cap.
Separation from employment	An Employer is not required to provide compensation to an Employee for accrued or unused sick days at separation from employment.
Reinstatement	If an Employee is re-hired within a year of separation from employment, previously accrued and unused paid sick leave shall be reinstated.

Usage	
When	An Employee may use paid sick leave beginning on the 90th day of employment or July 1, 2016, whichever is later.
How	An Employer shall provide paid sick leave upon the oral or written request of an Employee for themselves or a family member, or for any individual related by blood or affinity. Qualified use of time can be found in LAMC Section 187.04 G.
	The use of paid sick leave may be limited to 48 hours leave annually.

The Los Angeles Municipal Code Section 187.06 protects Employees from any discrimination or retaliation for exercising their rights to receive the City's paid sick leave.

For more information, please contact the Office of Wage Standards at
1-844-WAGESLA(924-3752) or email wagesla@lacity.org or visit wagesla.lacity.org.

Minimum Wage in Santa Monica

EVENT

Santa Monica's Council passed an ordinance increasing the minimum wage for all Santa Monica workers starting **July 1, 2016**.

Major provisions match the City and County of Los Angeles for regional coordination:

- Phased increase to reach **\$15 in 2020** for most businesses
- One-year delay (\$15 by 2021) for businesses with 25 or fewer employees
- One-year delay (\$15 by 2021) for qualifying nonprofit organizations

The ordinance includes a higher wage for Santa Monica hotel workers, matching the City of Los Angeles in 2017, and going beyond Los Angeles in applying to hotels of all sizes.

- \$13.25 July 1, 2016; **\$15.37 July 1, 2017**

The ordinance includes terms specific to the Santa Monica context reflecting Council's and the community's value for worker protections and for preserving Santa Monica's unique identity.

- Provision for sick leave to protect employees and families (9 days large businesses; 5 days smaller businesses)
- Service charge regulation to protect worker income and ensure consumer transparency
- First time worker / seasonal exemption to protect first time employment
- Best practice enforcement provisions including retaliation protection, private right of action
- Focus on education and outreach through community based organization partnerships
- Exception for collective bargaining

A business-labor working group will recommend technical adjustments to the adopted ordinance as a continuing commitment to a collaborative process.

PROCESS

The ordinance was the outcome of nearly eight months of research and community engagement. This featured:

- Expert input from UC Berkeley's Labor Center
- Strong and active participation from businesses, workers, advocacy groups, and community members
- Preliminary report to Council, stakeholders and the public on results of outreach process and staff recommendations

REPORT AND ORDINANCE: WWW.SMGOV.NET/MINIMUMWAGE

THIS POSTER MUST BE DISPLAYED WHERE EMPLOYEES CAN EASILY READ IT

(Poster may be printed on 8 ½" x 11" letter size paper)

**HEALTHY WORKPLACES/HEALTHY FAMILIES ACT OF 2014
PAID SICK LEAVE****Entitlement:**

- An employee who, on or after July 1, 2015, works in California for 30 or more days within a year from the beginning of employment is entitled to paid sick leave.
- Paid sick leave accrues at the rate of one hour per every 30 hours worked, paid at the employee's regular wage rate. Accrual shall begin on the first day of employment or July 1, 2015, whichever is later.
- Accrued paid sick leave shall carry over to the following year of employment and may be capped at 48 hours or 6 days. However, subject to specified conditions, if an employer has a paid sick leave, paid leave or paid time off policy (PTO) that provides no less than 24 hours or three days of paid leave or paid time off, no accrual or carry over is required if the full amount of leave is received at the beginning of each year in accordance with the policy.

Usage:

- An employee may use accrued paid sick days beginning on the 90th day of employment.
- An employer shall provide paid sick days upon the oral or written request of an employee for themselves or a family member for the diagnosis, care or treatment of an existing health condition or preventive care, or specified purposes for an employee who is a victim of domestic violence, sexual assault, or stalking.
- An employer may limit the use of paid sick days to 24 hours or three days in each year of employment.

Retaliation or discrimination against an employee who requests paid sick days or uses paid sick days or both is prohibited. An employee can file a complaint with the Labor Commissioner against an employer who retaliates or discriminates against the employee.

For additional information you may contact your employer or the local office of the Labor Commissioner. Locate the office by looking at the list of offices on our website <http://www.dir.ca.gov/dlse/DistrictOffices.htm> using the [alphabetical listing of cities, locations, and communities](#). Staff is available in person and by telephone.

California Paid Sick Leave: Frequently Asked Questions

This document contains answers to questions that are frequently asked about California's new Paid Sick Leave law (AB 1522, operative January 1, 2015, and as amended in AB 304 effective July 13, 2015).

DIR has updated the FAQ list originally posted in February 2015 to reflect new requirements under AB 304. This newer document also clarifies previous responses given in answer to questions received from members of the public.

Eligibility for Paid Sick Leave Under the New Law

1. When does the new law take effect?

The state's new sick leave law went into effect on January 1, 2015. However, the right to begin accruing and taking sick leave under this law did not go into effect until July 1, 2015. Note that many employers already had sick leave policies in place for covered employees before the new law was adopted. If those existing sick leave policies already satisfied the requirements of the new law, there may not have been any required changes to an employee's right to accrue and take sick leave as a result of the new law.

2. How do I qualify for paid sick leave?

To qualify for sick leave, an employee must:

- Work for the same employer, on or after January 1, 2015, for at least 30 days within a year in California, and
- Satisfy a 90-day employment period (similar to a probationary period) before taking any sick leave

3. What if I work less than 30 days in California within a year?

If you work less than 30 calendar days within a year for the same employer in California, then you are not entitled to paid sick leave under this new law.

4. What if I work more than 30 days in California within a year but less than 90 days?

The 90 calendar day period works like a probationary period. If you work less than 90 days for your employer, you are not entitled to take paid sick leave.

5. When am I entitled to take paid sick leave?

A qualifying employee begins to accrue paid sick leave beginning on July 1, 2015, or if hired after that date on the first day of employment. An employee is entitled to use (take) paid sick leave beginning on the 90th day of employment.

6. Why does the law take effect January 1, 2015 if I don't begin accruing until July 1, 2015?

The different dates are a result of the general effective dates of new legislation (on January 1 following enactment of the law) and the way the law was drafted, making some of its provisions operative on a specified date (July 1, 2015). The qualifying period that determines which employees are eligible for paid sick leave, and the qualifying period for employee notice required by Labor Code 2810.5 both became effective on January 1, 2015; however the law provides that employees' right to accrue and take sick leave did not begin until July 1, 2015.

7. Does paid sick leave apply to all employees who work in California?

All employees who work at least 30 days for the same employer within a year in California, including part-time, per diem, and temporary employees, are covered by this new law with some specific exceptions. Employees exempt from the paid sick leave law include:

- Providers of publicly-funded In-Home Supportive Services (IHSS)
- Employees covered by collective bargaining agreements with specified provisions
- Individuals employed by an air carrier as a flight deck or cabin crew member, if they receive compensated time off at least equivalent to the requirements of the new law
- Retired annuitants working for governmental entities.

8. What if I am employed by a staffing agency?

Employees of a staffing agency are covered by the new law. Therefore, whoever is the employer or joint employer is required to provide paid sick leave to qualifying employees.

How qualifying employees accrue and take paid sick leave**9. If I qualify, how much paid sick leave can I take and be paid for?**

It depends on what kind of plan your employer chooses to offer in order to comply with the new law. Some employers already have paid time off or sick leave policies that meet the requirements of the new law, and for employees who are covered by those existing plans, the amount of sick leave you are entitled to take

will not change. In general terms, the law requires employers to provide and allow employees to use at least 24 hours or three days of paid sick leave per year.

Employers adopting new policies to comply with the law may choose whether to have an “*accrual*” policy or a “*no accrual/up front*” policy.

An *accrual* policy is one where employees earn sick leave over time, with the accrued time carrying over in each year of employment. In general terms (and subject to some exceptions), employees under an accrual plan must earn at least one hour of paid sick leave for each 30 hours of work (the 1:30 schedule).

Although employers may adopt or keep other types of accrual schedules, the schedule must result in an employee having at least 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment.

Although employees may accrue more than three days of paid sick leave under the one hour for every 30 hours worked (or under an alternative accrual standard) under an accrual method, the law allows employers to limit an employee’s **use** of paid sick leave to 24 hours or three days during a year. The law also allows an employer to limit an employee’s total accrued paid sick leave to no more than 48 hours or six days.

A *no accrual/up front* policy makes the full amount of sick leave for the year available immediately at the beginning of a year-long period, except for initial hires where it must be available for use by the 120th day of employment. The employer must provide at least 24 hours or three days of paid sick leave per year and the full amount of this leave must be available for the employee’s use from the beginning of each year of employment, calendar year, or 12-month period. Note: the employer determines how the year will be calculated, whether it tracks a typical calendar year, fiscal year, or other 12-month period).

Lastly, the law allows certain types of existing sick leave policies to be “grandfathered,” if the policy was in existence prior to January 1, 2015. These policies are deemed to comply with the new law if:

- The accrual provides no less than one day or 8 hours of accrued paid sick leave or paid time off within three months of employment per year, and
- The employee was eligible to earn at least three days or 24 hours of paid sick leave or paid time off within 9 months of employment.

Any modification to a grandfathered sick leave or paid time off policy will nullify its qualification as a grandfathered policy and the employer will be required to comply with the requirements under the new law.

10. How is the year measured?

Because paid sick leave accrues beginning on July 1, 2015, or the first day of employment if hired after July 1, 2015, the 12 month period will vary by hire date for those employees hired after July 1, 2015. Therefore, the measurement will mostly be tracked by the employee’s anniversary date.

11. Can my employer provide or advance paid sick leave to me prior to my accrual of sufficient paid leave time or prior to meeting the 90-day employment requirement?

Yes. An employer may elect to advance sick leave to an employee before it is accrued, but there is no requirement for an employer to do so under this law.

12. Why does the law let me accrue more time than I could use in a year?

Accrual, carryover, and use are all distinct concepts.

Accrual: Accrual of paid sick leave is based on the number of hours an employee works

Carryover: The amount of paid sick leave carried over to the next year; may be subject to a cap if the employer establishes a cap by policy.

Use: The use of paid sick leave may be limited to 3 days or 24 hours per year.

13. What happens if I am a seasonal employee and I only work 60 days one year but return to the same employer within one year and work another 60 days?

The paid sick leave law requires that your accrued and unused sick leave be restored to you if you return to the same employer within 12 months from the previous separation.

Note: An employer is not required to restore previously accrued and unused paid time off (PTO), if the sick leave was provided pursuant to a PTO policy covering sick leave which was paid or cashed out to the employee at the end of the previous employment with that employer.

14. What happens if I return to work for the same employer after more than one year?

The paid sick leave law does not require that your accrued sick leave be restored to you.

15. If I work part time, six hours per day, I have accrued 24 hours of paid sick leave and I take three paid sick days, can my employer refuse to allow me to take any more sick leave in that same year?

It will depend on the facts but generally speaking, no. The statute provides that an employer may limit the amount of sick leave to 24 hours or three days per year. Since you work 6 hours per day, you have only used 18 of your 24 hours. You still have 6 hours left to take and be paid for during the year because an employer must allow an employee to use at least three days or 24 hours, whichever is more (refer to [DLSE Opinion Letter](#) 2015.08.07).

Employer policies can provide more paid sick leave but not less**16. What happens when an employer has its own Paid Time Off (PTO) plan?**

The new law establishes minimum requirements for paid sick leave, but an employer may provide sick leave through its own existing sick leave or paid time off plan, or establish different plans for different categories of workers. Each plan must satisfy the accrual, carryover, and use requirements of the new law. In general terms, the minimum requirements under the new law are that an employer must provide at least 24 hours or three days of paid sick leave per year. A paid time off (PTO) plan that employees may use for the same purposes of paid sick leave, and that complies with all applicable minimum requirements of the new law, may continue to be used.

In general terms, the new law provides that, employers who adopt an accrual plan for paid sick leave, employees must accrue at least 1 hour of paid sick leave for each 30 hours of work. An employer may use a different accrual method, as long as the accrual is on a regular basis and results in the employee having no less than 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment, or each calendar year, or in each 12-month period.

The law also has a “grandfather” clause, which allows employers with paid sick leave policies or paid time off policies that were in existence prior to January 1, 2015, to maintain those policies and be deemed in compliance as long as they meet the following requirements:

- The accrual provides no less than one day or 8 hours of accrued paid sick leave or paid time off within three months of employment per year, and
- The employee was eligible to earn at least three days or 24 hours of paid sick leave or paid time off within 9 months of employment.

Sick leave or annual leave provided to governmental employees pursuant to either certain Government Code provisions or a memorandum of understanding meet the accrual requirements.

17. How does an employer satisfy the provision for putting the full amount of leave into my leave bank under the alternative “up-front” (or advance) method for providing paid sick leave?

The law states that an employer is not required to have an accrual or carryover policy for paid sick leave if the “full amount of leave” is provided to employees at the beginning of each year of employment, calendar year or 12-month period. The “full amount of leave” that an employer is required to provide under this provision is at least 24 hours or three days of paid sick leave.

For initial hires, however, the employee must still meet the 90-day employment requirement prior to taking any paid sick leave.

18. Under the accrual method, can I carry over unused sick leave from one year to the next?

Yes, but an employer may limit or cap the overall amount of sick leave an employee may accrue to 6 days or 48 hours.

19. My employer provides paid time off which I can use for vacation or illness. Will my employer have to provide additional sick leave?

No, as long as your employer provides the minimum of at least 24 hours or three days per year of paid leave that can be used for health care and that meets other requirements in the law.

20. My company offers unlimited time off. How does the new law affect me?

Most employers with this new but growing policy do not track how much time employees take off or for what reason. Although the new law requires that employers separately track sick leave accrual and use, for employers with unlimited paid time off plans, the notice, itemized pay stub or separate written statement provided with the payment of wages meets this requirement by indicating the paid sick leave is “unlimited”.

For what purposes can an employee take paid sick leave

21. What can I use paid sick leave for?

You can take paid sick leave for yourself or a family member, for preventive care or diagnosis, care or treatment of an existing health condition, or for specified purposes if you are a victim of domestic violence, sexual assault or stalking.

- Family members include the employee's parent, child, spouse, registered domestic partner, grandparent, grandchild, and sibling.
- Preventive care would include annual physicals or flu shots.

The employee may decide how much paid sick leave he or she wants to use (for example, whether you want to take an entire day, or only part of a day). Your employer can require you to take a minimum of at least two hours of paid sick leave at a time, but otherwise the determination of how much time is needed is left to the employee.

22. Do I have to notify my employer before taking sick leave?

The employee must notify the employer in advance if the sick leave is planned, as may be the case with scheduled doctors' visits. If the need is unforeseeable, the employee need only give notice as soon as practical, as may occur in the case of unanticipated illness or a medical emergency.

Payment and tracking of earned and taken leave**23. When I take paid sick leave, will I get paid as I normally do for the applicable pay period?**

The new law requires that an employer provide payment for sick leave taken by an employee no later than the payday for the next regular payroll period after the sick leave was taken. This does not prevent an employer from making the adjustment in the pay for the same payroll period in which the leave was taken, but it permits an employer to delay the adjustment until the next payroll. For example, if you did not clock in for a shift and therefore were not paid for it but utilized your paid sick leave, your employer would have to pay you not later than the following pay period and account for it in the wage stub or separate itemized wage statement for that following regular pay period.

24. How much will I get paid?

It depends on whether you are an “exempt” or “non-exempt” employee. For non-exempt employees, you will be paid your regular or normal non-overtime hourly rate for the amount of time that you took as paid sick leave. For example, if you took two hours of paid sick leave to attend a doctor’s appointment, you will be paid for those two hours at the same non-overtime hourly rate you would have earned if you had been working.

To determine the rate of pay, the employer may either:

- Calculate your regular, non-overtime rate of pay for the workweek in which you used paid sick leave, whether or not you actually worked overtime in that workweek (in general terms, this is usually done by dividing your total non-overtime compensation by the total non-overtime hours worked), or
- Divide your total compensation for the previous 90 days (excluding overtime premium pay) by the total number of non-overtime hours worked in the full pay periods of the prior 90 days of employment

For exempt employees, paid sick leave is calculated in the same manner the employer calculates wages for other forms of paid leave time (for example, vacation pay, paid-time off).

25. How will I know how much sick leave I have accrued?

Employers must show how many days of sick leave you have available on your pay stub, or on a document issued the same day as your paycheck. If an employer provides unlimited paid sick leave or unlimited paid time off, the employer may indicate “unlimited” on your pay stub or other document provided to you the same day as your wages.

Employers also must keep records showing how many paid sick day you earned and used for three years. This information may be stored on documents available to employees electronically.

26. Does my employer have to document the reason I use paid sick leave?

The law states that an employer is not obligated to inquire into, or record, the purposes for which an employee uses paid sick leave or paid time off.

27. How does the new law fit in with local sick leave ordinances?

If employees are subject to local sick leave ordinances, the employer must comply with both the local and California laws, which may differ in some respects. The employer must provide the provision or benefit that is most generous to the employee.

28. What if I work an alternative work schedule of four 10-hour days and I take paid sick leave. How much should I be paid?

The paid sick leave law allows employees to decide how much paid leave time to take, subject to their employer's ability to set a two-hour minimum.

For example, if an employee has accrued ten hours, he or she can request to be paid for ten hours. If the employee decides to take less time than that in paid sick leave, then he or she will be paid for the number of hours that they chose to take. Be advised, employees must take a minimum of two hours when they choose to take sick leave if the employer sets a two-hour minimum.

If an employee on an alternative work schedule is sick for three days and has accrued only 24 hours of paid sick leave, the employer will pay for the 24 hours accrued. However, if the employee has accrued 30 hours of paid sick leave they must be paid for the full 30 hours, or three days, of work (refer to [DLSE Opinion Letter](#) 2015.08.07).

29. Do I have the right to cash out my unused sick days, like I can with vacation and paid time off?

No, not unless your employer's policy provides for a payout. If you leave your job and get rehired by the same employer within 12 months, you can reclaim (restore) what you had accrued in paid sick leave, provided it was not paid out pursuant to a paid time off policy at termination.

Required information to be provided to employees**30. How will I learn of my rights to paid sick leave from my employer?**

Beginning January 1, 2015, employers are required to display a [poster](#) in a conspicuous place at the workplace.

The workplace posting must contain the following information:

- That an employee is entitled to accrue, request, and use paid sick days;
- The amount of sick days provided for and the terms of use of paid sick days;
- That retaliation or discrimination against an employee who requests paid sick days or uses paid sick days or both is prohibited; and
- That an employee has the right under this law to file a complaint with the Labor Commissioner against an employer who retaliates or discriminates against an employee

The new law required the Labor Commissioner to develop such a poster, and it is now available on the Labor Commissioner's website.

After January 1, 2015, employers are required to provide most employees with an individualized Notice to Employee (required under Labor Code section 2810.5) that includes paid sick leave information. A [Notice to Employee](#) form revised to reflect the new sick leave law by the Labor Commissioner's Office must be used for employees hired after January 1, 2015. For employees hired prior to January 1, 2015, the employer is required to provide a revised Notice to Employee or otherwise inform each employee of the information regarding paid sick leave, using any of the alternative methods specified in Labor Code section 2810.5(b).

The Notice to Employee provisions of Labor Code section 2810.5 do not apply to exempt employees, most government employees, or to employees covered by a valid collective bargaining agreement that meets certain specifications.

31. How will I know if my employer's policy has different terms from the paid sick leave law?

The state law providing for paid sick leave creates *minimum* standards for paid sick leave. Employers may use their existing policies so long as the policy complies with the minimum requirements of the law. The revised [Notice to Employee](#) form includes a check box to inform an employee of an employer's own existing paid time off or paid sick leave policy that meets or exceeds the requirements of the new law.

To avoid misinformation or misunderstanding regarding an employer's paid time off or paid sick leave policy, employers are encouraged to ensure that employees are made fully aware of the terms and conditions of their policy. Although the notice requirements of Labor Code section 2810.5 do not apply to employees who are exempt from the payment of overtime, employees who are exempt from the payment of overtime are covered by this new paid sick leave law.

32. Does my employer have to issue new notices to employees who were hired prior to January 1, 2015?

In general, yes. Unless the notice requirement in Labor Code section 2810.5 does not apply (exempt employees, public employees, and employees covered under certain collective bargaining agreements are excluded), or if the paid sick leave does not apply under one of the exceptions stated in Labor Code section 245.5(a), an employer must notify all employees hired prior to January 1, 2015 of changes to terms and conditions of employment that relate to paid sick leave within 7 days of the actual change. A revised [Notice to Employee](#) may be used for providing individual notice to these existing employees unless the employer chooses an authorized alternative method.

33. If I already work under an existing paid leave policy or sick leave policy which is in writing and my employer states it complies with the new law and will not be changed as a result of this law, will I still get individual notice?

Although an existing paid sick leave or paid time off policy may already satisfy the minimum requirements of the law, and the policy may have been previously provided to an employee or contained in an employer's policy manual available to employees), employers must provide some form of notice of the employee's rights under the new law.

The Labor Commissioner's Office has advised employers that it is a best practice to provide an individual notice containing information about the new paid sick leave law on the [revised DLSE notice form](#) to existing employees.

Whether an employer elects to use the DLSE revised form or another kind of written document, such notice must contain information about the employee's rights under new paid sick leave law, and ideally should include details on how the employer intends to meet the requirements of the new law for the particular employee. For example, a written statement provided to the employee which refers to or summarizes the employer's existing sick leave policy and contains the points of information as specified in the revised notice form that is provided to each employee would be the recommended best practice.

City of Los Angeles Paid Sick Leave

Table of Contents

Overview of the New Paid Sick Leave Requirements	1
Frequently Asked Questions	2
Eligibility	2
Accrual, Tracking, and Policy	4
Notices and Penalties	5
Additional Information	6

Note: The Paid Sick Leave Ordinance amended the Minimum Wage Ordinance, so now there are minimum wage and paid sick leave provisions in the Minimum Wage Ordinance. See the poster [here](#).

Overview of the New Paid Sick Leave Requirements

The paid sick leave requirements are phased in over two years. Employers with 26 or more employees must comply with the ordinance on July 1, 2016. Employers with 25 or fewer employees (small employers) must begin complying with the ordinance on July 1, 2017.

Starting July 1, 2016, all employers (except employers with 25 or fewer employees; these small employers are not required to comply until July 1, 2017) must provide paid sick leave according to the Los Angeles Minimum Wage Ordinance. The paid sick leave must be provided to all employees who work at least two hours in a particular week in the city of Los Angeles for the same employer for 30 days or more within a year. Employers with 25 or fewer employees must begin providing sick leave benefits on July 1, 2017.

The main requirements include:

- Paid sick leave must accrue on the first day of employment or July 1, 2016, whichever is later.
- An employee may use paid sick leave beginning on the 90th day of employment or July 1, 2016, whichever is later.
- Employers must provide sick leave either by: 1) providing the entire 48 hours to an employee at the beginning of each year of employment, calendar year, or 12-month period (lump-sum/front-loading); or 2) providing the employee one hour of sick leave per every 30 hours worked (accrual method).
- Employees are entitled to take up to 48 hours of paid sick leave in each year of employment, calendar year, or 12-month period. For employers using the accrual method, accrued unused paid sick leave carries over to the following year of employment and may be capped at 72 hours; however, an employer may set a higher cap or no cap at all.

- If an employer has a paid leave or paid time off (PTO) policy or provides payment for compensated time off, that is equal to or no less than 48 hours, then no additional time is required.
- An employee may take paid sick leave for himself or herself, children (biological, adopted, or foster child; stepchild; legal ward of the child of a worker standing in loco parentis to the child), parents, grandchildren, grandparents, spouses, registered domestic partners, parents of a spouse or domestic partner, siblings, and any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.
- An employer may require an employee to provide “reasonable documentation” of an absence from work for which paid sick leave is being used; however, the law does not define “reasonable documentation” or the appropriate circumstances (employers must be cautious of state medical privacy laws).
- Employers are not required to provide compensation to an employee for accrued or unused paid sick days upon termination, resignation, retirement, or other separation from employment.
- Employers may include paid sick leave within an all-inclusive paid time off (PTO) policy so long as the policy is in compliance with all paid sick leave requirements. However, all accrued, unused time under the PTO policy would need to be paid out upon termination.
- If the employee separates from an employer and is rehired by the employer within one year from the date of separation, then previously accrued and unused paid sick leave must be reinstated.
- Employers may not discharge, reduce in compensation, or otherwise discriminate against any employee for opposing any practice proscribed by the law, for requesting to use paid sick leave or actually using paid sick leave, for participating in proceedings related to the law, for seeking to enforce his or her rights under the law by any lawful means, or for otherwise asserting rights under the law.

Frequently Asked Questions

Eligibility

Question: Which employers are covered by the Los Angeles paid sick leave law?

Answer: All employers (except employers with 25 or fewer employees; these small employers are not required to comply until July 1, 2017) must provide paid sick leave according to the Los Angeles Minimum Wage Ordinance. This is because the new paid sick leave provisions are amendments to the Los Angeles Minimum Wage Ordinance, so now there are minimum wage and paid sick leave provisions in the Minimum Wage Ordinance. Subsequently, paid sick leave must be provided to all employees who work at least two hours in a particular week in the city of Los Angeles for the same employer for 30 days or more within a year. Employers with 25 or fewer employees must begin providing paid sick leave benefits on July 1, 2017.

Question: If our company is based out of another state but we have employees in California, how can we determine if our Southern California employees are within the locational jurisdiction for the Los Angeles paid sick leave provisions?

Answer: The City of Los Angeles recommends visiting [ZIMAS](#) to determine the city’s boundaries and whether your employees fall within these boundaries. The city’s ordinance only applies to companies located in or that conduct business in the incorporated city limits. Keep in mind the paid sick leave laws are different in the city of Los Angeles versus the county of Los Angeles. The county of Los

Angeles paid sick leave provisions apply to businesses within the county, but not within the city of Los Angeles, or other incorporated cities within the county.

Question: If we employ fewer than 25 workers, are we required to comply with the paid sick leave provisions?

Answer: Yes; however, you will not be required to comply until July 1, 2017. According to the law, employers covered by the paid sick leave provisions include any person or business entity, inclusive of corporate officers and executives, who directly or indirectly employ or exercise control over the wages, hours, or working conditions of any employee, including through a temporary service or staffing agency. There is no requirement that an employer be located within Los Angeles, or even in California.

Question: Does the law apply to other regions within Los Angeles County?

Answer: The city of Los Angeles paid sick leave provisions only apply to employees working in the city of Los Angeles.

The county of Los Angeles has separate paid sick leave provisions which apply to businesses within the county, but not within the city of Los Angeles, or other incorporated cities within the county.

Question: Are all employees in the city of Los Angeles entitled to paid sick leave?

Answer: Yes, the city of Los Angeles paid sick leave provisions within the Los Angeles Minimum Wage Ordinance mandates that all employees receive paid sick leave, including part-time and temporary employees. The law specifically defines an **employee** as any individual who:

- In a particular week performs at least two hours of work within the geographic boundaries of the city of Los Angeles for an employer; and
- Qualifies as an employee entitled to payment of a minimum wage from any employer under the California minimum wage law, as provided under Cal. Lab. Code § Section 1197 and wage orders published by the California Industrial Welfare Commission.

Question: For what purposes may an employee use paid sick leave?

Answer: Employers must provide paid sick leave upon an employee's oral or written request. Paid sick leave may be used for the same purposes as under the California law, including all of the following:

- The employee's own health care needs (including treatment of an existing health condition and preventative care).
- A covered family member's health care needs (includes treatment and preventative care).
- To seek aid, treatment, or related assistance for domestic violence, sexual assault, or stalking.

Importantly, the definition of a family member is broad under the city of Los Angeles provisions. Specifically, under the Los Angeles provisions, a family member includes children (biological, adopted, step, loco parentis), siblings, spouses, registered domestic partners, parents (including parents of the spouse or domestic partner), grandparents, or grandchildren and "any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship."

The law also provides that an employer may require an employee to provide reasonable documentation of an absence from work for which paid sick leave is or will be used.

Accrual, Tracking, and Policy

Question: Are covered employers required to provide an additional 48 hours on top of the state requirement of 24 hours?

Answer: No. Under the city's provisions, covered employers are required to provide a total of 48 paid sick leave hours.

Question: May an employer incorporate the new paid sick leave into a pre-existing or new paid time off (PTO) plan?

Answer: Yes. Employers may include employees' paid sick leave within an all-inclusive PTO plan. However, employers electing an all-inclusive PTO plan must ensure that employees are granted the prerequisite 48 hours of paid sick leave along with all other provisional requirements. For example, such an all-inclusive PTO policy must permit employees to take time off from work to care for individuals included in the expanded definition of "family member" and not include a two-hour minimum usage increment. Additionally, all accrued, unused time under the PTO policy would need to be paid out upon termination.

Best practices are to also include a statement in the all-inclusive PTO policy that explains how it is in compliance with city and state regulations and have all policies reviewed by legal counsel.

Be mindful that written notice of any change in any existing policy must be provided within 10 days of the implementation of the change, as well as posting notice regarding sick leave entitlement. Notices must be in English, Spanish, Chinese (Cantonese and Mandarin), Hindi, Vietnamese, Tagalog, Korean, Japanese, Thai, Armenian, Russian, and Farsi, and any other language spoken by at least 5 percent of the employees at the workplace or job site.

Question: We have several establishments, all with different Employer Identification Numbers (EINs), but commonly owned. Are we required to track sick leave for each location at which an employee works?

Answer: Yes, when payroll is determined and processed separately by and for each location, each location must track sick leave for the employee. If there is one common payroll that provides compensation regardless of where the employee works, then the sick leave may be tracked for combined locations.

Question: We are already supplying 40 hours of sick and 80 hours of vacation leave; must we make any changes?

Answer: California law permits employers to include employees' paid sick leave within an all-inclusive PTO policy. However, employers must ensure that employees are provided with at least as much time off as required by the city's paid sick leave provisions (up to 48 hours per year) and are complying with all other requirements of the law. For example, such a policy must, among other things, permit employees to take time off to care for individuals included in the expanded definition of family member and not include a two-hour minimum usage increment. Additionally, all accrued, unused time under the PTO policy would need to be paid out upon termination.

Be mindful that written notice of any change in your existing policy must be provided within 10 days of the implementation of the change, as well as posting notice regarding sick leave entitlement. Notices must be in English, Spanish, Chinese (Cantonese and Mandarin), Hindi, Vietnamese, Tagalog, Korean, Japanese, Thai, Armenian, Russian, Farsi, and any other language spoken by at least 5 percent of the employees at the workplace or job site.

Question: Are covered employers required to provide 48 hours of paid time off or merely 48 hours off for sick reasons as unpaid?

Answer: Covered employees must be provided 48 hours of paid sick leave per year.

Question: What are the next steps an employer should consider under this new law?

Answer: First, determine whether your employees perform at least two hours of work within the city of Los Angeles and work in the city for you for 30 or more days within a year from the beginning of their employment. If your employees meet this standard, then you need to determine if you are covered by the law this year or in 2017.

If you find that the law is applicable to you and your employees, then you must review and modify your workplace leave policies in abidance with the new paid sick leave provisions. We encourage you to immediately make this assessment and coordinate with all payroll services because the law is effective July 1, 2016 for employers with 26 or more employees, and July 1, 2017 for all employers.

Question: Can we require medical certification for paid sick leave?

Answer: The law provides, “an employer may require an employee to provide reasonable documentation of an absence from work for which paid sick leave is or will be used.” This is unlike the California state law.

Notices and Penalties

Question: What are penalties related to the paid sick leave provisions?

Answer: The following are penalties for violations of the city’s paid sick leave provisions:

Violation	Fine Amount
Failure to post notice of the Los Angeles Minimum Wage rate and Sick Leave Benefits - Municipal Code Section 188.03.A.	Up to \$500
Failure to allow access to payroll records - Municipal Code Section 188.03.B.	Up to \$500
Failure to maintain payroll records or to retain payroll records for four years - Municipal Code Section 188.03.B.	Up to \$500
Failure to allow access for inspection of books and records or to interview employees - Municipal Code Section 188.03.C.	Up to \$500
Retaliation for exercising rights under this article - Municipal Code Section 188.04 - The penalty for retaliation is up to \$1,000 per employee.	Up to \$1,000
Failure to provide employee’s name, address, and telephone number in writing - Municipal Code Section 188.03.A or 188.05.B.	Up to \$500
Failure to cooperate with the Division’s investigation - Municipal Code Section 188.05.B.	Up to \$500
Failure to post Notice of Correction to employees - Municipal Code Section 188.06.D.	Up to \$500

Question: Where can we obtain the notice and posting for the new law?

Answer: See the “Documents” section at <http://wagesla.lacity.org/#information>.

Question: Must we provide notices in a foreign language?

Answer: Notices must be in English, Spanish, Chinese (Cantonese and Mandarin), Hindi, Vietnamese, Tagalog, Korean, Japanese, Thai, Armenian, Russian, and Farsi, and any other language spoken by at least 5 percent of the employees at the workplace or job site. See the “Documents” section at <http://wagesla.lacity.org/#information>.

Additional Information

The final ordinance and FAQs issued by the City of Los Angeles are located at <http://wagesla.lacity.org/>.

Whistleblower Protections

Must be prominently displayed in lettering larger than size 14 type and include a list of employee rights and responsibilities under the whistleblower laws, including the telephone number of the whistleblower hotline maintained by the office of the California Attorney General. (Labor Code § 1102.8)

INJURY AND ILLNESS PREVENTION PROGRAM

Every California employer for each facility must maintain a written Injury and Illness Prevention Program. Requirements for such a program can be obtained from the OSHA at www.dir.ca.gov/dosh or by writing the Division of Occupational Safety and Health, P. O. Box 420603, San Francisco, CA 94142

SAFETY

In 1973 the California Occupational Safety and Health Act was enacted to protect California employees from workplace hazards. The Division of Occupational Safety and Health (Cal/OSHA) within the Department of Industrial Relations enforces the Act. Cal/OSHA offers a consultation service that assists employers in achieving voluntary compliance with the various worker safety and health standards. The Consultation Service is offered at no cost to employers. The Consultation Service can be of particular service to small businesses that do not have the internal resources to keep pace with the safety and health standards administered by Cal/OSHA. The Consultation Service is entirely separate from Cal/OSHA's Compliance Unit. At the employer's request a Cal/OSHA consultant will make an onsite visit and assist the employer in identifying any existing violations. Cal/OSHA consultants do not cite employers for safety and health violations. Instead, advice is given on how to correct the violations. A reasonable abatement plan is agreed upon. However, if the employer refuses to abate an imminent hazard or serious violation, the Cal/OSHA Compliance Unit would be notified. The Cal/OSHA Consultation Service can be reached at (415) 703-4050.

An employer must file a report with the Division of Labor Statistics and Research or the workers' compensation insurance carrier for every occupational injury or illness that results in loss-time beyond the date of injury or illness, or that requires medical treatment beyond first aid. This report must be filed within five (5) days after the employer learns of the injury or illness. A death or serious injury or illness (requiring hospitalization for more than 24 hours other than for purpose of observation) must be reported to the Division of Occupational Safety and Health by telephone or telegraph within 24 hours after the employer knows or should have known of the death or illness. (Title 8, California Code of Regulations, §342)

Employers must also maintain, in each establishment, a log of all-recordable occupational injuries and illnesses for that establishment.

WORKERS' COMPENSATION INSURANCE

All employers, except the state, are required to have workers' compensation insurance to cover injuries or illnesses sustained on the job. (Labor Code §3700, et seq.) An employee who suffers a work-related injury or illness that requires medical treatment beyond first aid must notify his or her employer *in writing* within 30 days of the injury or illness. (Labor Code §5400) An employer must provide a claim form to an employee within 24 hours of the reported work-related injury or illness. (Labor Code §5401) Contact the Division of Workers Compensation for more information regarding workers' compensation claims and benefits or visit their website for information at www.dir.ca.gov/dwc.

FEDERAL POSTING REQUIREMENTS

In addition to the California posting and notice requirements, the Federal government has certain posting obligations. Contact the U. S. Department of Labor office for federal posting requirements and office locations at www.dol.gov.

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT

REQUIRED POSTERS AND NOTICES

All of the postings listed below are available online and can be downloaded and printed <http://www.dir.ca.gov/wpnodb.html>. If you need more than five copies of any posting or have questions about required postings, you can

- e-mail the DIR at Posting@dir.ca.gov,
- write to the address listed below pertaining the form requested, or
- fax your request to (415) 703-4807.

The Department of Industrial Relations has the following posting requirements:

IWC Order	These orders can be obtained by writing to Division of Labor Standards Enforcement, P. O. Box 420603, San Francisco, California 94142, Attention: POSTERS. Make certain you specify which wage order you would like sent. (See appropriate IWC Orders)
Minimum Wage Order	These posters can be obtained by writing to the Division of Labor Standards Enforcement, P. O. Box 420603, San Francisco, California 94142, Attention: POSTERS.
Pay Day Notice	An employer-developed notice is permitted (Labor Code §207). A sample notice can be obtained from the Division of Labor Standards Enforcement, P. O. Box 420603, San Francisco, California 94142, Attention: POSTERS.
Cal/OSHA Form 200	This summary form of on-the-job injuries and illnesses must be posted annually during the month of February. (Title 8, California Code of Regulations §14305(d)(1)) For additional information, write to the Division of Occupational Safety and Health, P. O. Box 420603, San Francisco, California 94142 or at www.dir.ca.gov/dosh .
Workers' Compensation Insurance	A poster can be obtained from your workers' compensation insurance carrier (Labor Code §3550)

In addition to the posters required by various divisions of the Department of Industrial Relations, other state agencies have notice or poster obligations. Some of these additional requirements include:

Harassment or Discrimination in Employment is Prohibited (DFEH-162) (Fair Employment and Housing Act, Government Code §12900, et seq.)	This notice can be downloaded and printed from the DFEH site at www.dfeh.ca.gov . Additional copies of this poster and other DFEH publications can be ordered through their website or can be obtained by writing to the Department of Fair Employment and Housing, 2014 "T" Street, Suite 210, Sacramento, California 95814 or by calling 1-800-884-1684
Notice to Employees concerning Disability Benefits and Unemployment Insurance (DE 1275A)	These notices can be obtained by contacting the Employment Development Department at 1-800-300-5616 or at www.edd.ca.gov .
Voting Notice	An employer-developed notice is permitted, but should conform to the required language. (See Elections Code § 14001)