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# **CITY OF LOS ANGELES UPDATES PAID SICK LEAVE RULES**

On March 14<sup>th</sup>, the City of Los Angeles (City) Office of Wage Standards (OWS) revised its paid sick leave requirements through its Rules and Regulations Implementing the Minimum Wage Ordinance (Revised Rules) and Frequently Asked Question (FAQs). The mandatory paid sick leave law, which is part of the City's Minimum Wage Ordinance (Ordinance), has been in effect since July 1, 2016, for employers with twenty-six (26) or more employees. For employers with twenty-five (25) or fewer employees, the Minimum Wage Ordinance will go into effect on July 1, 2017. The revisions to the paid sick leave law are summarized below.

### **Rate of Pay**

The Revised Rules clarify that employers should calculate the rate of pay for employees on sick leave in the same manner prescribed under state law, using one of two methods:

1. **Regular Pay During Workweek:** Calculate sick leave rate of pay in the same manner as the regular rate of pay for the workweek in which the sick leave is used
2. **Average Rate over Last Pay Period:** Divide the employee's total wages (excluding any overtime premium pay) by the total number of hours worked in the full pay period during the last ninety (90) days of employment.

### **Clarifying Types of Leave**

Employers who provide forty-eight (48) hours of paid sick time need not provide additional sick time. The Revised Rules clarify that this forty-eight (48) hours includes vacation, sick, personal time, paid time off, holidays, and personal days.

Employers that do not provide forty-eight (48) hours of paid time off, but believe its policy of compensated time off is more generous than required by the Ordinance can request a confirmation from the OWS by completing and submitting MW-7 Minimum Wage Ordinance Paid Sick Leave Determination Request Form to the OWS.

### **How to Determine Business Size**

Employer size is determined by the number of employees who perform at least two (2) hours of work within the geographic boundaries of the City, and are entitled to the California state minimum wage.

### **Small Employers May Front-load for 2017**

Starting on July 1, 2017, the Ordinance will apply to small employers with twenty-five (25) or fewer nonexempt employees working in the City. These small employers may use a front-loading method to offer leave, and prorate this amount for 2017. From July 1, 2017 to December 31, 2017, small employers using the front-loading method can offer twenty four (24) hours of paid sick leave, and offer the full forty-eight (48) hours from January 1, 2018 to December 31, 2018

## City of Los Angeles Updates Paid Sick Leave Rules (Continued)

### Calculation Methods

Covered employers may use different methods of calculating paid sick leave for employees in different classes (e.g., part time v. full time employees). As a reminder, the two methods available to employers are the front-loading method (employers provide employees with forty-eight (48) hours of paid sick leave at the beginning of each twelve (12) month period) or the accrual method (employers provide employees with one hour of sick leave per thirty (30) hours worked). Employers must allow employees to carryover unused paid sick time hours into the following year, but an employer may limit the total amount of accrued sick time to seventy-two (72) hours of paid sick time in one year, under either method. Employers may allow for a greater annual limit of paid sick time above seventy-two (72) hours, but are not required to do so.

### Exempt Employees

The Revised FAQs clarify that the Ordinance does not apply to exempt employees. Exempt employees are defined as individuals not entitled to minimum wage from any employer under the California minimum wage law.

### Notice and Leave Requests

Previously, the Ordinance held that an employer could not deny an employee's request for leave if the request was communicated more than one hour before the employee's shift began. However, the Revised Rules explain that employees only need to give notice as soon as practical (e.g., in the event of unanticipated illness or medical emergencies), or advance notice for planned absences (e.g., scheduled doctor's appointments). Notably, the Revised Rules do not clarify what "advance notice" means.

### Action Required

Covered employers with twenty-six (26) or more employees should review the revisions to the mandatory paid sick leave requirements and update their employee handbook/leave policies as soon as possible, if necessary. Covered employers with twenty-five (25) or fewer employees should also confirm whether changes to their leave policies are necessary, and update their handbooks/leave policies before July 1, 2017 (their effective date).

**For the revised FAQs, see:** <http://wagesla.lacity.org/sites/g/files/wph471/f/MWO-FAQ-2017-03.pdf>.

**For the Rules and Regulations Implementing the Minimum Wage Ordinance, see:**  
<http://wagesla.lacity.org/sites/g/files/wph471/f/MWO-RulesandRegulations-2017-03.pdf>.

**For the Minimum Wage Ordinance Paid Sick Leave Determination Request Form Guide, see:**  
<http://wagesla.lacity.org/sites/g/files/wph471/f/MW-7-MWO-PSLD-Request-Guide-and-Form.pdf>.

## IRS Issues Inflationary Adjustments to the Employer Mandate Penalties for 2017

Under the Affordable Care Act's (ACA) Employer Mandate, an Applicable Large Employer (ALE) that does not offer Minimum Essential Coverage (MEC) to "substantially all" of its full-time employees, or does not offer affordable coverage that provides minimum value, would be exposed to penalties from the IRS. Essentially, there are two different penalties an ALE may be subject to, depending on whether the ALE failed to offer MEC or failed to offer affordable coverage that provides minimum value.

If an ALE fails to offer MEC to substantially all (95%) of its full-time employees (and dependent children), that ALE may be subject to a penalty of \$2,000 (adjusted for inflation) for **all** full-time employees over 30 employees, if at least one employee purchased coverage through the Exchange and received a subsidy. In 2016, this penalty was \$2,160, and in 2017 this penalty increased to **\$2,260**.

Even if an ALE offers MEC to substantially all of its full-time employees, if that ALE fails to offer **affordable** coverage or fails to offer coverage that provides **minimum value**, the ALE may be subject to a penalty of \$3,000 (indexed for inflation) for **each** employee who was not offered affordable coverage that provides minimum value that purchased coverage through the Exchange and received a subsidy. In 2016, this penalty was \$3,240, and for 2017, this penalty increased to **\$3,390**.

### No Action Required

Employers should be aware that they may be subject to increased penalties for failing to offer substantially all of their full-time employees and dependent children Minimum Essential Coverage, and may also be exposed to penalties for failing to offer affordable, minimum value coverage.

For additional details see: <https://www.irs.gov/affordable-care-act/employers/types-of-employer-payments-and-how-they-are-calculated>

## Link to the HCSO 2016 Annual Reporting Form Released

In our March 2017 Legislative Compliance Newsletter, we included a compliance reminder that the San Francisco Health Care Annual Reports are due April 30, 2017. At the time, the 2016 Annual Reporting Form had not yet been released. However, the San Francisco Office of Labor Standards Enforcement (OLSE) has since released the link to the reporting form.

**Please note** that April 30<sup>th</sup> is a Sunday, and therefore the last day to submit this form to the San Francisco OLSE will be **May 1, 2017**.

### Action Required

Covered employers with employees in San Francisco should file an Annual Report with the City of San Francisco by May 1<sup>st</sup>.

The 2016 Annual Reporting Form can be accessed at: <https://etaxstatement.sfgov.org/OLSE/>

# QUESTION OF THE MONTH

## Who Must Receive SPDs for ERISA Welfare Plans?

**QUESTION:** We are reviewing the SPD procedures for our ERISA welfare plans and need some guidance. Who must receive SPDs for these plans?

**ANSWER:** ERISA requires a plan administrator to automatically furnish a summary plan description (SPD) to each participant covered under a welfare plan. The term “participant” is not limited to current employees; it includes any employee or former employee who is or may become eligible for benefits under the plan or whose beneficiaries may be eligible for benefits. A participant becomes “covered” under a welfare plan on the earliest date that the individual (1) begins participation, (2) becomes eligible to receive a benefit subject only to a contingency giving rise to the benefit (for example, an employee covered under a long-term disability plan is eligible for benefits even if no disability occurs), or (3) makes a voluntary or mandatory plan contribution. Here are considerations for furnishing automatic SPDs to common categories of individuals:

- **Employees or Former Employees Covered Under the Plan.** SPDs must be provided automatically to current plan participants and former employees, such as retirees, who remain covered under the plan. Automatic SPDs are not required for welfare plan beneficiaries such as covered spouses and dependent children, except as noted below.
- **COBRA Qualified Beneficiaries.** Generally, separate SPDs are not required for qualified beneficiaries living at the same address. For example, a single SPD can be furnished to a parent electing COBRA coverage for children living in the parent’s home.
- **Alternate Recipients Under Qualified Medical Child Support Orders (QMCSOs).** The DOL treats alternate recipients under QMCSOs as plan participants for ERISA disclosure purposes. Generally, the SPD should be furnished to the child’s custodial parent or guardian.
- **Spouses or Other Dependents of Deceased Participants.** A deceased participant’s spouse or dependents who continue to receive benefits under a medical or other welfare plan should be furnished with SPDs.
- **Representatives or Guardians of Incapacitated Persons.** When the plan has notice that the participant or other individual entitled to an SPD is incapacitated, the SPD should be sent to the individual’s representative or guardian.

SPDs must be automatically furnished at specific times; for more information, see [Question of the Week](#). In addition, SPDs must be provided to plan participants and beneficiaries who request them, including those who have received automatic SPDs (see [Question of the Week](#)) and some individuals not entitled to automatic SPDs. Failure to furnish requested copies within 30 days exposes the plan administrator (usually the employer) to penalties of up to \$110 per day.

Finally, note that health care reform’s summary of benefits and coverage (SBC) is a separate disclosure requirement with different rules (see [Question of the Week](#)).

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