Los Angeles and San Diego Join the Fray with New and Expanded Sick Leave and Minimum Wage Laws

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The ink was barely dry on Governor Brown’s signature wherein he approved California’s $15.00 stepped minimum wage increase and employers had just settled in on their California mandated sick leave policies; then came the June 2016 elections where the City of San Diego voters went to the polls and voted for minimum wage and sick leave increases above the state mandates. The ballot measure (Proposition I) asked voters to approve the City of San Diego Earned Sick Leave and Minimum Wage Ordinance, No. 0-20390, which the San Diego City Council previously had approved on August 18, 2014, and which was placed on the June 7, 2016 ballot as a result of a referendum petition.

The San Diego Ordinance requires employers to provide employees with one hour of paid sick leave for every 30 hours worked within the city limits, with no cap on accrual, and allows employees to use 40 hours of sick leave in a 12-month period. In addition, the Ordinance raises the City’s minimum wage to $10.50 per hour once the Ordinance becomes effective, and provides for an increase to $11.50 per hour as of January 1, 2017.

The San Diego Registrar of Voters has 30 days to certify the election results, which then must be approved by the City’s Legislative Body. The City Clerk anticipates bringing forward the election results to the Legislative Body mid-July. Assuming the City Clerk’s forecast is correct, we can expect that the new wage and sick leave entitlements will be effective by mid or the end of July.

Similarly, the week before the San Diego vote, the City of Los Angeles also addressed minimum wage and sick leave proposals. On June 1, 2016, the Los Angeles City Council passed the City’s sick leave ordinance, which requires employers to provide up to 48 hours of paid sick leave per year. The Los Angeles City Council also voted to increase the minimum wage. While the entire schedule of stepped increases is noted further below, suffice to say that, effective July 1, 2016, for employers with 26 or more employees, the minimum wage increases to $10.50. For employers with 25 or fewer employees, for now, the wage remains at the current minimum of $10.00 per hour until July 1, 2017.
Employers with employees working in Los Angeles and San Diego who pay at or close to the minimum wage need to review these newly-passed wage requirements. In addition, employers need once again to review their handbooks for compliance with the more generous sick leave accruals. Below we have described the requirements for both San Diego and Los Angeles. Notably, neither local law provides for a collective bargaining agreement exemption (unlike the CA state paid sick leave law). In addition, both the San Diego Ordinance and the Los Angeles Ordinance provide penalties for violation of its requirements, including notice and posting requirements.

San Diego

The City of San Diego Earned Sick Leave and Minimum Wage Ordinance (the San Diego Ordinance) applies to employers and employees in the geographic boundaries of the City. The San Diego Ordinance defines "employers" as "any person or persons" (including associations, organizations, partnerships, business trusts, limited liability companies, or corporations) who exercises control over the wages, hours, or working conditions of any employee, engages an employee, or "suffers or permits" an employee to work. Employers do not include aged, blind, or disabled people who receive in-home supportive services care, under state law.

The San Diego Ordinance defines "employee" as any person who, "in one or more calendar weeks of the year performs at least two hours of work within the geographic boundaries of the City for an employer," and who qualifies for the payment of minimum wage under the State of California minimum wage law. Employees do not include independent contractors as defined by the California Labor Code, or people who have been issued a special license by the state to be employed at less than minimum wage, certain youth employees in publicly subsidized summer or short-term employment programs, and certain counselors at organized, outdoor camps.

There are significant differences between the San Diego Ordinance and the CA state paid sick leave law. The San Diego Ordinance provides greater benefits to employees. It does not allow an employer to impose a maximum accrual cap on sick leave (which CA state law allows), and it also allows employees to use 40 hours of sick leave in a 12-month period (as opposed to three (3) days or 24 hours under state law). There also is no express exemption for employees covered by a collective bargaining agreement, unlike the California state paid sick leave law.

Generally, the San Diego Ordinance provides that eligible employees are entitled to accrue one hour of paid sick leave for every 30 hours worked in the city. Unused, accrued leave must be carried over from year to year. Employees begin accruing paid sick leave on the first day of employment, and may use sick leave on the 90th day of employment (same as state law). Paid sick leave is available for the following purposes:

• the employee’s own physical or mental illness, injury, or medical condition or to obtain diagnosis, treatment, or other medical reasons, including pregnancy or obtaining a physical examination;
• to provide care or assistance to a family member with a physical or mental illness, injury, or medical condition or who requires diagnosis or treatment (family member is defined to include child, spouse, parent, grandparent, grandchild, sibling, or the child or parent of a spouse);
• when necessary for the employee or an employee’s family member to obtain medical attention or other services due to domestic violence, sexual assault, or stalking (referred to as “safe time”);
• if the employee’s place of business or child’s school or child care provider is closed due to a public health emergency.
Upon an employee’s separation, employers do not have to pay out any unused paid sick leave (unless the sick leave is being provided as part of a PTO policy), but must maintain the accrued, unused sick leave balance for six (6) months if the employee returns.

Where the need for sick leave is foreseeable, an employer may require reasonable advance notice of the intention to use such sick leave, not to exceed seven days’ notice prior to the date such sick leave is to begin. Where the need is not foreseeable, an employer may require an employee to provide notice of the need for the use of sick leave as soon as practicable.

For an absence of more than three (3) consecutive work days, an employer may require reasonable documentation that the use of sick leave was authorized. By contrast, the CA state law statute does not contain a medical verification provision, and the Labor Commissioner has indicated that requiring a medical verification in order to use earned sick leave may amount to interference with an employee’s paid sick leave rights.

The San Diego Ordinance does not require employers with a PTO policy to provide any additional paid sick leave to its employees, so long as the paid leave is used for the same purpose and under the same conditions as permitted by San Diego’s new law. But, because of the significant differences between the CA state paid sick leave law and the San Diego Ordinance, employers with PTO policies may wish to consider providing a separate paid sick leave for San Diego employees.

As noted, the San Diego Ordinance is effective soon following certification of election results. The Ordinance also raises the City’s minimum wage to $10.50 per hour once the Ordinance becomes effective, and provides for an increase to $11.50 per hour as of January 1, 2017. Beginning January 1, 2019, the minimum wage will annually increase by the percentage growth in the prior year's Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers.

The San Diego Ordinance also includes a notice and posting requirement. Employers who fail to comply with the notice and posting requirements are subject to a civil penalty of $100 for each employee who was not given notice, up to a maximum of $2,000. Employers who otherwise violate any requirement of the Ordinance are subject to a civil penalty for each violation of up to $1,000 per violation.

Finally, the Ordinance prohibits retaliation for exercising any rights under the Ordinance, including requesting and using earned sick leave, filing a complaint for alleged violations of the Ordinance, communicating with any person about alleged violations and reporting any alleged violations. The Ordinance provides for enforcement action and remedies including backpay, liquidated damages of double backpay, reinstatement and attorneys’ fees.

**Los Angeles**

The Los Angeles paid sick leave ordinance (the Los Angeles Ordinance) covers employees who, “on or after July 1, 2016, works in the City for the same Employer for 30 days or more within a year from the commencement of employment.” Like the San Diego Ordinance, “employee” is defined as any individual who performs at least two hours of work in a particular week for the employer within the geographic boundaries of the City. “Employer” is defined as including associations, organizations, partnerships, business trusts, limited liability companies, or corporations, as well as “a corporate officer or executive, who directly or indirectly or through an agent or any other person, including through the services of a temporary service or staffing agency or similar entity, employs or exercises control over the wages, hours or working conditions of any Employee.”
Like the CA state paid sick leave law, employees accrue one (1) hour of sick leave for every 30 hours worked. However, unlike the state law, the Los Angeles Ordinance requires all employers in the City to provide up to 48 hours of paid sick leave a year to their workers, three (3) days more than mandated under state law. Alternatively, employers can provide the entire 48 hours upfront at the beginning of the year. There is no express exemption for employees covered by a collective bargaining agreement.

Employees are entitled to take up to 48 hours of sick leave in each year of employment, calendar year, or 12-month period. Accrued, unused paid sick leave shall carry over to the following year of employment, but may be capped at 72 hours. The Los Angeles Ordinance provides that “no additional time is required” if an employer has a paid leave or paid time off policy or provides payment for compensated time off, that is equal to or no less than 48 hours.

The Los Angeles Ordinance contains an urgency provision that would make the ordinance effective immediately; however, accrual and use of sick leave start no earlier than July 1, 2016. Employees hired after July 1, 2016, will begin to accrue (or will be granted) paid sick leave on their date of hire. Employees may use paid sick leave beginning on the 90th day of employment or July 1, 2016, whichever is later. Like the CA state paid sick leave law, accrued unused paid sick leave need not be cashed out at termination and any unused accrued paid sick leave must be reinstated if the employee is rehired within one year from the date of separation.

Sick leave under the Los Angeles Ordinance may be used “upon the oral or written request of an employee for themselves or a family member” for all of the reasons stated in the California state paid sick leave law. The ordinance expands the term “family member” to include “any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.” Employees may be required to provide “reasonable documentation” of an absence from work for which paid sick leave is used.

As with the San Diego Ordinance, the Los Angeles Ordinance provides for a notice and posting requirement and also expressly prohibits retaliation for requesting to use paid sick leave, using paid sick leave, opposing any practice prohibited under the ordinance or participating in related proceedings. Los Angeles has stiffer penalties. Employers who violate the Los Angeles Ordinance are liable to pay employees a civil penalty of $120 per day “that each of the violations occurred or continued,” plus backpay, sick time benefits, reinstatement and attorneys’ fees and costs. In addition, employees are entitled to treble damages of backpay, sick time benefits and penalties owed for retaliatory action by the employer. Employers who violate any requirements of the Ordinance are also liable to the City for a penalty of up to $50 per day “that either wages or sick time benefits were unlawfully withheld.” The Los Angeles Ordinance further provides that “administrative fines” too may be assessed by the City for violations, such as for failure to post the notice (which is a fine of “up to $500”) and for retaliation (“up to $1,000 per employee”).

The Los Angeles City Ordinance also raises the minimum wage. For employers with 26 or more employees, the minimum wage increases to $10.50/hour as of July 1, 2016. Smaller employers (25 or fewer employees), have until July 1, 2017 to implement the minimum wage increase. The schedule of specific increases are as follows:

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<tr>
<th>26 or More Employees</th>
<th>25 or Fewer Employees</th>
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<tr>
<td>$10.50 eff. 7/1/16</td>
<td>$10.00 (current CA min.)</td>
</tr>
<tr>
<td>$12.00 eff. 7/1/17</td>
<td>$10.50 eff. 7/1/17</td>
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</tbody>
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$13.25 eff. 7/1/18  $12.00 eff. 7/1/18
$14.25 eff. 7/1/19  $13.25 eff. 7/1/19
$15.00 eff. 7/1/20  $14.25 eff. 7/1/20
--------          $15.00 eff. 7/1/21

Certain non-profit employers may seek a deferral rate schedule for small employers. A non-profit employer seeking the deferral must “establish by compelling evidence that: “The chief executive officer or highest paid employee earns a salary which, when calculated on an hourly basis, is less than five times the lowest wage paid by the corporation;” or it is a “Transitional Employer” as defined in Section 10.31.1(h) of the Los Angeles Administrative Code; or it is a “child care provider”; or an employer “funded primarily by city, county, state or federal grants or reimbursements.”

Also note that the County of Los Angeles had enacted its own minimum wage increases in 2015 by county ordinance, applicable to employees of businesses in unincorporated areas of Los Angeles County. The minimum wage ordinances of both the City of Los Angeles and the County of Los Angeles provide the same increases.

Employers who have employees working in San Diego and Los Angeles full time, part time or periodically need to review their payroll and sick leave practices in these two geographic areas, and should consider implementing any necessary changes for compliance purposes, such as creating separate sick leave policies for San Diego and Los Angeles based employees or revising policies statewide. Necessary administrative support to track these entitlements, employee count in the impacted geographic locations and overall budgets will certainly impact any employer choices between these and other options.

Finally, it is important for employers to check about other local ordinances. For example, this article discusses only the cities of San Diego and Los Angeles. However, in January 2016, Santa Monica also adopted a paid sick leave law as part of its minimum wage ordinance with which employers must comply beginning on January 1, 2017. The ordinance also has special wage increases for hotel employees. Information about those increases and the 2017 sick leave entitlements can be found at http://beta.smgov.net/strategic-goals/inclusive-diverse-community/minimum-wage-ordinance.

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