

- Q. We are a CA company. Most of our employees are CA residents however for about 5 months each year they work in AZ. During the time they are working in AZ do they still accrue sick leave?
- A. Most likely, yes. California wage and hour laws generally follow California employees while they work for an employer in another state.
- Q. Can we have different sick leave policies for different positions or must it all be the same for all employees
- A. Yes, as long as each different policy complies with the law.
- Q. Web Address for wage notice and poster?
- A. [www.dir.ca.gov](http://www.dir.ca.gov). There is a paid sick leave point you can click, which may or may not work. If not, then click on "labor law" for the Labor Commissioner's website. There is a "Paid Sick Leave" section highlighted. It has the new wage disclosure template and poster. They both are now available in English or Spanish.
- Q. If the ag field employee usually works 10 hours a day, do we need to give them 3 days (30 hours) or 24 hours of sick leave?
- A. Probably so. The law generally assumes a regular 8-hour day. It does not expressly address employees working regularly working longer shifts, which happens in ag, or shorter shifts. The law requires at least "24 hours or three days" of paid sick leave. To be safe, an employer likely should measure what would be required under either "24 hours or three days" and provide the more generous amount. In this case, that amount would be 30 hours. If you only gave 24 hours, that's only 2.4 days of sick leave – not three days. An employee perhaps could make a claim that the sick leave should have been 30 hours.
- Q. At Jul 1 for exempt EEs, if they already have sick leave on the books, do we grant 3 additional days if switching to the front load method?
- A. You should grant the three days up front then if switching methods, because I assume you would void whatever balance already was on the books.
- Q. If the salaried employee gets paid a full week even if he didn't actually work can that count as sick leave?
- A. Probably not. You paid continued salary, so the employee was paid. However, you have to provide separate paid sick leave and comply with the law's other terms and protections, not just pay for an absence.
- Q. For calculating the hourly sick leave amount to pay for piece-rate employees, are the periods of non-productive work time included as part of the wages paid or only wages for actual hours worked?
- A. Good question, especially given how piece rate and non-productive time issues are huge issues in ag. The law does not expressly address this question, but the language used leads

to an answer. With piece rate employees, the law requires dividing the applicable total wages by the “hours worked” in the period. “Hours worked” is a term of art from the wage orders. It refers not only to time actually worked in productive work, but also to time under the employer’s control, which is why non-productive time has to be paid. As a result, for the “hours worked,” you should use the non-productive time paid as well as the actual hours worked.

- Q. As allowed by law, for some harvest crews we pay "non-productive time" at minimum wage not the employee's regular hourly rate. Can sick time which is non-productive time, be paid at minimum wage?
- A. I understand your question to be whether sick leave could be paid at the minimum wage instead because, in reality, it is non-productive. Under the sick leave law, an employer cannot pay sick leave at a lower rate than if the employer was working. The rate on the paid sick leave has to be the employee’s hourly rate or, if there were different rates or piece-rate pay in the last 90 days, the rate gets determined under the formula set in the law. Please note, too, that whether non-productive time can be paid at the minimum wage, or rather must be at the regular rate or regular piece rate, is an ongoing legal controversy.
- Q. Upon rehire, does the employee have to go through the 90 day qualifying period prior to use?
- A. The law says no: The employee is entitled to use previously accrued and unused paid sick leave “upon rehiring.”
- Q. If a piece-rate employee is rehired and eligible to immediately use any accrued sick leave left over from when they left, which pay periods are considered when calculating the hourly rate of pay if the employee uses some of the sick leave before he/she has worked a 90 day period?
- A. While the law requires reinstatement of previously accrued but unused sick leave, it does not address this particular situation. The law generally refers to “the 90 days of employment before taking accrued sick leave.” Because the reinstatement of past accrued sick leave essentially bridges together the past and current employment periods, the most likely answer is to look back at the previous period to get the full 90-day period.
- Q. If the employer uses the 3 day up front method do they have to itemize this amount on wage statements?
- A. Yes, the balance needs to be shown regardless of the method used.
- Q. Do you have to reissue the wage disclosure notice to all current employees?
- A. Yes. They have not had a previous wage disclosure notice with this newly required information. If you implement a new policy to comply with the law, you also would want to issue a new notice. The Labor Commissioner’s guidance now says to issue a new notice or provide the required information about paid sick leave in an alternative way that complies with the wage disclosure notice.

- Q. Is the poster available in Spanish?
- A. Yes, now the poster and wage disclosure notice are available in Spanish on the Labor Commissioner's website.
- Q. If ER cannot require medical notes or verification from outside source, can ER require statement from EE that Leave is for reason allowed under AB 1522?
- A. If you have separate sick leave and the employee claims sick leave on a timecard, or calls in sick, there should not a question that are claiming sick leave that may qualify under the law if they have not already taken the sick leave amount that must be provided. You should not need to know more. The three days or 25 hours has to be provided and can be used for illness. If you have a PTO policy, that's a harder question because the employee usually does not give a specific reason for using PTO. You always want to be careful about inquiring if someone is absent for illness. Still, even with a PTO policy, there's an argument that allowing an employee to use three days or 24 hours complied even without knowing the reason. The employee should not have to specifically invoke the paid sick leave law or AB 1522.
- Q. Just to clarify: Current employees will begin to accrue sick leave starting Jan 1, correct?
- A. Accrual does not have to start until July 1 under the law. You can have a more generous policy that starts earlier.
- Q. If you choose to provide 3 days up front. Should an employer convey those 3 days January 1 or July 1st?
- A. It needs to be on July 1 to comply with the law. Then, the period should run annually from that date. For employees granted three days when hired, the year should track their anniversary dates.
- Q. If you have a policy that accrues at 1:40, already, is that adequate or does there need to be a 1 : 30 accrual ?
- A. An one hour accrual for every 40 hours worked would not comply. The law requires at least one hour for every 30 hours worked, using the accrual method.
- Q. If an agricultural employer decides to grant the 24 hours, it does not carry over to the next year and does not get cashed out.... what about a layoff at the end of the season.....
- A. Unused sick leave does not have to be paid out any end of employment.
- Q. can we require an employee to use sick leave
- A. That may not be a good idea in at least some cases. The law does not have a provision for forcing use of sick leave. Forcing someone to use sick could be considered to be regarding someone as disabled in some cases, raising the potential of a disability discrimination claim. If you have an employee who is clearly sick with the flu or a cold, and the employee has sick

leave available, you may want to suggest that the employee stay home for the employee's sake and so others do not get sick. That's one of the points of the law: Allowing employees to stay off work on paid leave while they recover. You always want to be careful about not letting people work because you think they are ill. You want to look at whether the person is able to do the job in their condition, as well as if they are contagious. But you always want to be careful here.

- Q. If an employee has a workers' comp claim, can they use the 3 days of sick leave for the 3 day waiting period?
- A. The paid sick leave law is separate from worker's comp. If someone has an absence that qualifies for using sick leave, and worker's comp would not preclude them from taking paid leave, they should be able to use their available paid sick time.
- Q. Can we have different sick leave policies within our company for different classes of employees? In other words, can we have a policy of giving 3 days upfront to our year around employees and can we use accrual method for seasonal employees. We have seasonal sorting shed operation that only works 4 months a year and we may want to handle this group of employees differently than the year round employees.
- A. Yes, as long as each different policy complies with the law.
- Q. Once selected, can you at some later date change from an accrual to a front loaded method, or vice versa?
- A. Yes. The law does not prohibit a switch. However, in doing so, you need to carefully look at how to handle any unused balances and provide appropriate notices. It could take some consideration and planning to change. However, the law does not lock an employer into one method forever, once chosen.
- Q. I just want to ensure that I understood correctly. If I give all employees the upfront option, I am not required to carry over? Correct? If they do not use by the end of the year. It is simply gone.
- A. Yes, but the employees get a new allotment of paid sick leave at the start of the year.
- Q. Could you explain the difference between the 4 boxes on the 2810.5 notice. Which of the four boxes should be checked?
- A. It depends on what method you are using to comply, or if you are claiming an exemption. Two of the boxes cover the accrual method (either following the law or being more generous), while the third covers an upfront grant of sick leave.
- Q. Does the 30 day mandate refer to working for me, as an employer, for 30 days in CA, or the EE working for anyone in CA for 30 days?
- A. It should be employer-specific.

- Q. You mentioned we can't deny use of accrued sick leave but what if it's by someone that has sick leave that has rolled over and they've already used their yearly allotment?
- A. The law only requires that an employee be able to use 24 hours or three days of sick leave each year, which can't be denied. If someone has more sick leave available, the employer can let the employee use it.
- Q. The 90 days qualifying period, does it mean employer does not start accruing till past the 90 days, or he cannot take accrued sick leave for the first 90 days.
- A. Accrual starts on the first day of employment, but the employer is not required to allow use of the sick leave before 90 days.
- Q. For the accrual method an employee earns 1 hour of sick leave for every 30 hours worked correct? If they work 50 hours one week does that mean they get 1.66 hours?
- A. For a non-exempt employee, yes. But remember there is a cap of six days or 48 hours allowed on accrual.