



## New Santa Monica Ordinance Provides For Paid Sick Leave and Increased Minimum Wages

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Santa Monica will become the first city in Southern California and the fourth in the state to enact a municipal paid sick leave law. The city's Paid Sick Leave and Minimum Wage ordinance will take effect in two phases. The first phase will commence on January 1, 2017, when most Santa Monica employees will be entitled to accrue and use up to 40 hours of paid sick leave. That amount climbs to 72 hours the following year, which is *three times* the amount of paid sick leave that an employee must be permitted to use annually under California's paid sick leave law. The ordinance also provides a schedule of minimum wage rates for private sector and hotel workers from July 1, 2016 through the year 2022 and regulates service charges imposed by Santa Monica businesses.

### Paid Sick Leave

#### Coverage

Generally, the paid sick leave provisions of the ordinance apply to any employee who works at least two (2) hours in any particular week in Santa Monica. Similar to paid sick leave ordinances in San Francisco, Oakland and Emeryville, the Santa Monica ordinance covers to employees based outside of Santa Monica, but who work in the city on a temporary or occasional basis (e.g., delivery persons, installers, film and television production crews).

The ordinance provides exemptions for government and public sector employees. Employees covered by a collective bargaining agreement may waive their rights under the ordinance ***if the waiver is made in a clear and unambiguous provision of the collective bargaining agreement***. Additionally, the ordinance permits "transitional employers" to apply for an exemption. (Transitional employers are non-profits that provide subsidized, short term unemployment to the long-term unemployed.)

#### Amount of Sick Leave That May Accrue and Be Used

Under the ordinance, eligible employees must accrue paid sick leave at the rate of at least one (1) hour for every thirty (30) hours worked. Employers with twenty-six (26) or more employees must permit employees to accrue up to forty (40) hours of paid sick leave during the first phase, effective January 1, 2017, and up to seventy-two (72) hours of paid sick leave during the second phase, effective January 1, 2018. Employers with twenty-five (25) or fewer employees must permit accrual of up to thirty-two (32) hours of paid sick leave during the first phase, and forty (40) hours of paid sick leave during the second phase. Once the maximum accrual is reached, accrual may cease until the employee's accrued, unused sick leave dips below the permissible cap. As an alternative to accrual, the ordinance permits an employer to make an annual grant to employees of the minimum amount of sick leave.

Unlike state law, which permits an employer to restrict the use of accrued sick leave to the greater of three (3) days or twenty-four (24) hours of sick leave per year, the Santa Monica law does not permit an employer to restrict the amount of accrued sick leave that may be used.



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## **When Sick Leave Accrues and May Be Used**

Under the ordinance, similar to state law, accrual must begin on the date of hire, but an employer may preclude an employee from using accrued sick leave during his or her first ninety (90) days of employment. Unlike state law, the Santa Monica ordinance does not expressly permit an employer to require reasonable notice before an employee uses paid sick leave. Indeed, although the version of the ordinance that was originally passed expressly stated that an employer could require such notice, this language was removed from a recently amended version of the law.

## **Other Provisions**

The ordinance incorporates California law with respect to permissible uses of sick leave (i.e., sick time may be used (1) in connection with the diagnosis, care or treatment of an existing health condition of, or preventative care for, the employee or the employee's family member; or (2) for the purpose of obtaining legal, medical and related assistance by an employee who is the victim of domestic violence, sexual assault or stalking. "Family member" includes an employee's child, parent parent-in-law, spouse, registered domestic partner, grandparent, grandchild and sibling.) Like state law, the Santa Monica law also prohibits employers from requiring employees to arrange for coverage when they are absent and does not require payout of accrued unused leave upon termination.

The ordinance prohibits retaliation and creates a rebuttable presumption that retaliation has occurred when an employer takes adverse employment action against an employee within ninety (90) days of exercising his/her rights under the ordinance.

## **Remedies and Penalties**

Civil penalties for violation of the ordinance include up to \$100 per violation to each aggrieved employee, with treble damages available for willful violations. Violations are counted in days. In addition to penalties, aggrieved employees are entitled to payment of withheld wages, payment of unlawfully withheld sick leave, reinstatement of employment, and/or injunctive relief, and attorneys' fees and costs. Moreover, violations may be prosecuted criminally, with penalties up to \$500 per violation and six months in County Jail. Additionally, those convicted of violating any provisions of the ordinance must reimburse the full cost of law enforcement investigations.

Similar to the California Private Attorney General Act (PAGA), the ordinance also permits private parties to enforce the law "on behalf of the public." Those bringing an action on behalf of others are entitled to equitable and injunctive relief, plus attorneys' fees and costs.

## **Minimum Wage Provisions**

### **Applicable Rates**

Through the ordinance, the City of Santa Monica seeks to align its minimum wage rates with those recently passed in the City of Los Angeles and Los Angeles County. Wage rates are broken down into three major categories: employees of private employers with 26 or more employees; employees of private employers with 25 or fewer employees; and hotel workers. As is true of the sick leave provisions, the ordinance's minimum wage provisions for private, non-hotel employers apply to all non-exempt employees who work two or more hours in any particular week and to all non-exempt "hotel workers."



Effective Date	Non-Hotel Workers		Hotel Workers
July 1	If 26 or more workers	If 25 or fewer workers	
2016	\$10.50		\$13.25
2017	\$12.00	\$10.50	Match the hourly wage set for Hotel Workers in the City of Los Angeles**
2018	\$13.25	\$12.00	Match LA**
2019	\$14.25	\$13.25	Match LA**
2020	\$15.00	\$14.25	Match LA**
2021		\$15.00	Match LA**
2022	INDEXED*	INDEXED*	Match LA**

\*Increases will track the Consumer Price Index, mirroring Los Angeles City and County minimum wage laws. The City of Santa Monica will announce the new rates at the beginning of each year, becoming effective on July 1 of that year.

\*\*The applicable minimum wage in Los Angeles is \$15.37, which will remain effective until July 1, 2017. The City of Santa Monica will announce the adjusted rates at the beginning of each year, becoming effective on July 1 of that year.

### Services Charges

The ordinance requires businesses to clearly describe service charges, so that customers can “easily and reasonably deduce” the service for which the fee is charged. If the service charge is optional, it may not be added automatically to bills, receipts, or invoices.



The ordinance further mandates that employers distribute the entirety of all service charges to those non-managerial/nonsupervisory employees who contribute to the chain of services for which the charges are collected. The ordinance allows pooling, so long as the pool does not include supervisors or managers. Employers may not deduct for credit card processing fees. The ordinance does not apply to tips or gratuities.

Employers must provide their employees with a written plan concerning the distribution of service charges. Amounts collected in cash must be paid to employees on the same day they are collected. All other amounts must be paid no later than the next pay period following collection. Each pay period, employers must report the amount of service charges collected and distributed to employees during that period.

### **Ask MSK**

*What Steps Should Santa Monica Employers Take To Prepare For The Implementation Of The ordinance?*

Employers that do business in Santa Monica should review their current paid sick leave and/or paid time off (PTO) policies to ensure compliance with the ordinance. As noted in the Alert, even employees who are based outside of Santa Monica will be covered by the Santa Monica law in any week in which they work 2 or more hours in the city. Additionally, they should ensure that their payroll systems are adjusted to permit the appropriate paid sick leave accrual. Under state law, accrued paid sick leave must be reflected on employee wage statements and/or pay stubs.

Employers with collective bargaining agreements should address the ordinance with the union(s) representing their employees, as a waiver of the ordinance may only be achieved through a clear and unambiguous provision of the collective bargaining agreement.

*What Other Paid Sick Leave Laws Are On The Horizon?*

On April 19, 2016, the Los Angeles City Council voted in favor of crafting an ordinance requiring all employers in the city to allow employees to accrue up to seventy-two (72) hours of sick leave and to use up to forty-eight (48) of those hours in any year. This ordinance, which still has to be drafted by the City Attorney, is tentatively scheduled to take effect on July 1, 2016.

Additionally, in 2015, President Barack Obama signed Executive Order 13706, which will require federal contractors to provide employees with a minimum of 7 days of paid sick leave. The Department of Labor has issued a notice of proposed rulemaking with respect to this Executive Order, which rules will apply to most federal contracts entered into on or after January 1, 2017. Here is a link to the notice of proposed rulemaking. [Click here](#)

