



San Diego Minimum Wage and Paid Sick Leave Ordinance Effective July 11: Employers Need to Act Quickly!

Revised on July 14, 2016, with Updated Information from Office of Enforcement

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With Assistance from Kera Harkins, Research Services Coordinator

On June 28, 2016, we alerted employers about the San Diego Earned Sick Leave and Minimum Wage Ordinance (“Ordinance”), cautioning employers that the “original” Ordinance had an uncertain effective date of sometime in mid-July and that the “implemented” Ordinance might include major substantive changes. On July 11, the City Council approved certification of the results from the June 7 election that passed the original Ordinance, which means the *original Ordinance* is effective immediately (i.e., July 11, 2016). To clarify, *only the terms of the original Ordinance are effective as of July 11*. The terms of the implemented Ordinance, which are now finalized and being considered by the City Council, will be effective in mid-September.

City Council Makes Significant Changes to Implemented Ordinance

The implemented Ordinance contains the following critical changes, among others (the full text of the revisions is available [here](#)¹):

- The effective date for the paid sick leave (“PSL”) and minimum wage requirements is defined as July 11, 2016.
- Employers may impose a cap on an employee’s accrual of PSL of 80 hours (or twice the annual use limit). This means that employers that were using PTO policies to comply with PSL requirements can more easily continue to do so, but employers should proceed with caution (see Task List section below).
- Employers may comply with the PSL provisions by using a lump sum, allotment, or frontloading option.
- The Office of Enforcement will publish the notices and posters that employers are required to provide to employees pursuant to the Ordinance by September 1, 2016. The Office of Enforcement has already made the English posters available. Employers are required to provide the individual notices to employees by **October 1, 2016**. Employers are encouraged to periodically check the Office of Enforcement’s [website](#) for updates regarding these materials.
- The rate at which an employer must pay PSL to a non-exempt employee is now aligned with the California PSL law (“at the same regular rate of pay for the workweek in which the Employee uses” the PSL).
- The implemented Ordinance significantly strengthened the retaliation, enforcement, and penalty provisions for violations. In fact, an employer’s adverse action against an employee within 90 days of an employee exercising his or her rights under the Ordinance “creates a rebuttable presumption” that the employer acted in retaliation against the employee. Employers are cautioned to consult counsel before taking adverse action in these circumstances.

¹ The City Council is currently considering additional revisions, such as exclusions for employers with valid collective bargaining agreements that provide adequate paid sick leave to covered employees.

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Compliance Task List for Employers

For those employers operating within the City of San Diego or with employees working within the City of San Diego, below is a critical “to do” list:²

- All employers must ensure that they increase their minimum wage for affected employees to \$10.50 per hour worked, effective July 11.
- Employers with *accrual PSL policies* need to ensure that their policies are modified to allow for a higher use limit (40 hours) and a higher cap (80 hours).
- Employers with *allotment PSL policies* need to increase the PSL allotted to employees to 40 hours every 12-month period.
- Employers with *PTO policies* need to ensure that their policies are modified to comply with the Ordinance. There are two provisions in the implemented Ordinance on which an employer may rely for using a PTO policy (§ 39.0105(g)). The first part of (g) requires technical compliance with the requirements of the Ordinance, such as providing PTO on an hours worked basis and providing a sufficient cap (such as twice the annual accrual rate). The second part of (g) (which was added after this client alert was originally distributed) is more flexible and does not require such technical compliance, if the employer’s PTO policy provides “greater paid time off” and constitutes a “contract, . . . employment benefit plan, or other agreement.” However, employers should be advised that using a PTO policy to comply with the Ordinance could be risky in light of the 90-day rebuttable presumption noted above.
- Employers with *unlimited time off policies* do not appear to need any further modifications to their policies other than minimally modifying their policies to include additional references to the Ordinance and certain technical requirements.

Employers are strongly encouraged to consult their legal counsel when implementing these changes to ensure compliance.

If you have questions about this alert, please contact Annie Macaleer.



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² These recommendations are based on the terms of the implemented Ordinance. Although these terms are still being considered by the City Council and the effective date is not until mid-September, the Office of Enforcement has indicated that the 80-hour cap and the allotment terms will not be changed and that an employer’s good faith reliance on the terms of the implemented Ordinance will be considered. In addition, the Office of Enforcement’s agenda will primarily be complaint-driven for the foreseeable future as opposed to proactive enforcement.

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