

# Vacation Pay/Sick Pay

## YOUR LEGAL RIGHTS

### 1. Am I entitled to vacation pay or sick pay?

**Vacation Time.** California does not require employers to provide their workers with vacation time, paid or unpaid. However, if your employer does promise to provide vacation time, or you are covered by your employer's vacation pay policy, you have the right to be paid for your vacation if you obey your employer's policy. There are also several rules about vacation that your employer must follow no matter how the policy is written or told to you. Those rules are described in this Fact Sheet.

**Sick Leave.** California does not require employers to provide workers with sick time, paid or unpaid. If your employer does provide sick time, you have the right to take it if you obey your employer's policy (*see Section 7, below, for more details*). However, unlike vacation pay, you are not entitled to be paid for the sick days that you do not use.

*Note:* if you or a family member becomes ill, the federal Family Medical Leave Act (FMLA) may allow you to take unpaid sick leave even if you don't get sick pay from your employer and the California Paid Family Leave law may allow you to receive benefits if you take time off to care for certain family members. See our Fact Sheets titled "**Leave from Work to Care for a Family Member**" and "**Paid Family Leave**" for more information.

**Combined Vacation and Sick Leave (PTO).** If your employer has a leave policy that combines holiday, vacation, and sick leave (usually called "paid time off," "personal time off" or "PTO"), that time normally is treated like vacation time. Therefore, you have the right to use the time, or even be paid for the time if you don't use it.

**Holidays.** State law does not require your employer to give you the day off on holidays (Thanksgiving, 4th of July), or to pay you extra if you work on a holiday. However if your employer does pay extra (for example, double time) if you work on a holiday, it must pay you what it promised. Unless your employer makes a promise to pay you extra, holidays are the same as any other day and you only get overtime if working the holiday puts you over 8 hours in a day or 40 hours in a week.

**Public Employees.** If you work for a state or local government agency, your employer's policies are not covered by the same laws as private employers so most rules in this Fact Sheet do not apply.

**Union Members:** The California law that says any earned but unused vacation must be paid when an employee leaves has an exception for employees in unions. If your collective bargaining agreement (“CBA”) has rules about how vacation is paid out, those rules, and not the rules described in Section 6, below, will apply. Union members with claims covered by the CBA normally must go through the union grievance procedure.

## 2. How do I “earn” vacation time?

Under the law, your vacation time is considered wages. Most vacation plans provide that your vacation time “accrues” at a rate proportional to the amount of time that you have worked for your employer. For example, if you get 2 weeks (10 work days) of vacation per year, you will have earned (accrued) 5 days of vacation after 6 months of work (or 0.42 days per pay period if you are paid twice a month). Even if your employer tells you that you are not allowed to take that two weeks of vacation until the year is over, you are actually earning a part of it every pay period that you work. Therefore, if you quit or get fired before the year ends, you get paid for the days of vacation time that you earned but did not take.

## 3. Can my employer have different vacation policies for different types of employees?

Generally, yes. Your employer is usually permitted to have different vacation and/or sick leave policies for different categories of employees. For example, an employer is allowed to give three weeks paid vacation to exempt employees and two weeks vacation to non-exempt employees. If you are a temporary or probationary employee, you may not be eligible for vacation benefits because employers sometimes have policies that say you cannot earn vacation time if you are in a probationary period. A probationary period can last 30 days, 60 days, or even one year. However, if your employer has a personnel policy that says you are on probation, but also has a vacation policy that gives you “credit” for vacation earned during probation, you actually begin earning that vacation on the very first day of the probation period.

## 4. Can my employer tell me when I can take my vacation time?

Yes. Your employer can tell you when and how long you take a vacation. Just because you have earned vacation does not mean that you have the right to use it whenever you want. You need to work out your vacation schedule with your employer, or follow its policy for requesting vacation time. Generally, it is good idea to ask your employer to approve your vacation request in writing and to give you a copy of your request.

## 5. Can you lose your vacation time if you don't use it?

No. Your employer cannot force you to give up your earned vacation time if you don't use it within a certain amount of time. This means your employer cannot have a policy that says you must use your vacation pay by the end of the year or you lose it. It also means that if you request to take vacation and the request is denied or if you decide to save your vacation for the future, you still have the vacation time in a "bank" to use later. However, your employer can put a reasonable "cap" on the amount of vacation time that you can save up. In that case, if you save up the maximum amount of vacation time allowed by your employer, then you cannot earn any additional time until you use some vacation time. (For example, if your employer "caps" the amount of vacation time that you can earn at 150 hours, then you cannot save any more than 150 vacation hours at a time, even if you earn more than 150 hours. Later, if you use some of your vacation time, you can earn more again, but only up to the 150 hour maximum.) Your employer may also provide you with payments as a substitute for vacation time when you reach the limit. In other words, your employer can choose to give you money instead of paid time off, but s/he does not have to.

## 6. What happens to my vacation time if I leave your job?

**You quit, get fired, or your contract ends.** If you leave your job before you have used all of the vacation time that you have earned, your employer must pay you for the vacation days that you did not take. Those vacation days are paid at your final rate of pay. Because the money that you receive for your unused vacation is considered wages, your employer must include this money with your final check.

If your employer does not include your vacation pay in your final check, you may be able to file a claim with the California Department of Industrial Relations/Division of Labor Standards Enforcement ("Labor Commissioner") to receive this pay, as you would for any other wages that your employer fails to pay. Your employer may also have to pay you an additional penalty. See our Fact Sheet titled "**Getting Your Final Paycheck**" for more information.

**"Vacation Advances."** If your employer gives you an advance on your vacation time and you leave your job before you can earn the vacation time, the California Labor Commissioner has taken the position that your employer does not have the right to deduct the advance from your final check.

## 7. Can your employer restrict my use of sick time?

Generally, yes. If your employer gives sick leave, it can require a note from your doctor as a condition to getting paid for the leave. However, your employer cannot ask you for information that would require you to reveal a disability or serious health condition. See our Fact Sheets titled "**Leave from Work for Your Own Health Condition**" and "**Disabilities in the Workplace**" for more information.

## 8. Can I take sick time to care for someone else in my family?

Maybe. If your child, parent, spouse, or registered domestic partner is sick (as defined by your employer's sick leave policy), and if you meet the requirements of the policy (such as having to provide a doctor's note) you can use some of your own sick time to take care of your family member. Specifically, each year you can use up to one half of your yearly sick days to care for a sick child, parent, spouse, or registered domestic partner. Your employer cannot fire you if you take sick time and obey all of the requirements of your employer's policy. (*See Section 7, above*)

You may also have the right to take unpaid family medical leave to care for you parent, spouse, registered domestic partner, or child for longer periods of time. See our Fact Sheet titled "**Leave from Work to Care for a Family Member**" for more information. You do not have the right to take sick leave or FMLA leave to care for a relative other than a parent, child, spouse, or registered domestic partner. The California Paid Family Leave law may allow you to receive benefits if you take time off to care for certain family members. See our Fact Sheet titled "**Paid Family Leave**" for more information.

**This fact sheet is intended to provide accurate, general information regarding legal rights relating to employment in California. Yet because laws and legal procedures are subject to frequent change and differing interpretations, the Legal Aid Society - Employment Law Center cannot ensure the information in this fact sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your legal rights in your situation.**

For further information about your employment rights, please call:

### **The Workers' Rights Clinic**

**415-864-8208** (SF Bay Area) or **866-864-8208** (Toll Free in CA)

The Workers' Rights Clinic is a project of The Legal Aid Society - Employment Law Center, a non-profit organization focusing on the employment-related legal rights of low-income workers and providing free legal information on a wide range of employment-related problems.

