

Minimum Wage and Earned Sick Leave in San Diego

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Overview

- Minimum Wage Requirements in SD (and LA)
- Paid Sick Leave Requirements in California and SD (and LA)
- Common issues, questions, concerns, pitfalls



Timeline

- July 28, 2014: SD City Council passes paid sick leave ordinance

- September 10, 2014: California Governor Brown signs paid sick leave law

- June 2, 2016: LA mayor signs paid sick leave ordinance
- June 7, 2016: SD voters approve Proposition I

SD – Minimum Wage

- Applies to:
 - EEs who work at least 2 or more hours in a calendar week within the city limits
- Effective July 11, 2016
 - Implementing ordinance that clarified many of the provisions became effective September 2, 2016.
 - <https://www.sandiego.gov/treasurer/minimum-wage-program>
 - Continuously updated with pertinent information

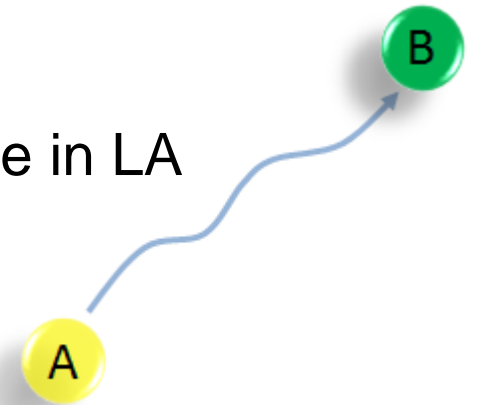
SD – Minimum Wage Rates

Date	Minimum Wage Rate
July 11, 2016	\$10.50
January 1, 2017	\$11.50
January 1, 2019+	Increases based on San Diego's CPI Index*

* The City will publish a bulletin each October announcing the adjusted minimum wage for the next year.

LA – Minimum Wage

- Applies to:
 - EEs who work in the City of LA for at least two hours in a particular week
 - Why is this important in SD?
 - EEs that drive through LA for work
 - EEs that telecommute from their home in LA
- Effective:
 - July 1, 2016 for ERs with 26 or more EEs
 - July 1, 2017 for ERs with 25 or less EEs



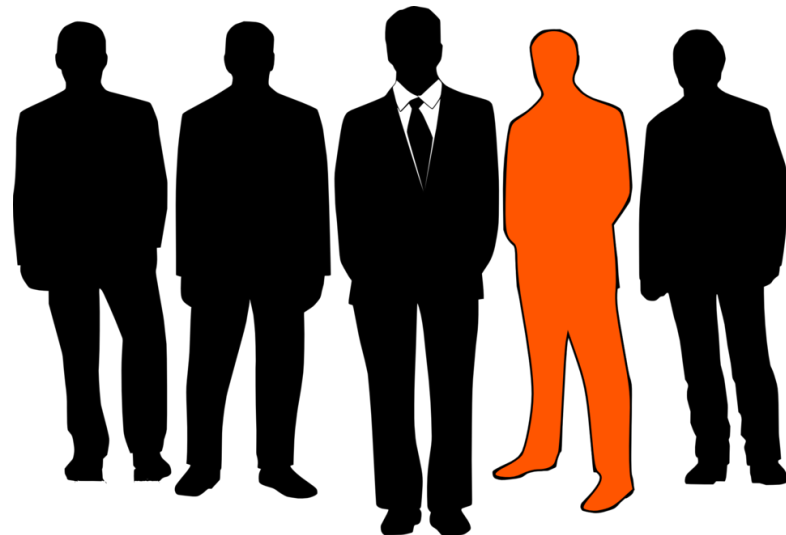
LA – Minimum Wage Rates

Date	Minimum wage for employers with 26 or more employees	Minimum wage for employers with 25 or fewer employees
July 1, 2016	\$10.50	\$10.00*
July 1, 2017	\$12.00	\$10.50
July 1, 2018	\$13.25	\$12.00
July 1, 2019	\$14.25	\$13.25
July 1, 2020	\$15.00	\$14.25
July 1, 2021	\$15.00	\$15.00

*Minimum wage is set by state law

SD – Paid Sick Leave

- Applies to:
 - EEs who work at least 2 hours in the City in a particular week
 - Independent contractors exempted



LA – Paid Sick Leave

- Applies to:
 - EEs who (1) work at least 2 hours in the City in a particular week and (2) work in the City for 30 or more days within a year from the start of employment
 - Day = Any increment of time worked within a 24 hours period in the City
 - Note: It is unclear whether the EE must work all 30 days in LA before he/she is entitled to sick leave
- Effective
 - July 1, 2016 for ERs with 26 or more EEs
 - July 1, 2017 for ERs with 25 or less EEs

San Diego Paid Sick Leave Key Points

- Covered employers: All, regardless of size
- Two methods: Lump sum **or** accrual
- First day sick leave can be used: 90th calendar day of employment
- Cash out: Not required at separation
- Benefit year: Any consecutive 12-month period

San Diego Paid Sick Leave Key Points

- Permitted use increments: Two hours
- Pay rate: Same hourly rate or other measure of compensation as the employee earns at the time the sick leave is used
- Reinstatement: If employee is hired within 6 months of separation – *state law is one year!*

San Diego Paid Sick Leave – Lump Sum Method



PHOTO: SHUTTERSTOCK

San Diego Paid Sick Leave – Lump Sum Method

- Forty (40) hours “dumped” on first day of benefit year
 - Not measured in terms of “days,” but policy that gives “5 days” is presumably compliant, if it gives at least 40 hours
- No accrual or carry-over required
- Advantage: administratively easier
- Disadvantage: not well-suited for part-time employees or employers with high turnover

San Diego Paid Sick Leave – Accrual Method



PHOTO: SHUTTERSTOCK

San Diego Paid Sick Leave – Accrual Method

- “Accrue” one (1) hour of sick leave for every thirty (30) hours worked – *same as state law!*
- Accrual must begin on first day of employment (or July 11, 2016)
- Employer may cap use at 40 hours
- Employers may cap accrual at 80 hours



San Diego Paid Sick Leave – Accrual Method

- Exempt employees presumed to work 40 hours per week, unless they work less than 40
- Advantages:
 - Less expensive
- Disadvantages:
 - Administratively difficult
 - Measure all time? Only time working in SD?
 - Tracking carry-over

San Diego Paid Sick Leave – PTO Exception

- PTO, paid leave, or paid vacation policy:
 - If the leave provides same amount of paid leave and for the same purposes under the ordinance, employer need not provide additional paid sick leave.
 - If through a contract, collective bargaining agreement, employment benefit plan or other agreement, the employer provides **greater** PTO than required, the employer may utilize an “alternative methodology for the calculation of, payment of, and use of earned sick leave.”
 - Unclear whether this allows for alternate **accrual**

PTO Exception – Open Question

- Employer A does not provide 1 hour of sick leave for every 30 hours worked, but instead provides 0.20 days (or 1.6 hours) of PTO for every 1 week worked.
- Compliant?



San Diego Paid Sick Leave – Notice and Posting

- At time of hire, or Oct. 1, 2016 (whichever is later), employer must:
 - Legally determine the number of employees
 - How to calculate the number of employees



- Notice of the law must be posted in a conspicuous place accessible to all employees.
 - 5% of employees must be notified
- Requirement for employers to document wages paid and accrual/use of sick leave “on a regular basis”

SD Ordinance Violations

- Penalties to the employee for noncompliance
 - Double back wages, reinstatement, attorneys' fees and costs
 - Each day constitutes a separate violation
- Penalties to the employee for retaliation
 - Up to \$1,000 per violation (or double back wages)
 - Up to \$3,000 (or double back wages) when employee is terminated
 - Penalty to the state between \$1,000 and \$3,000
- Additional penalties for posting/notice violations

LA Ordinance Violations

- Damages & Penalties
 - All wages and sick leave benefits
 - \$120 per employee per day each violation occurred
 - Up to \$500 for failing to post required notice
 - Damages are **tripled** if an ER retaliates against EE

Thoughts...

- Only pay the increased minimum wage for hours worked in SD?
 - If yes, how to track these hours? Administratively possible?
 - Consider payroll companies and their capabilities
- Only allow employees to accrue extra paid sick leave for hours worked in SD?
 - If yes, how to track these hours? Administratively possible?
 - Consider payroll companies and their capabilities

Retaliation

- **DO NOT RETALIATE**

- Employees may:

- Request payment of minimum wage;
- Request and use sick leave;
- Talk about their rights to sick leave/minimum wage; and
- Talk to anyone about a possible ordinance violation, even if they are wrong. . .

- ...and they are protected from retaliation!

- If adverse action within 90 days of any of the above, rebuttable presumption of retaliation.



The End

Questions?