

Human Resources

New Law Expands Mandatory Paid Sick Leave

GOV. GAVIN Newsom has signed legislation that will increase the amount of paid sick leave days California workers are eligible for.

The law, SB 616, will expand the minimum number of paid sick leave days that employers are required to provide to five days (40 hours) from the current three, or 24 hours.

With an effective date of Jan. 1, 2024, employers have a short time to ramp up and adjust their human resources systems to account for the changes, particularly if they already use the accrual method for building up sick leave. Here's what you need to know:



Paid sick leave can be used to:

- Recover from physical/mental illness or injury.
- Seek medical diagnosis, treatment or preventive care.
- Care for a family member who is ill or needs medical diagnosis, treatment or preventive care.

The takeaway

Employers may provide more paid sick leave hours or days off than the law requires.

With this law taking effect in a few months, it's important that employers start preparing and planning for the changes now. ❖

NOW IS THE TIME TO...

- Update your paid sick leave,
- Ensure you are complying with the state law or your local ordinance (if more generous than the new law),
- Update applicable accrual rates or frontloading numbers in your payroll systems, and
- Train management on the new law.

Options for providing sick leave

Employers will have these options for providing sick leave:

Up front: Employers may provide all five paid sick days up front at the start of the year.

Accrual: If an employer uses the this method, it has two choices to build up sick leave:

- Accruing one hour of paid sick leave for every 30 hours worked, or
- Providing 40 hours of paid sick leave by the 200th day of the year (up from the current 24 hours by the 120th day of the year).

The law also changes the minimum accrual cap, which is the floor for how many days or hours an employer can allow workers to accumulate paid sick days. The current cap is six days — or 48 hours.

Starting in 2024, that minimum accrual cap will be 10 days, or 80 hours.

One more change: Under the new law, employees must be eligible for at least all five days or 40 hours of sick leave or paid time off within nine months of employment.

What's not changing

The new law keeps in place requirements that all full-time, part-time and temporary workers are eligible for sick time if they meet the following qualifications:

- They work for the same employer for at least 30 days in a year, and
- They complete a 90-day employment period before taking any paid sick leave.

Workplace Violence Prevention Law to Take Effect

GOV. GAVIN Newsom has signed into law a measure that will require nearly every employer in California to have in place a workplace violence prevention plan.

The new law, which takes effect July 1, 2024, will require any company with at least one worker to create a workplace violence prevention plan and conduct annual workplace violence prevention training.

The new legislation, SB 553, requires Cal/OSHA to start work on regulations to adopt a workplace violence standard. However, regardless of whether new regulations are in place or not, Cal/OSHA is authorized and required to start enforcing the new law starting July 1.

EXCEPTIONS

The law does not apply to:

- The health care industry, which has its own prevention standard.
- Remote workers.
- Workplaces not open to the public and with fewer than 10 staff.
- Department of Corrections and law enforcement agencies.

Main requirements

Employers will be required to implement and maintain an effective workplace violence prevention plan that includes:

- Procedures for the employer to accept and respond to reports of workplace violence.
- Procedures for staff to report an incident or concern,
- Procedures for responding to an incident.
- Procedures to identify and evaluate workplace violence

- hazards, including scheduled periodic inspections.
- Procedures for post-incident response and investigation.
- The law also requires employers to create and keep:
 - Records of workplace violence hazard identification, evaluation and correction.
 - Training records.
 - A violent incident log for every incident.
 - Records of workplace violence incident investigations.

Training

The law also requires employers to train their staff in the elements of their workplace violence prevention plan, including:

- The various parts of the plan (also make the plan available to all staff).
- How to report workplace violence hazards and workplace violence incidents.
- Corrective measures the employer has implemented.
- How to seek assistance to prevent or respond to violence.
- Strategies to avoid physical harm.
- Information about the violent incident log and how employees can obtain a copy.

Guidance

Cal/OSHA will typically create model programs or plans for employers to follow.

It has not yet stated it will do so, but it likely will as it has in the past when requiring implementation of specific prevention plans.

While the law won't take effect until the middle of 2024, you should start preparing for it soon to ensure compliance. ❖



Protecting Outdoor Workers When Winter Sets In

ALTHOUGH MOST of California won't be experiencing sub-zero temperatures this winter it can get cold in some regions of the state, affecting people who work outdoors, particularly in higher elevations, the Valley and in the Bay Area.

Occupations that are most at risk include construction, yard, agricultural and infrastructure workers. But anyone that has to spend a long amount of time outside in the winter can be affected.

Prolonged exposure to freezing or cold temperatures can result in serious maladies, including trench foot, frostbite, hypothermia, and in the worst-case scenario, death.

The kind of conditions that cause cold-related ailments, aside from low temperatures, are high and/or cool winds, dampness and cold water.

Even though temperatures may be above freezing, if it's a windy day, you have to take the wind-chill factor into consideration.

Safeguarding your workers

Fed-OSHA has published the "Cold Stress Guide" with tips on handling cold weather:

- Learn the signs and symptoms of cold-induced illnesses/injuries and what to do to help workers.
- Encourage workers to wear proper clothing for cold, wet and windy conditions, including layers, so they can adjust to changing conditions.
- Workers should take frequent short breaks in warm, dry shelters.
- Try to schedule work for the warmest part of the day.
- Tell your workers to not work to the point of exhaustion, as it can make them more susceptible to hypothermia.
- Work in pairs.
- Workers should eat warm, high-calorie foods such as hot pasta dishes for breakfast and lunch.

When hypothermia sets in

The most common risk in California winters is hypothermia, which occurs when body temperature falls to a level where normal muscular and cerebral functions are impaired.

HYPOTHERMIA SIGNS

- Shivering uncontrollably,
- Slurred speech,
- Clumsy movements, and
- Fatigue and confused behavior.

If a worker displays signs of hypothermia:

- Call for emergency help.
- Move them to a warm, dry area. Remove wet clothing and replace with warm, dry clothing or provide blankets.
- Have the person drink warm, sweet drinks if they are alert. Avoid drinks with caffeine or alcohol.
- Have them move their arms and legs to create muscle heat. If they are unable to do this, place warm bottles or hot packs in the armpit, groin, neck and head areas.

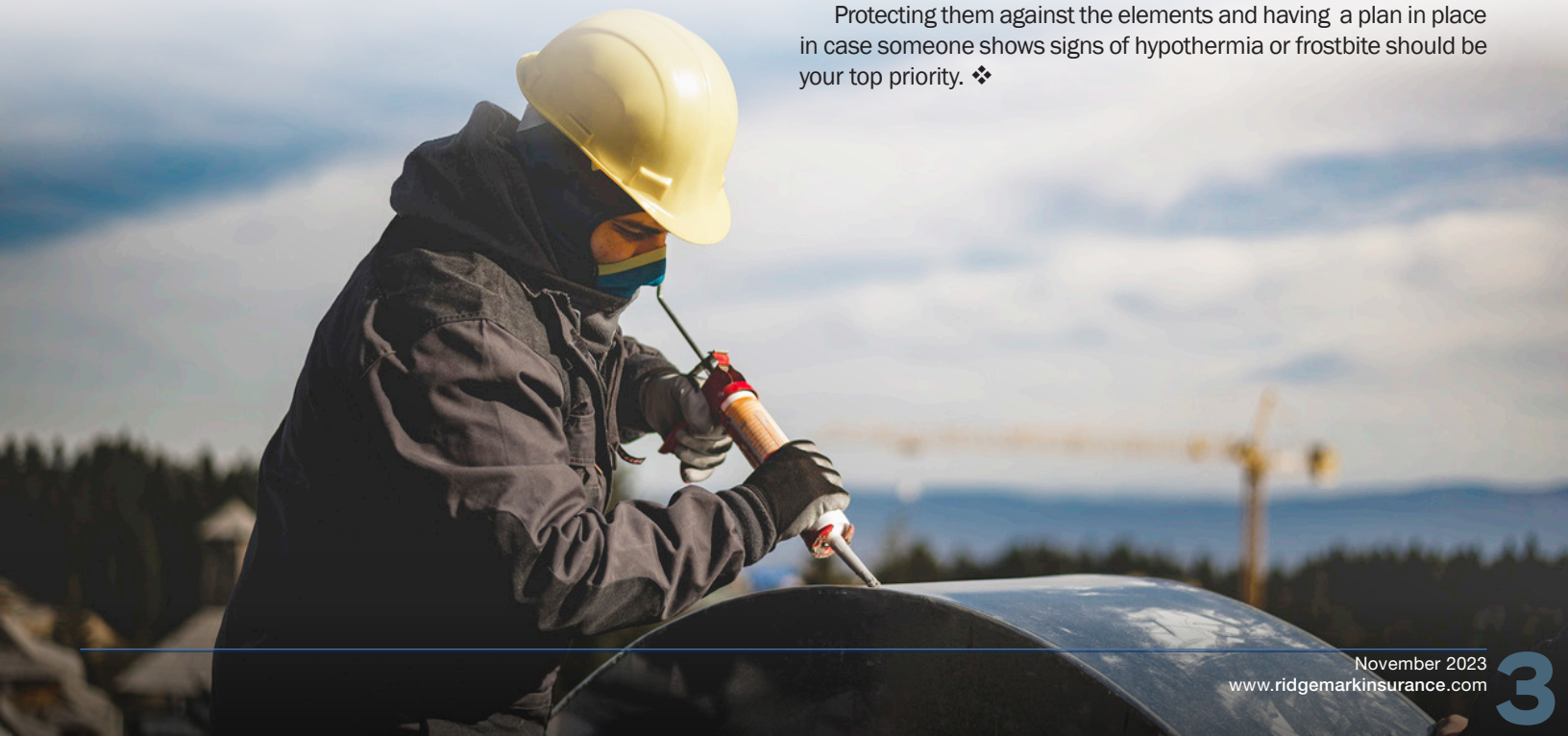
If a person is in danger of getting hypothermia from water exposure:

- Call for emergency help,
- If you don't have fresh clothes and a warm place to change, do not remove any clothing. Button, buckle, zip and tighten any collars, cuffs, shoes and hoods because the layer of trapped water closest to the body provides a layer of insulation that slows the loss of heat.

The takeaway

Even if your staff don't work in sub-zero conditions, they can still develop hypothermia while working outdoors. Cal/OSHA requires employers to provide a safe work environment.

Protecting them against the elements and having a plan in place in case someone shows signs of hypothermia or frostbite should be your top priority. ❖





EEOC Enforcement

Employee Retaliation Complaints Surging

THE U.S. Equal Employment Opportunity Commission is seeing a wave of retaliation complaints by employees. Retaliation charges accounted for more than 35% of all charges filed with the commission in fiscal year 2022.

Retaliation means any adverse action that you or someone who works for you takes against an employee because they complained about harassment or discrimination. Any negative action that would deter a reasonable worker in the same situation from making a complaint qualifies as retaliation.

Employees who participate in an investigation of any of these problems are also protected. For example, you cannot punish an employee for giving a statement to a government agency that is looking into a discrimination claim.

Employment law attorneys say that the increase is in part because employees who sue for retaliation have a higher degree of success than those who bring a regular discrimination charge. It's important that all employers train their managers and supervisors to not retaliate against workers making complaints, as the result can be a costly lawsuit.

Thanks to a precedent-setting case, *Burlington Northern & Santa Fe Railroad*

vs. *White*, while an employee alleging discrimination must prove that they suffered a “materially adverse employment action,” a retaliation plaintiff only needs to show that the employer undertook some action that may dissuade them from making or supporting a charge.

Employment law experts recommend that employers do the following:

Set Clear, Unambiguous Policies

- Your company policy should clearly state that retaliation is not permitted.
- The policy should describe the parameters of inappropriate conduct as well as you can define them.
- Put the policy in writing.
- Set reporting and grievance procedures, including the person to whom the employee can report a retaliation complaint.
- Have staff sign an acknowledgment of receipt of your policy.

Investigate complaints promptly

Remember that anyone who participates in an investigation is likely protected from retaliation (including the employee who makes a complaint and witnesses).

Communicate the results of the investigation to the grievant.

Take effective remedial measures, including carefully reviewing all disciplinary measures before imposing them. You should also ensure that disciplinary actions are consistent with past practices.

Train managers and supervisors

Finally, you should train managers and supervisors and ensure they understand your policies.

Make sure they understand who is protected from retaliation (participants, complainants, and even persons related to the complainant in some cases).

They should also understand what constitutes retaliatory conduct and, if they are unsure, they should speak to your human resources manager. ❖