

NEW LAW GRANTS SICK LEAVE TO CARE FOR FAMILY MEMBERS

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Labor Code §233, which became effective on January 1, 2000, requires employers who provide sick days to allow employees to use up to one-half of the employee's annual sick leave accrual to care for a sick child, parent or spouse of the employee. The new law should not be confused with, nor extend any leave rights conferred by, the Family Medical Leave Act or its California equivalent, the California Family Rights Act, which requires employers to grant unpaid leaves when certain criteria have been met. Nor does the law relate to any benefit provided under Workers' Compensation or other employment-related laws. Rather, Labor Code §233 applies only to paid time off which an employer provides to its employees pursuant to its own internal employment policies and practices.

Any other policies which employers may have concerning the sick leave should not be affected by the new law. Accordingly, an employer can continue to require workers to comply with any restrictions the employer may place on a worker's ability to take sick leave, such as requiring medical certification for extended absences. Further, Labor Code §233 does not require that the employee be granted sick leave if the amount of time requested has already been used or has not yet accrued.

The new law prohibits employers from retaliating against any worker who exercises his or her rights under the law and allows that such employees may file a claim with the Labor Commissioner or bring a civil action seeking reinstatement and actual damages or one days pay, whichever is greater, and for appropriate equitable relief. In addition, the employee can obtain his or her reasonable attorneys' fees if he or she prevails on such a claim.

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Kelly O. Scott

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