

Revisions to the California Labor Code section 233 (“Kin Care”) **took effect on January 1, 2016**. These revisions eliminate inconsistencies between Kin Care and California’s new Paid Sick Leave (“PSL”) law, which went into full effect on July 1, 2015.

When Kin Care Applies, Sick Leave and Paid Time Off and Vacation... Oh My!

Kin Care, as revised, applies to “sick leave” which is defined as “accrued increments of compensated leave provided by an employer to an employee as a benefit of the employment for use by the employee during an absence from the employment for any of the reasons specified in [the PSL law].”

While we know Kin Care applies to sick leave, the applicability of Kin Care to Paid Time Off (“PTO”) policies and/or Vacation programs remains somewhat unclear.

Many companies utilize a PTO program to provide employees with vacation and sick leave benefits from a single unified program. If your company utilizes such a program, the revised Kin Care law requires that at least one-half of the PTO time be available to employees for use for any of the protected reasons listed in the PSL law. (These are discussed more in depth below.) Alternatively, if your company has separate vacation and sick leave plans it remains unclear whether the revised Kin Care law requires one-half of the accrued vacation to be available for use for any of the PSL protected reasons. One federal court has found that the Kin Care requirements did not apply to vacation leave; however, the decision was not flagged for publication and holds no precedential weight. So for now, this question remains largely unanswered.

Kin Care Revisions Incorporate Definitions from New Paid Sick Leave Law

When implemented last July, California’s new PSL law contained a more expansive definition of “family member” and additionally provided a list of protected reasons for which an employee could utilize his or her accrued PSL. These new definitions created inconsistencies between Kin Care and the new PSL.

Frequently asked questions about PSL can be found on the DLSE website:
http://www.dir.ca.gov/DLSE/Sick_Leave_Law_FAQs.pdf.

Family Member

Before, Kin Care required employers who provide sick leave to allow their employees to use one-half of their annually accrued sick leave to care for an employee’s “child, parent, spouse, or domestic partner.” Under the new PSL law, a family member is defined as:

- A child, which for purposes of this article means a biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis. This definition of a child is applicable regardless of age or dependency status.

- A biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child.
- A spouse.
- A registered domestic partner.
- A grandparent.
- A grandchild.
- A sibling.

Cal. Lab. Code § 245.5(c)(2).

The new PSL definition includes more expansive definitions of child and parent, and additionally extends family member status to grandparents, grandchildren, and siblings. In order to eliminate these inconsistencies, the revised Kin Care law, effective January 1, 2016, adopts the "family member" definition from the PSL law.

Permitted Reasons to Use Paid Sick Leave

In addition to the more expansive definition of "family member," the new PSL law includes a list of permitted reasons for which employees are allowed to use their PSL. This list includes the "[d]iagnosis, care, or treatment of an existing health condition of, or preventative care for, an employee or an employee's family member," and "[f]or an employee who is a victim of domestic violence, sexual assault, or stalking." Cal. Lab. Code § 246.5(a). *The revised Kin Care law, effective January 1, 2016, incorporates these reasons stating that employees may use up to one-half of their annual accrued sick leave for any of the purposes listed in the PSL law.*

Under the revised Kin Care provisions, if you provide your employees with PSL at least one-half of an employee's annually accrued sick leave must be made available for the employee to care for a family member for any of the permitted reasons listed in the PSL law.

Limits on Employer's Ability to Restrict Sick Leave

Notably, the revised Kin Care law removes the provision which expressly allowed employers to place conditions and restrictions on the use of employee sick leave (e.g., requiring doctor's notes). The revisions also contain provisions which prohibit retaliation or discrimination against an employee "for using, or attempting to exercise the right to use, sick leave to attend to an illness or the preventative care of a family member, or for any other reason stated in [the PSL law]."

What This Means For California Employers

The revised Kin Care provisions went into effect on January 1, 2016. California employers must consider the effects these changes will have on their existing programs and ensure they have implemented policies to properly follow the new provisions. Employee handbooks and policies must be updated to ensure compliance. Consult with qualified legal counsel if you have any questions or concerns about your leave benefit, Paid Sick Leave and/or the revised Kin Care law.