



*San Francisco Paid Sick Leave Ordinance*  
*Administrative Code Chapter 12W*

Frequently Asked Questions  
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**Advisory:** The San Francisco Paid Sick Leave Frequently Asked Questions (FAQs) address issues related to San Francisco's paid sick leave law only. For information regarding California's paid sick leave law, go to [https://www.dir.ca.gov/dlse/paid\\_sick\\_leave.htm](https://www.dir.ca.gov/dlse/paid_sick_leave.htm).

**Effective Date**

**1. Q: When did the Ordinance take effect?**

A: The Paid Sick Leave Ordinance ("Ordinance") took effect on February 5, 2007. In 2016, San Francisco voters passed amendments to the Ordinance to include worker protections that largely parallel California's paid sick leave law, the Healthy Workplaces, Healthy Families Act of 2014.

**Scope of Ordinance**

**2. Q: Are employers with employees in San Francisco subject to both San Francisco paid sick leave and California paid sick leave?**

A: Yes, employers must comply with both San Francisco and California law.

In most employment situations, employers that comply with San Francisco paid sick leave will also be compliant with California paid sick leave. However, employers are encouraged to review both laws thoroughly. When there are conflicting requirements in the laws, the employer must follow the stricter standard; that is, the one that is most beneficial to the employee.

**3. Q: Are employees entitled to accrue paid sick leave for hours worked outside of the city?**

A: No. Under the Ordinance, employees accrue paid sick leave only for those hours worked within San Francisco. However, employers must comply with California paid sick leave requirements when employees are working elsewhere in California.

**4. Q: If an employer is based outside of San Francisco but has employees who perform work in the city, do the employees accrue paid sick leave for hours worked in San Francisco?**

A: Yes. All employees who perform work in San Francisco for at least 56 hours during a calendar year, including on a part-time or temporary basis, accrue paid sick leave for those hours worked in the city, regardless of where their employer is located.

**For specific rules governing limited and alternative San Francisco work schedules, see [Rule Number 6](#).**

**5. Q: In determining if an employer qualifies as a small business under the Ordinance, are all of its employees counted, including those who work outside of San Francisco?**

A: Yes. For the purpose of calculating employer size, all persons performing work for the employer during a given week are counted, whether or not the persons work in San Francisco.

**6. Q: If an employer operates three stores, each with seven employees, is it considered a small business under the Ordinance?**

A: No. For the purpose of calculating employer size, employees performing work in different locations operated by the same employer are all counted as employees of the employer. The seven employees at each of the three stores would be considered together, totaling 21 employees for this employer. The employer would not be considered as a small business under the Ordinance.

**For specific rules governing controlled groups of corporations, see [Rule Number 9](#).**

**7. Q: How does an employer determine whether it qualifies as a small business if its number of employees changes during the year?**

A: A small business is an employer for which fewer than 10 persons, including part-time and temporary employees, work for compensation during a given week. Pursuant to [Rule Number 7](#), in situations in which the number of persons who work for compensation per week fluctuates above and below 10 or more per week over the course of a year, OLSE will calculate business size for the current calendar year based upon the average number of persons who worked for compensation per week during the preceding calendar year.

For example, for a business that operated the entire preceding year, the calculation would be as follows: (a) For each of the 52 weeks during the year, determine the total number of persons who worked for compensation; (b) Add these numbers together; (c) Divide by 52. If this number is below 10, then the employer would qualify as a small business for the current calendar year.

For new employers, OLSE will calculate business size for the current calendar year based upon the average number of persons per week who worked for compensation for the first ninety days after its first employee(s) began work.

**8. Q: Does the Ordinance cover undocumented employees?**

A: Yes. All employees who work in San Francisco – whether or not they are legally authorized to work in the United States – are covered by the law. OLSE will process an employee’s claim without regard to the employee’s immigration status. Employees filing a claim with OLSE will not be questioned about their immigration status.

**9. Q: Does the Ordinance require employers to provide paid sick leave to independent contractors?**

A: No. The Ordinance applies to employees. However, merely labeling someone as an “independent contractor” does not make it so. Consistent with California law, whether a person is an employee or independent contractor is a fact-specific inquiry that is determined by a variety of factors.

For more information on how the State of California reviews issues relating to independent contractor status in wage and hour cases, see the California Labor & Workforce Development Agency [Employment Status Portal](#).

**10. Q: Are household employees, such as caregivers, cooks, and house cleaners, covered by the Ordinance?**

A: Yes. Household employees who perform work in San Francisco are covered by the Ordinance. Note that household workers who are properly classified as independent contractors are not covered by the Ordinance.

**11. Q: If a business contracts with a temporary staffing agency to have the agency provide temporary employees to the business, who is responsible under the Ordinance to meet the obligations to the employees?**

A: The business and the temporary staffing agency may be considered joint employers under the Ordinance. In such situations, each employer has an obligation to ensure that the requirements are met. The business and the temporary staffing agency may agree between themselves who will monitor compliance with the Ordinance, but any such assignment of responsibility cannot limit or deny the rights of temporary employees under the Ordinance.

For specific rules governing Joint Employment, see [Rule Number 10](#).

**12. Q: Assume an employee has worked for various businesses through a temporary staffing agency and has accrued 32 hours of paid sick leave. However, the employee**

**has only worked for one week at the employee's current assignment. Is the employee entitled to use paid sick leave?**

A: Based on the limited facts presented here, yes. The temporary staffing agency has the responsibility for providing paid sick leave since the employee has worked for it for more than 90 days and accrued paid sick leave. The business has no obligation to pay the employee sick leave because the employee has not worked for it for at least 90 days and accrued paid sick leave in that assignment.

**13. Q: Can an employer require employees to use paid sick leave while on family medical leave under state or federal law?**

A: This question involves the interpretation of the Family Medical Leave Act (FMLA) and the California Family Rights Act (CFRA). OLSE has no jurisdiction over enforcement of either the FMLA or the CFRA. OLSE recommends that employers and employees consult with the [Federal Department of Labor](#) regarding FMLA issues and with the California [Department of Fair Employment and Housing](#) regarding CFRA issues. In addition, employers and employees may wish to review administrative regulations implementing the FMLA (29 C.F.R. Part 825) and CFRA (2 Cal. Code Regs. § 7297.0-11)

**14. Q: Can an employee who is receiving paid sick leave also get State Disability Insurance (SDI) or Workers' Compensation (WC) benefits?**

A: Whether an employee is eligible for SDI or WC benefits is governed by the California Unemployment Insurance and Labor codes, which also provide guidance about the integration of paid sick leave and other benefits. For more information about SDI benefits, consult the [Employment Development Department](#). For more information about Workers' Compensation benefits, consult the [Division of Compensation](#).

**15. Q: Are employees of private sector employers at the San Francisco International Airport covered by the Ordinance?**

A: No. The Ordinance covers employees who are employed within the geographic boundaries of San Francisco, which does not include the San Francisco International Airport (SFO). Note, however, that many private sector employers at SFO are covered by the City's Minimum Compensation Ordinance which provides for paid time off that may be used for sick leave, vacation, or personal necessity. For more information on the [Minimum Compensation Ordinance](#), call (415) 554-6237 or email [MCO@sfgov.org](mailto:MCO@sfgov.org).

**16. Q: Are employees of private sector employers at the Presidio covered by the Ordinance?**

A: No. The PSLO does not cover private businesses located in "federal enclaves" such as the Presidio, Fort Mason, and the Golden Gate National Recreation Area (GGNRA).

## **Accrual of Paid Sick Leave**

### **17. Q: When do employees begin to accrue paid sick leave?**

A: Paid sick leave begins to accrue on the employee's first day of work.

For specific rules governing breaks-in-service, see [Rule Number 4](#).

### **18. Q: At what rate do employees accrue paid sick leave?**

A: For every 30 hours worked, an employee accrues one hour of paid sick leave.

### **19. Q: What constitutes "hours worked" under the Ordinance?**

A: OLSE defines "hours worked" in a manner consistent with the California Division of Labor Standards Enforcement's [Enforcement Policies and Interpretations Manual Section 46](#). Topics include travel time and reporting time.

Note that while Reporting Time is not considered "hours worked" for purposes of calculating overtime, it is compensable time and, thus, must be included in calculating sick leave accrual.

### **20. Q: Does paid sick leave accrue on overtime hours worked?**

A: It depends on the employee's status under the federal Fair Labor Standards Act (FLSA) and California labor law. For employees who are not exempt from the overtime provisions of the FLSA and California labor law, paid sick leave accrues on all hours worked, including overtime hours worked.

For employees who are exempt from the overtime provisions of the FLSA and California labor law (an Exempt Employee), paid sick leave accrues based upon a 40-hour work week absent evidence that the Exempt Employee's regular work week is less than 40 hours. In instances where there is evidence that the Exempt Employee's regular work week is less than 40 hours, paid sick leave accrues based upon that regular work week.

For specific rules governing the accrual of paid sick leave for Exempt Employees, see [Rule Number 8](#).

### **21. Q: Are employees entitled to accrue paid sick leave when on vacation or out sick?**

A: It depends. Non-Exempt Employees are not entitled to accrue paid sick leave when they are not working, such as when they are out on vacation or out sick.

However, pursuant to [Rule 8](#), for an Exempt Employee paid sick leave accrues based upon a 40-hour work week, absent evidence that the Exempt Employee's regular work

week is less than 40 hours. In instances where the Exempt Employee's regular work week is less than 40 hours, paid sick leave accrues based upon that regular work week.

**22. Q: Is it acceptable for employers to establish payroll systems under which employees accrue paid sick leave in less than one-hour increments?**

A: Yes. The Ordinance establishes a minimum standard for computing accrual of paid sick leave – one-hour increments. The Ordinance does not bar an employer from having a system or policy that accrues paid sick leave in smaller amounts, so long as the system or policy does not fall below the standard set by the Ordinance.

**23. Q: What would be examples of compliant payroll systems?**

A: Example of compliant payroll systems are where employees accrue 0.0333 hours of paid sick leave for every hour worked (30 hours worked divided by 1 hour of sick leave earned). Employers may establish a cap of 40 hours at any given time for a small business, or 72 hours for a large employer. The balance in an employee's accrued, unused sick leave would roll over from year to year.

Note, per FAQ 22, that employers are not required to award paid sick leave in less than one-hour increments, but may choose to do so.

**24. Q: Do employees lose accrued paid sick leave hours at the end of the year?**

A: No. The Ordinance does not work on a calendar year basis. Unused hours of paid sick leave that employees have accrued roll over to the following year.

**25. Q: Is there a cap on how much paid sick leave an employee is entitled to accrue?**

A: Yes. For employees of small businesses (ones for which fewer than 10 persons, including part-time and temporary employees, work for compensation during a given week), employees are not entitled to accrue additional sick leave if they have a current balance of 40 hours or more of accrued paid sick leave. For employees of employers with 10 employees or more, employees are not entitled to accrue additional sick leave if they have a current balance of 72 hours or more of accrued paid sick leave.

**26. Q: Is the cap on paid sick leave an annual cap?**

A: No. The Ordinance allows employers to limit how many hours of paid sick leave an employee may have accrued "in the bank" at any given time. Sick leave accrues at the normal rate of one hour of sick leave for every 30 hours of work whenever an employee's sick leave balance is below that cap.

For example, John works as a non-Exempt Employee for a small business. From January through July, John accrues 40 hours of paid sick leave. As permitted for an employee of

a small business, that is his cap. In August, John falls ill and uses all 40 hours of paid sick leave that he has “in the bank.” When John comes back to work, he begins to accrue new hours of paid sick leave. Over his next three months of work, John accrues 16 new hours of paid sick leave. In November, he falls ill again and uses those 16 hours of paid sick leave that he now has “in the bank.” In all, John accrued and used 56 hours of paid sick leave so far that year.

**27. Q: Once employees hit their cap of paid sick leave, do they get credit for additional hours worked?**

A: No. Once employees hit their cap of paid sick leave, they no longer accrue paid sick leave until they use some of the hours they have “in the bank.”

For example, Jane works as a non-Exempt Employee for a small business. From January through July, Jane accrues 40 hours of paid sick leave. As permitted for an employee of a small business, that is her cap. She continues to work, without using any of the paid sick leave that she has accrued, for the next two years. At that point, she still has only 40 hours of paid sick leave “in the bank.” Jane then falls ill and uses 8 hours of her paid sick leave. She now has 32 hours of paid sick leave left. When she returns to work, she will begin to accrue new hours of paid sick leave back up to her cap.

**28. Q: Does the Ordinance require employers to provide 72 hours of paid sick leave per year (40 hours of paid sick leave per year for small businesses)?**

A: No. Under the Ordinance, employees accrue one hour of paid sick leave for every 30 hours worked. The number of hours of paid sick leave that an employee earns is based upon how many hours the employee works.

**29. Q: If a large employer allows its employees to use 72 hours of paid sick leave per year, is this policy sufficient to meet the requirements of the Ordinance?**

A: Not necessarily. It depends on the facts of the situation. While the law caps at 72 hours the amount of paid sick leave an employee of a large employer is entitled to accrue, accrued paid sick leave hours roll over at the end of the year – and there is no cap on the number of hours of paid sick leave that an employee may use in a given year.

As an example, David has 72 hours of accrued paid sick leave at the beginning of the year. In January, he falls ill and uses all of those hours at that time. David comes back to work and over the next eleven months accrues 64 new hours of paid sick leave. Then, in December, he falls ill again and uses those 64 hours of paid sick leave. In total, under this scenario, David has used 136 hours of paid sick leave in that year. Under this scenario, a policy that only permits employees to use 72 hours of paid sick leave per year would be insufficient to meet the requirements of the law.

**30. Q: If an employer offers Paid Time Off (PTO) or vacation days that may be used for any purpose, including sick leave, beyond the minimum accrual requirements in the Ordinance, does the employer need to offer additional paid sick leave?**

A: No. If an employer has a paid leave policy, such as a PTO or vacation policy, that makes available to employees paid leave that may be used for the same purposes specified in the Ordinance (or for any purpose) and that is sufficient to meet the Ordinance’s requirements for paid sick leave accrual, then it is not required to provide additional paid sick leave.

OLSE recommends that employers who implement a policy that requires employees to use PTO or vacation time when they are sick inform their employees of that requirement prior to the employees’ requested use of paid leave.

**31. Q: May an employer, in accordance with California paid sick leave, make available to an employee a lump sum of paid sick leave at the beginning of each year of employment, calendar year, or other 12-month period (an “upfront allocation”)?**

A: Yes. In such cases, OLSE will treat the upfront allocation as an advance on paid sick leave to be accrued per the Ordinance; that is, accrual of paid sick leave would temporarily halt and the employee would not continue to accrue paid sick leave until after the employee has worked the number of hours necessary to have accrued the upfront allocation amount, at which point the employee would then resume accruing paid sick leave.

Per the Ordinance, any advance of paid sick leave shall occur pursuant to an employer’s written policy or, absent an applicable written policy, shall be documented in writing to the affected employee.

It is important to note that employers that choose to comply with California paid sick leave with an upfront allocation of 24 hours must still comply with the accrual requirements of San Francisco paid sick leave, under which employees may accrue more than 24 hours.

**32. Q: Assume that a small business would like to credit its full-time employees with 40 hours of Paid Time Off at the beginning of each year, which may be used for any purpose including sick leave. If one of its employees uses 40 hours for a vacation in March, and then falls ill in September, does the employer need to provide additional hours of paid sick leave?**

A: The employee would be entitled to additional paid sick leave at the point at which the employee has worked enough hours to accrue new paid sick leave beyond what was credited up front by the employer as PTO.

In this example, the employee would have to work 1,200 hours from January to



September before he or she would have accrued the 40 hours of paid leave (40 x 30) that had already been used in March for the vacation. Only after working those 1,200 hours would the employee begin to accrue more paid sick leave hours.

**33. Q: Are employers required to list an employee’s paid sick leave balance on the employee’s pay stub?**

A: Yes, under state law. Pursuant to California Labor Code Section 246(i), employers “shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee’s itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee’s payment of wages.”

**34. Q: Are employers required to pay employees for unused paid sick leave when the employees quit, retire, or are fired?**

A: No. The Ordinance does not require an employer to pay employees for accrued unused paid sick leave upon the employee’s termination, resignation, retirement, or other separation from employment. However, if an employer is using a Paid Time Off or vacation policy to comply with the Ordinance, the employer must comply with other applicable laws, and California law requires the payout of PTO or vacation upon separation of an employee.

**35. Q: If an employer re-hires a former employee, can that employee use previously accrued paid sick leave?**

A: Pursuant to Section 12W.3(g) of the Ordinance, if the employee is re-hired within one year from the date of separation, previously accrued and unused paid sick leave must be reinstated and may be used upon returning to work.

**For specific rules governing breaks in service, see [Rule Number 4](#).**

**36. Q: What constitutes a “separation from employment” under the Ordinance and its Implementing Rules?**

A: In determining whether or not there has been a “separation from employment” under the Ordinance and Rules, OLSE will consider all relevant circumstances including, but not limited to, whether an employer has demonstrated compliance with provisions of the [California Labor Code](#) and [California Unemployment Insurance Code](#) that require, respectively, immediate payment of final wages and written notice as to change in employment relationship.

## **Use of Paid Sick Leave**

### **37. Q: For what purposes can employees use paid sick leave?**

A: Employees may use paid sick leave when they are ill, injured, or for the purpose of receiving medical care (including preventive care), treatment, diagnosis, or other medical reason, and also to aid or care for a Family Member or Designated Person when those persons are ill, injured, or receiving medical care (including preventive care), treatment, or diagnosis, or other medical reason.

Employees may also use paid sick leave for purposes related to domestic violence, sexual assault, or stalking, suffered by the employee, and for purposes related to bone marrow donation or organ donation. Further, an employee may use paid sick leave to care for or assist a Family Member or Designated Person that is donating bone marrow or an organ to another person.

### **38. Q: Are employees entitled to use paid sick leave as bereavement leave?**

A: No. Employers may allow employees to use paid sick leave as bereavement leave, but employers are not obligated to do so.

### **39. Q: Does the Ordinance require employers to permit employees to use paid sick leave when they are working or scheduled to work outside of San Francisco?**

A: No. The Ordinance requires employers to allow employees to use paid sick leave when they are working or scheduled to work in San Francisco. However, an employer may choose to permit employees to use paid sick leave when the employees are working or scheduled to work outside of San Francisco as part of its California paid sick leave obligations.

### **40. Q: If an employee is transferred to work outside of San Francisco, what happens to the employee's accrued paid sick leave hours?**

A: Employers may allow employees to use paid sick leave hours outside of San Francisco as part of its California paid sick leave obligations. However, if the employer does not allow the use of paid sick leave hours outside of San Francisco, those hours remain "in the bank" for four years from the employee's last day of work in San Francisco, available for use should the employee work or be scheduled to work in San Francisco during that time.

### **41. Q: Who qualifies as a Family Member under the Ordinance?**

A: Family Member under the Ordinance is defined as a: child; parent; legal guardian or ward; sibling; grandparent; grandchild; and spouse or registered domestic partner under any state or local law. These relationships include not only biological relationships but

also relationships resulting from adoption, step-relationships, and foster care relationships.

“Child” also includes a child of a domestic partner and a child of a person standing in loco parentis.

“Parent” also includes a person who stood in loco parentis when the employee was a minor child, and a person who is a biological, adoptive, or foster parent, or guardian of the employee’s spouse or registered domestic partner.

**42. Q: What is a Designated Person?**

A: If an employee has no spouse or registered domestic partner, the employee may designate one person for whom the employee may use paid sick leave to provide aid or care. This designation must be on file with the employer before the employee may use paid sick leave for this purpose, unless the employer has failed to take affirmative steps to offer the employee an opportunity to list a Designated Person.

**43. Q: Do employers have the obligation to take affirmative steps to offer employees without a spouse or registered domestic partner an opportunity to list a Designated Person?**

A: Yes. If an employer fails to provide an employee without a spouse or domestic partner the opportunity to list a Designated Person and the employee requests use of paid sick leave to care for a non-Family Member, the employer must permit the employee to select a Designated Person and to take paid sick leave for that person at that time. That Designated Person will remain on file until the next opportunity for the employee to change the designation.

**44. Q: When do employers need to offer employees without a spouse or domestic partner the opportunity to list a Designated Person?**

A: Employers must offer the opportunity to make a designation no later than 30 work hours from the employee’s first day of work.

**45. Q: Is it acceptable for employers to offer an annual opportunity to list a Designated Person to employees without a spouse or registered domestic partner at the same time, for example during the employer’s annual open enrollment period?**

A: Yes. However, as noted in the preceding Q and A, there are strict time deadlines for the requirement of initially offering employees an opportunity to list a Designated Person.

**46. Q: Is it reasonable to require employees to provide advance notification for every use of paid sick leave?**

A: Employers may require employee notification of paid sick leave use consistent with [Rule Number 1](#).

**47. Q: Is it reasonable to require employees to provide a doctor's note for every use of paid sick leave?**

A: No, employers may not require a doctor's note for every use of paid sick leave, and, pursuant to [Rule Number 2](#), may not require a doctor's note or other documentation for the use of paid sick leave of three or fewer consecutive work days.

**For specific rules governing employer verification of paid sick leave use, see [Rule Number 2](#).**

**48. Q: Are there medical privacy laws that employers must follow when verifying that an employee's use of paid sick leave is consistent with the Ordinance?**

A: Yes. In confirming that an employee's use of paid sick leave is consistent with the Ordinance, employers must abide by all federal and state medical privacy laws. For more information regarding privacy of medical issues in the workplace, contact the [Department of Health & Human Services](#) and the [Equal Employment Opportunity Commission](#) regarding federal law and the [Fair Employment & Housing Commission](#) regarding state law.

**49. Q: May an employer require its employees to use paid sick leave in one hour increments?**

A: Yes. However, an employer may choose to permit its employees to use paid sick leave in less than one hour increments if the employer wishes to do so.

**50. Q: May an employer require its employees to take off the full day to use paid sick leave?**

A: No. Employers may not require, as a condition of an employee's taking paid sick leave, that the employee take paid sick leave in increments of more than one hour.

**For specific rules governing other employer requirements pertaining to amount of paid sick leave taken, see [Rule Number 3](#).**

**51. Q: How many hours of paid sick leave may an employee use on days when the employee is scheduled to work more than 8 hours (i.e. when the employee is scheduled to work overtime hours)?**

A: An employee may use paid sick leave hours for all hours the employee is scheduled to work, including regular and overtime hours. However, all hours would be paid to the

employee at the regular sick leave rate of pay.

**52. Q: When can an on-call employee use paid sick leave under the Ordinance?**

A: An on-call employee may use paid sick leave as permitted under the Ordinance when the employee is at work or scheduled to work. If an employer decides to allow the use of paid sick leave in other circumstances, the employer may do so.

**53. Q: Is paid sick leave to be available to employees as soon as they accrue it, or can an employer make it available at the end of the pay period or some other future point in time?**

A: Paid sick leave is to be available to employees as soon as they accrue it.

**Payment of Sick Leave**

**54. Q: How should employers calculate the sick leave rate of pay?**

A: For non-Exempt Employees, the Ordinance provides two options. Most employers calculate paid sick leave for non-Exempt Employees using the regular rate of pay for the workweek in which the employee uses paid sick leave, whether or not the employee works overtime in that week. Alternatively, the employer may calculate paid sick leave by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

Paid sick leave for Exempt Employees must be calculated in the same manner as the employer calculates wages for other forms of paid leave time.

In no circumstances may paid sick leave be provided at less than the San Francisco minimum wage.

For specific rules governing rate of pay, see [Rule Number 5](#).

**55. Q: If an employer provides benefits on an hourly basis, is the employer required to provide the same benefits when its employees are using paid sick leave hours?**

A: Yes.

**56. Q: What is the sick leave rate of pay for an employee who has two jobs at different pay rates for the same employer (or an employee whose rate of pay fluctuates for the same job)?**

A: For an employee who has two jobs at different pay rates for the same employer, or for an employee whose rate of pay fluctuates for the same job, the employer shall reimburse the

employee at a rate of pay equal to the scheduled rate(s) of pay for the job during which sick leave is taken.

**57. Q: Are tips included when calculating the sick leave rate of pay for tipped employees?**

A: No. The sick leave rate of pay is based only upon compensation paid by the employer.

**58. Q: When must employees be paid for sick leave?**

A: Sick leave must be paid no later than the payday for the next regular payroll period after the sick leave was taken by the employee. However, if the employer has a reasonable verification requirement, the employer is not obligated to pay sick leave until the employee has complied with the verification requirement.

**59. Q: May employers, including employers covered by the Minimum Compensation Ordinance, raise employee wages in lieu of providing paid sick leave?**

A: No. The accrual of paid sick leave under the Ordinance may not be waived unless, per Section 12W.9 of the Ordinance, it is expressly waived through a bona fide collective bargaining agreement in clear and unambiguous terms.

**60. Q: May employers offer their employees the option of “cashing out” unused paid sick leave at the end of the year?**

A: No. Employees may not “cash out” accrued paid sick leave hours unless, per Section 12W.9 of the Ordinance, doing so is expressly provided for through a bona fide collective bargaining agreement in clear and unambiguous terms.

**Notice and Posting**

**61. Q: Are employers required to post a notice informing employees of their rights under the Ordinance?**

A: Yes. Employers must post a notice informing employees of their rights in a location where employees can read it easily. Every employer shall post this notice in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace or job site. Employers may download the notice from OLSE’s website: [www.sfgov.org/olse/pslo](http://www.sfgov.org/olse/pslo).

## **Employer Records**

### **62. Q: What records do employers need to retain to be in compliance with the Ordinance?**

A: Employers must retain records documenting hours worked by employees and paid sick leave taken by employees. In the case of Exempt Employees, employers must maintain records of work schedules and days worked, but do not need to maintain records of actual hours worked. Employers must retain employee records for a period of four years even if the employee ceases to perform work in San Francisco or if there is a separation of employment. Employers must allow OLSE access to these records.

## **Exercise of Rights Protected; Retaliation Prohibited**

### **63. Q: Can an employer have an absence control policy that may lead to discipline, discharge, demotion, suspension, or any other adverse action for an employee's use of paid sick leave?**

A: No. It is unlawful for an employer absence control policy to count paid sick leave taken under the Ordinance as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action.

### **64. Q: Does the Ordinance prohibit retaliation against an employee for using paid sick leave?**

A: Yes. It is unlawful for an employer or any other person to discharge, threaten to discharge, demote, suspend, or in any manner discriminate or take adverse action against any person in retaliation for exercising rights protected under the Ordinance. Employees who believe that they have been subjected to retaliation may either file a complaint with OLSE or file a lawsuit in court against the employer.

### **65. Q: May employees covered by a collective bargaining agreement file a claim with OLSE?**

A: Yes. All employees, including those covered by a collective bargaining agreement, may file a claim with OLSE. Note, however, that employees would be unable to file a claim with OLSE if the collective bargaining agreement expressly waives the Ordinance. See "Waiver through Collective Bargaining" below.

## **Waiver through Collective Bargaining**

### **66. Q: Does the Ordinance apply to employees covered by a collective bargaining agreement?**

A: Yes. Generally, the Ordinance applies to persons who perform work in San Francisco, including those employees covered by a bona fide collective bargaining agreement in effect as of February 5, 2007. A bona fide collective bargaining agreement is a written contract concerning wages, hours, and working conditions that is collectively bargained by an employer and a recognized union that represents the employees.

### **67. Q: May a collective bargaining agreement waive some or all of the provisions of the Ordinance?**

A: Yes. The Ordinance permits waiver of some or all of its provisions through a collective bargaining agreement. The waiver must be in a bona fide collective bargaining agreement, must be express, and must be in clear and unambiguous terms. The parties to a collective bargaining agreement may negotiate any language they desire to effectuate a waiver, provided that the language meets the “clear and unambiguous” standard of the Ordinance. OLSE will not interfere with or participate in the negotiation of such language.

There are different ways to accomplish an effective waiver in a collective bargaining agreement. One approach that OLSE recognizes for purposes of enforcement is as follows: “Waiver of San Francisco Paid Sick Leave Ordinance: To the fullest extent permitted, this agreement shall operate to waive any provisions of the San Francisco Paid Sick Leave Ordinance, San Francisco Administrative Code Section 12W, and shall supersede and be considered to have fulfilled all requirements of said Ordinance as presently written, and or amended during the life of this agreement.”

*This document is intended to provide general guidance to employers and employees about the Paid Sick Leave Ordinance. Application of the Ordinance in particular circumstances may depend on the specific facts presented.*

**Please email further questions to [PSL@sfgov.org](mailto:PSL@sfgov.org)**

**Or call (415) 554-6271**

**[www.sfgov.org/olse/pslo](http://www.sfgov.org/olse/pslo)**