

## BERKELEY, CALIFORNIA

### PAID SICK LEAVE ORDINANCE

An employee is eligible if they in a calendar week **performs at least two (2) hours of work for an Employer within the geographic boundaries of the City of Berkeley, CA**; and qualifies as an employee entitled to payment of a minimum wage from any employer under the California minimum wage law or is a Welfare-to-Work Program participant.

The Ordinance requires that employees who have not accrued State-required paid sick leave before October 1, 2017, must begin to accrue City-required paid sick leave on October 1, 2017 or when employment begins, whichever is later.

The Ordinance further provides that employees who have accrued State-required paid sick leave before October 1, 2017 continue to and use such leave in a manner consistent with state law.

Covered employees accrue **one paid sick leave hour for every 30 hours worked**, which accrues in whole-hour units not fractionally (e.g., employees working 40 hours in a week will accrue one hour, not one-and-one-third hours as required under state law).

**An employee shall be entitled to use accrued paid sick days beginning on the 90<sup>th</sup> day of employment.**

**An employee can accrue up to 72 hours in a calendar year (cap).** There is a “floating” cap—whenever an employee’s accrued leave drops below the 72-hour cap due to usage, the employee begins again to accrue paid sick leave.

There is no limit to an employee’s use of accrued sick leave to anything less than the amount the employee has earned.

Accrued but unused paid sick leave carries over from year to year—but cannot exceed the cap (i.e., 72 hours).



**EFFECTIVE: 10/1/2017**

If an employer has a paid leave policy (e.g., paid time off policy, vacation, or other paid leave policy) that provides employees paid leave that may be used for the same purposes as the Berkeley law and meets the law’s accrual, cap, carry-over, cash-out, and use requirements, it is not required to provide additional paid sick leave.

It is unlawful for any Employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under or in connection with this section, including, but not limited to, by using the taking of earned sick time under this section as a negative factor in any employment action such as evaluation, promotion, disciplinary action or termination, or otherwise subjecting an Employee to discipline for the use of earned sick time under this section.

## Paid Sick Leave – Use of

- Diagnosis, care, or treatment of an existing health condition of, or preventive care for an employee or an employee's family member;
- For an employee who is a victim of domestic violence, sexual assault, or stalking according to the regulations (applies to California Paid Sick Leave Only).

Employee can use paid sick time in one (1) hour increments.

**Note:** An employee must miss scheduled work time in order to receive paid leave for the absence.

### Family Member

- Child (biological, adopted, or foster child, stepchild, legal ward, child of a domestic partner and a child to whom the employee stands in loco parentis);
- Biological, adoptive, or foster parent; step- parent, 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;
- Spouse;
- Registered domestic partner;
- Grandparent;
- Grandchild;
- Sibling.

### Designated Person

If an employee has no spouse or registered domestic partner, the employee may designate one person for whom s/he 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. The opportunity to make such a designation is on an annual basis, **with a window of 10 work days for the employee to make this designation.**

**An Employer may only take reasonable measures to verify or document that an Employee's use of Paid Sick Leave is lawful,** and shall not require an Employee to incur expenses in excess of \$15 in order to show his or her eligibility for such Paid Sick Leave.

## Paid Sick Leave – Employee Notice Requirement

- Employee must accumulate sick time (see below) before requesting use of sick leave.
- If the need for paid sick leave is foreseeable, the Employee shall provide reasonable advance notification. Employee must notify customer and your branch representative about his/her need to take the paid sick leave.
- If the need for paid sick leave is unforeseeable, the Employee shall provide notice of the need for the leave as soon as practicable.

## Paid Sick Leave - Accrual

- For every 30 hours worked, an employee shall accrue one hour of paid sick leave

Employee	How Sick Leave is Paid
Non-exempt	(1) In the same manner as the regular rate of pay for the workweek in which sick leave is used, whether or not the employee actually works overtime in that workweek; OR  (2) Divide the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay period of the prior 90 days of employment.
Exempt	In the same manner the employer calculates wages for other forms of paid leave time
If an employee in the 90 days of employment before taking accrued sick leave had different hourly pay rates, was paid by commission or piece rate, or was a nonexempt salaried employee	The rate of pay shall be calculated 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.

90-day time period is regardless of *where* the employee worked—it just has to be 90 days with the company.

An Employer may not require, as a condition of an Employee's taking Paid Sick Leave, that the Employee search for or find a replacement worker to cover the hours during which the Employee is on Paid Sick Leave.

- Does not accrue on sick or vacation hours
- Only accrues in hour-unit increments
- Employees may not have more than 72 hours of accrued paid sick leave saved at any time (floating cap)
- Once employees hit their floating cap (i.e., 72 hours), they no longer accrue paid sick leave until they use some of the hours they have "in the bank"
- Accrued paid sick leave does not expire; it carries over from year-to-year up to the cap (i.e., 72 hours)

## Paid Sick Leave – Upon Termination

- Accrued unused paid sick leave **is not paid out** upon termination, resignation, retirement, or other separation from employment

Note: Only paid out if using a PTO or vacation policy to comply with the Ordinance.

**Berkley, CA, Zip Codes Included – In SAP mark subarea as “Berkley CA”**

94701		
94702		
94703		
94704		
94705		
94707		
94708		
94709		
94710		
94712		
94720		

## **“DESIGNATED PERSON” FORM FOR PAID SICK LEAVE**

Under the City of Berkeley Paid Sick Leave Ordinance, employees may use paid sick leave when they or a member of their family are ill or injured or for the purpose of receiving medical care, treatment, or diagnosis.

In addition to using paid sick leave as specified above, if an employee has no spouse or registered domestic partner, he or she may designate one person for whom the employee may use paid sick leave to aid or care for the person.

Employers must offer the opportunity to make a designation no later than 30 work hours after the date paid sick leave begins to accrue. Employees have 10 work days to make this designation, and thereafter do not have the right to make or change the designation until next offered by the employer. Employers must offer the opportunity to make or change the designation on an annual basis, again with a window of 10 work days for the employee to make or change the designation.

**Employee Name:**

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**Name of Designated Person:**

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*I certify that I have no spouse or registered domestic partner. I designate the person listed above as my Designated Person for whom I may use paid sick leave pursuant to the City of Berkeley Paid Sick Leave Ordinance. I understand that if I have a spouse or registered domestic partner in the future, I will no longer be able to use paid sick leave to care for my Designated Person.*

<b>Employee Signature:</b>	<b>Date:</b>
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PLEASE POST WHERE EMPLOYEES CAN READ EASILY  
VIOLATORS SUBJECT TO PENALTIES

# OFFICIAL NOTICE

To employers and employees working in occupations in the City of Berkeley

## Berkeley Minimum Wage

<b>\$12.53</b> Per hour effective October 1, 2016	<b>\$13.75</b> Per hour effective October 1, 2017	<b>\$15.00</b> Per hour effective October 1, 2018
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**Future increases:** Beginning on July 1, 2019, and then on July 1 of each year, the Minimum Wage will increase by the prior calendar year's increase, if any, in the Consumer Price Index (CPI) for urban wage earners and clerical workers for the San Francisco-Oakland-San Jose, CA metropolitan statistical area.

Tips and/or gratuities cannot be used to achieve the minimum wage rate. Additional regulations related to the collection and distribution of "Service Charges" for food service and hospitality businesses, effective October 1, 2016.

**Paid Sick Leave - BMC Section 13.100** – Each employee shall earn one hour of paid sick leave for every thirty (30) hours worked and may use paid sick leave after 90 calendar days. Employers provide accrued paid sick leave in payroll records.

**Berkeley Family Friendly and Environment Friendly Workplace Ordinance BMC - Section 13.101** – Each employee has the right to ask for a flexible or predictable work schedule. Employers must respond in writing within 21 days to any written request.

Employee's rights under the City's labor ordinances are protected from retaliation. An employee or any other person may report to the City any suspected violation of the labor standard ordinances. The City will investigate possible violations, access payroll records and enforce corrective action to violations of the labor standard requirements.

**If you have questions, please contact your employer or the City of Berkeley:**  
**Health, Housing & Community Services Department**  
**(510) 981-CITY/2489 or 311 from any landline in Berkeley**  
**[www.cityofberkeley.info/Labor](http://www.cityofberkeley.info/Labor)**  
**Email: [Rules4work@cityofberkeley.info](mailto:Rules4work@cityofberkeley.info)**  
*Language Interpretation Available*