



SAN DIEGO EARNED SICK LEAVE UPDATES

As the end of the year approaches, it is important to return our focus on the challenges of reviewing and updating workplace policies and procedures to ensure compliance with the myriad of workplace laws. On June 14, 2016, Sacks Ricketts & Case issued an E-Alert notifying our clients and friends that the voters of the City of San Diego had approved Proposition I, the San Diego Ordinance increasing the minimum wage and providing for a paid sick leave benefit for employees within the City. The Ordinance became effective on July 11, 2016. Subsequently, the City Council approved an amendment of the Ordinance, resulting in an Implementing Guidance which became effective September 2, 2016. This Implementing Guidance provided the following clarification:

1. Earned Sick Leave (ESL) may be capped at 80 hours.
2. The front loading method is acceptable, and will satisfy the accrual and carryover provisions if no less than 40 hours ESL is awarded at the beginning of each “Benefit Year.” However, the employer must give 40 hours of ESL regardless of whether an employee is full time, part time or temporary.
3. ESL begins to accrue at commencement of employment or July 11, 2016, whichever is later.
4. An employee is entitled to use accrued ESL on the 90th day following commencement of employment or July 11, 2016, whichever is later.
5. An employer may satisfy the ESL requirement by providing PTO as long as the amount, purposes for which it may be used and conditions are the same.
6. An employer may limit use of ESL to 40 hours per Benefit Year.
7. Any *accrued* ESL that is not used must be carried over to the following Benefit Year.
8. Employers are not required to pay out any unused ESL at termination of employment but must reinstate any unused ESL if the employee is rehired within six months.
9. The City has published Minimum Wage and Earned Sick Leave Notices to be posted in the workplace. The City has also provided a Notice to Employee which employers should have completed and distributed to current employees on October 1, 2016, or must provide to new employees at the time of hire.

For further information and to view the Notices, please go to the City website:

<https://www.sandiego.gov/treasurer/minimum-wage-program>

On November 9, 2016, the City issued updated FAQs intended to clarify that employees who are exempt from the California *minimum wage* laws are not entitled to ESL under the City’s

ordinance. According to the FAQs, to qualify as an “employee” under the Ordinance, an employee must be entitled to payment of the minimum wage under the California **minimum wage** law. There remains in the Ordinance provisions for determining compensation for purposes of ESL accrual and use when an employee is exempt from **overtime** pay under state and federal law (but not exempt from minimum wage under state law). Needless to say, the coordination of state and local paid sick leave laws remains challenging, particularly for those employers in several locations. Please contact your SRC employment law counsel for assistance in updating your policies and practices.

Editor’s note: In our June 14, 2016 article, we inadvertently stated the state minimum wage would increase to \$11.00 on January 1, 2017. In fact, the state minimum wage rises to \$10.50 on January 1, 2017, and does not increase to \$11.00 until January 1, 2018. This has been corrected in the article on our website. We apologize for the error.

For further information, contact one of our employment attorneys.

Hope Case
(650) 494-4098
hcase@srclaw.com

Merrili Escue
(858) 381-5458
mescue@srclaw.com

Nancy Kawano
(858) 381-4890
nkawano@srclaw.com

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