

# Church & Ministry Compliance Consulting

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## **Attention all California Churches and Ministries!**

**On January 1, 2024, SB 616 (2023) is making major and significant changes to the Paid Sick Leave (PSL) requirements under the Healthy Workplaces and Healthy Families Act (HWHFA)** which became effective on January 1, 2015. PSL requirements apply to all employers in California that have one or more employees, including full-time, part-time, and temporary or seasonal employees. Employers whose PSL policy is based on a “fiscal year” (or other defined “benefit year”) that is different from the calendar year system may be required to increase the available PSL time or days on January 1, 2024.

To refresh your knowledge of the requirement for PSL, effective January 1, 2015, all employers were required to provide employees with minimum paid time off for specified illnesses and other reasons. The minimum “accrual” was one hour of paid leave for every 30 hours of paid work (regular and overtime, but not while on vacation or otherwise being paid while not actually working), and a minimum annual accrual of 24 hours. PSL is required to be made available on the 90<sup>th</sup> calendar day of employment, and the annual minimum accrual for full-time employees was required on or before the 120<sup>th</sup> calendar day of employment. Additionally, under the accrual method, all unused hours or days of PSL must “carry over” into the next benefit year, up to a minimum of 80 hours.

There is also a change to the “usage cap” under SB 616. Through December 31, 2023, employers can limit the use of PSL to just three days or 24 hours. On January 1, 2024, that increases to five days or 40 hours of PSL. Employers may permit employees to use a greater number of accrued hours, but they cannot restrict an employee’s use to a lower limit.

**Beginning January 1, 2024, the annual minimum PSL accrual is increasing to 40 hours and the minimum second year carry-over is increasing to 80 hours.** Additionally, employees who work a nontraditional work week (other than 5 days x 8 hours per day), the default PSL changes from “40 hours” to “five (5) days,” which means employees who work four ten-hour days must still be able to accrue a minimum of “five days” of PSL (50 hours). Employees who regularly work 12-hour days must be allowed to accrue 60 hours of PSL. This requirement applies to all employees as well. When used, PSL is paid at the employee’s “regular rate of pay” which could vary depending on the “look-back” period. Required accrual is still at least 24 hours by the 120<sup>th</sup> day of employment, but now increases to 40 hours by the 200<sup>th</sup> day of employment. Part-time and temporary workers are not covered by the accrual time limit, but all newly hired employees must be allowed to begin using any accrued PSL on their 90<sup>th</sup> day of employment.

Certain cities around California have differing Paid Sick Leave laws. SB 616 preempts all such laws which do not provide for an equal or greater amount of accrued PSL. But if a city or county has a greater requirement than that of SB 616, the local requirement will prevail. Additionally, another change that was effective on January 1, 2023, allows

employees to name a “designated person” other than a defined family member as a reason for taking PSL. Employers are permitted to restrict this designation to one person in a 12-month period. But if a local jurisdiction also has a “designated person” provision in its PSL ordinance, it could allow an employee to have two different “designated persons” -- one under the state PSL law and the other under the local PSL ordinance. Of course, employers can provide a more flexible benefit than the one mandated by the state.

Employees must be provided with a statement every payday which informs them of their accrued and remaining allowed PSL for the year. This can be on their paystub or in a separate document . . . but it must be provided EVERY payday.

### **Consider a “frontloading” policy for Paid Sick Leave**

Ever since the implementation of Paid Sick Leave in California, *Church & Ministry Compliance Consulting’s* CEO, Max Herr, has recommended that churches adopt an **“annual grant”** policy instead of the hourly accrual method of providing PSL to their employees in order to minimize the effort needed to keep track of accrued and used PSL time. Under this **“frontloading” method**, all current employees receive their full annual allotment of PSL hours (or days) on the first day of the benefit year (or the 90<sup>th</sup> day of employment for a new hire). Carry-over of unused time under frontloading is not required from one year to the next, so the only thing the church needs to keep track of is the number of PSL hours an employee has remaining for the year. Beginning January 1, 2024, the number of frontloaded hours must also increase to 40, which means employers using something other than a calendar year as their benefit year will have to add at least 16 additional hours of PSL to each employee’s remaining annual “bank.”

### **Employers do not have to pay out unused PSL**

While any vacation time or “personal leave” time that employers grant to their employees is compensable at termination, unless a church has adopted a unified method of “Paid Time Off” (PTO), which allows employees to take time off from work for any reason and be paid for those nonworked hours -- vacation, sick leave, personal time off -- PSL may, but is not required to be, “cashed out” at the time of termination of employment. Accrued, unused vacation, personal leave, or PTO time, however, is considered “deferred compensation,” and is always payable upon termination of employment. So churches that currently have a PTO policy in place may want to rethink that policy and perhaps replace it with a new policy that eliminates future combined PTO (but this will require at least 30 days’ advance notice of any change).

### **Using Paid Sick Leave time**

When it comes to actually using PSL time, an employer may require employees to use PSL in minimum increments of two hours. When they know that they will need to use some of their PSL (a “foreseen absence”), employees are required to give reasonable advance notice to their employer. For “unforeseen” absences, however, employees are required to notify their employer as soon as possible prior to or following the start of the absence.

In order to minimized business disruptions, employers may adopt reasonable

provisions governing employee absences, including a limit on the number of days or hours of sick leave an employee may take, or a graded disciplinary system that can be used to terminate an employee for excessive absenteeism. But the HWHFA does not allow employers to prevent an employee from using any or all of his PSL time, and it also prohibits employers from taking any kind of discriminatory or retaliatory action simply on the basis of an employee's use of accrued PSL time.

The HWHFA also does not prevent an employer from allowing employees to use PSL in advance of its actual accrual ("borrowing" or "taking an advance" against future PSL), but when an employer does allow this, it would be considered "wage theft" to attempt to recover the advance payments from final pay if employment terminates prior to accruing any or all of the advanced payments. For this reason, employers are cautioned to avoid advance payments of PSL or wages.

SB 616 also adds a provision for employees who are rehired or reinstated within one year of termination of employment. These employees must have all of their previously accrued and unused PSL time reinstated on their first day of employment (unless it was cashed out at the time of termination of employment).

Churches also need to understand that the rules concerning PSL are the same for both exempt and non-exempt employees, and there is no such thing as "pro-rated" PSL -- providing a lesser accrual of paid time off to part-time or temporary workers than that which is required by law. And PSL also coordinates with leave under the California Family Rights Act (CFRA) as well as the state's Paid Family Leave Act (which normally does not apply to churches because it is paid out of an employee's State Disability Insurance account, and church employees are generally exempt from SDI) or the federal Family Medical Leave Act, where applicable.

Finally, the HWHFA has always required that PSL be paid in the current or next pay period following its use. There is no excuse for an inadvertent failure to pay in a timely manner, but an intentional failure to pay the employee for time taken as required could result in fines to the church and a possible criminal prosecution for wage theft.

### **Minimum Wage Law Update**

Also of importance to churches throughout California is the minimum wage law for both exempt and non-exempt employees. Unless a local wage law requires a higher minimum hourly rate, **all non-exempt employees in California must be paid at least \$16.00 per hour beginning January 1, 2024. Exempt employees also have a defined "minimum salary" based on the statewide minimum hourly rate: it is two times the hourly rate times 40 hours per week times 52 weeks. The actual math looks like this:**

$$16 \times 2 \times 40 \times 52 = \$66,650$$

This is an increase of \$2080 over the minimum exempt salary for 2023. The minimum wage law concerning exempt employees has not changed in many years, and the salary cannot be "prorated" for part-time work. Only certain employees may be classified as exempt -- which means they do not receive overtime pay -- and chief among the rules is they must be paid a salary, not an hourly wage. This does not mean that

by simply paying employees a fixed salary instead of hourly wages an employer avoids having to pay for overtime work.

***Don't misclassify non-exempt employees (as exempt or contractors)***

Misclassifying an employee as exempt (or as an “independent contractor”) and allowing the employee to work more than eight hours in one day or more than 40 hours in one week (unless an alternative work week is established) without paying the premium rate of time-and-one-half the regular rate of pay is wage theft, and could be prosecuted as a misdemeanor, or even as a felony under certain circumstances. So if your church or ministry does have any exempt employees earning less than \$66,650 on December 31, 2023, they must receive a pay raise on January 1, 2024.

***No-cost assistance is available!***

If your church or ministry needs help with understanding or implementing any of this information, please contact Max Herr by phone or text message at [909-618-4841](tel:909-618-4841), or by email to [max@churchandministrycompliance.org](mailto:max@churchandministrycompliance.org)