



WILL LIGHTBOURNE
DIRECTOR

STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES
744 P Street • Sacramento, CA 95814 • www.cdss.ca.gov



EDMUND G. BROWN JR.
GOVERNOR

DRAFT Revision Date 11/21/2017

ALL COUNTY LETTER NO. XX-XX

REASON FOR THIS TRANSMITTAL

- State Law Change
- Federal Law or Regulation Change
- Court Order
- Clarification Requested by One or More Counties
- Initiated by CDSS

TO: ALL COUNTY WELFARE DIRECTORS
ALL IN-HOME SUPPORTIVE SERVICES (IHSS) PROGRAM MANAGERS

SUBJECT: **IMPLEMENTATION OF PROVISIONS OF SENATE BILL 3 RELATING TO PAID SICK LEAVE FOR IN-HOME SUPPORTIVE SERVICES PROVIDERS**

REFERENCE: SENATE BILL 3 (CHAPTER 4, STATUTES OF 2016)

This All-County Letter (ACL) provides counties with information and instructions for implementing the provisions of Senate Bill (SB) 3 which establishes a requirement to permit In-Home Supportive Services (IHSS) providers to accrue and use paid sick leave hours. In addition, this ACL provides information and instructions for implementing new policies related to the tracking and use of these paid sick leave hours. Finally, this ACL transmits a new form to be used by providers and recipients to request and track paid sick leave and a new notice to be used when processing the new form.

BACKGROUND

SB 3 was signed by Governor Brown on April 4, 2016. This bill allows IHSS providers to accrue eight hours of paid sick leave for each year, calendar year, or twelve-month period of employment, beginning July 1, 2018. Accrual will be increased to 16 hours of paid sick leave for each year, calendar year, or twelve-month period of employment on the date on which the State minimum wage reaches \$13.00 per hour (scheduled for January 1, 2020) and to 24 hours of paid sick leave for each year, calendar year, or twelve-month period of employment on the date on which the State minimum wage reaches \$15.00 per hour (scheduled for January 1, 2022).

POLICIES REGARDING PAID SICK LEAVE USAGE

Earning of Paid Sick Leave

SB 3 added Labor Code (LC) section 246(a)(2) which states, "Beginning July 1, 2018, an IHSS provider who works 30 calendar days within one year from the implementation date or the commencement of employment (whichever is later) as an IHSS provider will earn eight hours of paid sick leave." Because IHSS providers do not work traditional work schedules, to ensure a fair and equitable method of earning sick leave and still comport with State Labor Code statutes, CDSS in conjunction with stakeholders determined that the current average number of hours worked by an IHSS provider in a 30-day period would be utilized as the criteria for having worked the required 30 calendar days. The current average hours worked by an IHSS provider is 100 hours per month. Therefore, upon implementation of paid sick leave, existing providers (those that began working for an IHSS recipient prior to the implementation date of July 1, 2018) will earn eight hours of paid sick leave after they have worked 100 hours from the implementation date. New providers (those who begin working for an IHSS recipient after July 1, 2018) will earn eight hours of paid sick leave after they have worked for 100 hours from their initial hire date.

The following examples will detail how IHSS providers working differing schedules will earn their initial paid sick leave hours:

Example 1: Jason begins working 40 hours a week as a provider for Sarah on July 1, 2018. Once Jason has worked 100 hours providing authorized services for Sarah (on approximately July 18, 2018), he will earn eight hours of paid sick leave. If Jason does not use any of his paid sick leave before June 30, 2019, he will lose those paid sick leave hours but will accrue eight hours of paid sick leave on July 1, 2019, and will continue to accrue the full amount of leave on July 1 of subsequent years as long as he continues to work as an IHSS provider.

Example 2: Samantha begins working 10 hours a month as a backup provider providing authorized services to her recipient Alice on July 1, 2018. Because of the limited amount of time Samantha works for Alice, she will not earn eight hours of paid sick leave until she has worked for ten months (10 hours multiplied by 10 months equals 100 hours) on approximately May 1, 2019. If Samantha does not use those eight hours by June 30, 2019, she will lose those eight hours of paid sick leave but will accrue eight hours of paid sick leave on July 1, 2019, and will continue to accrue the full amount of leave on July 1 of subsequent years as long as she continues to work as an IHSS provider.

LC section 246(g)(2) states that if the provider leaves his/her employment but is then rehired within one year from the date of separation, previously accrued and unused paid sick leave shall be reinstated, and the provider can use any previously accrued and

unused paid sick leave and begin accruing additional paid sick time upon rehiring. Therefore, any provider who ceases employment with the IHSS program for longer than one year shall not be paid for any unused paid sick leave he/she has earned. However, if a provider begins working for the program again within one year from the date of separation, the provider will be considered active and enrolled within the IHSS program. Therefore, previously accrued and unused paid sick leave shall be reinstated to that provider, and the provider will be entitled to accrue paid sick leave at the beginning of each fiscal year. However, if the provider has not worked as an IHSS provider for over one year, the provider is considered inactive and must complete the provider enrollment process again in order to be enrolled as an IHSS provider. Once the provider is enrolled, he/she will begin the process of earning paid sick leave again in the same manner as any other newly enrolled provider.

Usage of Paid Sick Leave

LC section 246(c) states that an “employee shall be entitled to use accrued paid sick days beginning on the 90th day of employment, after which day the employee may use paid sick days as they are accrued.” Using similar criteria as that used for determining how paid sick leave hours are earned, the CDSS has determined that an IHSS provider shall be entitled to use his/her paid sick leave hours after working an additional 200 hours providing services to an IHSS recipient, or 60 calendar days from the date on which the provider earned his/her paid sick leave hours, whichever comes first.

The following examples detail how IHSS providers working differing schedules will be able to begin using their initial paid sick leave hours:

Example 1: Jason began working 40 hours a week as a provider for Sarah on July 1, 2018. After Jason has worked for Sarah for 100 hours providing authorized services (on approximately July 18, 2018), he earned eight hours of paid sick leave. After Jason works an additional 200 hours (for a total of 300 hours) providing authorized services (on approximately August 22, 2018), he will be able to begin using the paid sick leave hours he earned.

Example 2: Samantha began working 10 hours a month as a backup provider providing authorized services for her recipient Alice on July 1, 2018. Because of the limited amount of time she works for Alice, she did not earn eight hours of paid sick leave until May 1, 2019. Because she would have to work 20 more months providing authorized services to accumulate the additional 200 hours (for a total of 300 hours) necessary to be able to use her paid sick leave, Samantha will be able to begin using her paid sick leave 60 days from May 1, 2019, the day she earned her eight hours. Therefore, Samantha will be able to start using her paid sick leave on June 29, 2019.

Accrual of Paid Sick Leave

An IHSS provider will lose any unused sick leave hours at the end of each fiscal year beginning in FY 2018-2019 and accrue the full amount of sick leave for the subsequent fiscal year. From July 1, 2018, until July 1, 2020, IHSS providers will accrue eight hours of paid sick leave. After July 1, 2020, contingent upon the State minimum wage increase to \$13 per hour, IHSS providers will accrue sixteen hours of paid sick leave at the beginning of each fiscal year. After July 1, 2022, contingent upon the State minimum wage increase to \$15 per hour, IHSS providers will accrue twenty-four hours of paid sick leave at the beginning of each fiscal year.

Providers who commence employment with the IHSS program after January 1, 2020, but prior to the beginning of the next Fiscal Year (July 1, 2020) shall receive eight hours of paid sick leave, the full amount of paid sick leave accrued by providers at the start of the current Fiscal Year (July 1, 2019). On July 1, 2020, providers will accrue the full amount of paid sick leave of sixteen hours contingent upon the State minimum wage increase to \$13 per hour.

Providers who commence employment with the IHSS program after January 1, 2022, but prior to the beginning of the next Fiscal Year (July 1, 2022) shall receive sixteen hours of paid sick leave, the full amount of paid sick leave accrued by providers at the start of the current Fiscal Year (July 1, 2021). On July 1, 2022, providers will accrue the full amount of paid sick leave of twenty-four hours contingent upon the State minimum wage increase to \$15 per hour.

Reasons for Paid Sick Leave Usage

Once an IHSS provider is entitled to use his/her paid sick leave hours, he/she may use them for one of two purposes:

- Diagnosis, care, or treatment of an existing health condition, or preventative care for a provider or a provider's family member. This includes attendance at appointments with medical care professionals, including dentists and chiropractors.
 - The family members for whom a provider may request paid sick leave are defined as a child (biological, adopted, or foster), stepchild, legal ward, or child to whom the employee stands as a guardian in absence of the parents (this definition is applicable regardless of the age or dependency status of the "child"); a biological, adoptive, or foster parent, stepparent, or legal guardian of the provider or the provider's spouse or registered domestic partner, or a person who stood as guardian in the absence of the parents when the provider was a minor child; a spouse; a registered domestic partner; a grandparent; a grandchild; or a sibling.
- If the provider is a victim of domestic violence, sexual assault, or stalking,

- To obtain or attempt to obtain any relief, including, but not limited to, a temporary restraining order, restraining order, or other injunctive relief, to help ensure the health, safety, or welfare of the victim or his/her child;
- To seek medical attention for injuries caused by domestic violence, sexual assault, or stalking;
- To obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence, sexual assault, or stalking;
- To obtain psychological counseling related to an experience of domestic violence, sexual assault, or staking; or
- To participate in safety planning and take other actions to increase his/her personal safety or safety of his/her child from future domestic violence, sexual assault, or stalking, including temporary or permanent relocation.

Because the dates for earning and usage of paid sick leave are determined by the number of hours worked, the county and/or public authority should stress to providers the vital importance of submitting timesheets on time. Without timely timesheet submission, the CMIPS will have no way to verify the amount of hours an IHSS provider has worked in order to begin earning or using his/her paid sick leave. If a provider fails to timely submit timesheets, CMIPS II may not show that he/she has worked enough hours to have earned or be able to use paid sick leave.

Requesting Paid Sick Leave

LC section 246(k) states that an “employee may determine how much paid sick leave he or she needs to use, provided that an employer may set a reasonable minimum increment, not to exceed two hours, for the use of paid sick leave.” Based on this statute, the minimum increment for paid sick leave usage shall be one hour; additional paid sick leave time may be used in increments of 30 minutes. The minimum increment for paid sick leave usage shall be 30 minutes if the provider has only 30 minutes of paid sick leave time remaining in his/her balance.

To request paid sick leave, an IHSS provider must complete the IHSS Program Provider Sick Leave Request Form (SOC 2302). The SOC 2302 details the name and number of the provider and the date and times of the paid sick leave. It must then be signed and dated by both the provider and the recipient. Once the form is completed and signed, the provider is responsible for submitting the SOC 2302 to the CDSS vendor prior to the end of the pay period in which he or she used the paid sick leave time. Once the SOC 2302 has been received, it will be verified that the provider has sufficient paid sick leave time to use and, if so, that the use of the paid sick leave requested has been documented. A copy of the verified SOC 2302 will be sent to the provider for his or her own records.

The CDSS vendor will be responsible for the receipt and processing of all paid sick leave requests (SOC 2302) and for entering the sick leave request information into CMIPS.

When requesting usage of paid sick leave, if the need for paid sick leave is foreseeable (for example, a medical or dental appointment), the provider must provide the recipient with reasonable advance notice to allow the recipient time to make arrangements for a back-up provider to attend to his or her authorized service needs during the time the provider will be unavailable. For IHSS purposes, reasonable advance notice is determined to be at least 24 hours (1 day) prior to the use of paid sick leave. Providers should provide this advance notice to their recipients via use of the SOC 2302.

If the need for the paid sick leave is unforeseeable (for example, an illness or other medical emergency), the provider must contact the recipient immediately or at least two hours prior to the expected start time of the workday. This notice will allow the recipient the time to ensure his or her authorized service needs are met during the time the provider will be unavailable. After the provider returns to work following the use of the sick leave, he/she should have the SOC 2302 completed and signed as soon as possible.

Providers should be advised that the completed and signed SOC 2302 should be submitted to the CDSS vendor for processing prior to the end of the pay period during which the provider used the paid sick leave time, or the provider should submit the SOC 2302 concurrently when he/she submits his/her timesheet for processing. This will ensure accurate accounting of paid sick leave usage and balance and allow for timely payment of paid sick leave wages. If the paid sick leave time was taken on the final day of the pay period, the SOC 2302 must be completed and submitted by the end of the next pay period.

The CDSS has also developed a new notice that the CDSS vendor will use, as necessary, during the processing of the SOC 2302. The IHSS Program Notice to Provider of Incomplete Paid Sick Leave Request Form (SOC 2303) should be used when the form needs to be returned to a provider because he/she failed to properly complete the required information on the form or the form was unsigned by either the provider or the recipient.

Notification of Paid Sick Leave

LC section 246(i) requires the CDSS to provide each IHSS provider with written notice setting forth the amount of paid sick leave available for use on either the provider's itemized wage statement or in a separate writing provided on the designated pay date with the provider's payment of wages.

To comply with this provision of the statute, each provider's pay warrant will include information stating the amount of available paid sick leave hours as well as the amount of paid sick leave hours that were used by the provider during the previous pay period. Providers who use paid sick leave during a pay period will receive a supplemental pay warrant for that period, which will include the wages they receive for the paid sick leave hours used. The information about the amount of paid sick leave hours used and

balance of paid sick leave hours remaining will also be included on the supplemental pay warrant.

The CDSS is also developing two notification mailers, one for providers and one for recipients. The provider mailer will inform providers of paid sick leave requirements, and will include a blank SOC 2302 and a sample pay warrant to show providers how their paid sick leave balance will appear on the pay warrants. The provider mailer will also include the CDSS website address where providers can obtain additional SOC 2302 forms as needed. The mailer for recipients will inform recipients of the paid sick leave process (such as how providers will request time from recipients and the manner in which recipients will review and acknowledge the use of the provider's paid sick leave hours) and to assure recipients that provider paid sick leave usage will have no effect on their monthly authorized services time. Recipients will also be provided general information about how to obtain a back-up provider. The CDSS expects to release both mailers by May 2018.

The CDSS will develop a written notification to be sent to all providers on an annual basis to inform providers of the amount of paid sick leave they will earn as of July 1 of that year.

New Form and Notices

CDSS has developed a new form and a new notice for use by counties in implementing the new provider paid sick leave requirements. Neither the IHSS Program Provider Sick Leave Request Form (SOC 2302) nor the IHSS Program Notice to Provider of Incomplete Paid Sick Leave Request Form (SOC 2303) will be CMIPS generated.

The new form and notice will be effective July 1, 2018. The new form and notice, which are designated as "Required – No Substitutes Permitted," are available in camera-ready format on the CDSS Forms/Brochures web page at:

<http://www.dss.cahwnet.gov/cdssweb/PG183.htm>

Upon completion of translations, CDSS will post Armenian, Chinese and Spanish versions of the forms on the Translated Forms and Publications web page at:

http://www.dss.cahwnet.gov/cdssweb/FormsandPu_274.htm

The designated Forms Coordinator for your county must distribute translated forms to each program and location. Each county shall provide bilingual/interpretive services and written translations to non-English or limited-English proficient populations, as required by the Dymally-Alatorre Bilingual Services Act (Government Code section 7290 et seq.) and by state regulation (California Department of Social Services Manual of Policies and Procedures Division 21, Civil Rights Nondiscrimination, section 115).

Questions about accessing the form and notice may be directed to the Forms Management Unit at fmudss@dss.ca.gov. Questions about translations may be directed to the Language Services Unit at LTS@dss.ca.gov.

COUNTY RESPONSIBILITIES

County IHSS office staff will be responsible for working with IHSS providers and recipients to educate them on the new paid sick leave policy and requirements and to respond to questions that may arise regarding paid sick leave. The information provided should be consistent with the policy set forth within this ACL.

Provider orientation materials will be updated by CDSS to include information on paid sick leave requirements and the process of earning and using paid sick leave hours. The county IHSS office should inform providers during the provider orientation about the paid sick leave process in the interim prior to the release of the updated materials.

Modifications will be made to CMIPS to allow for the processing and entry of paid sick leave information into the system. A forthcoming ACL addressing these modifications will be released by the CDSS, Adult Programs Division, Systems and Administrative Branch.

If you have any questions regarding the policy and requirements set forth in this ACL, you may direct them to the CDSS, Adult Programs Division, Policy & Operations Bureau at (916) 651-5350.

Sincerely,

DEBBI THOMSON
Deputy Director
Adult Programs Division

Attachments