



CDSS

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

REASON FOR THIS TRANSMITTAL

January 9, 2018

ALL COUNTY LETTER NO. 18-01

- ☒ 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 \(CHAPTER 4, STATUTES OF 2016\)](#); [ALL-COUNTY LETTER \(ACL\) 12-19 \(APRIL 11, 2012\)](#); [ACL 15-60 \(JULY 22, 2015\)](#)

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.

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 comply with State Labor Code statutes, the California Department of Social Services (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)(1) states that the IHSS program is not required to provide wage compensation to a provider for any accrued and unused paid sick leave upon the provider's termination, resignation, retirement, or other separation from employment. However, pursuant to LC section 246(g)(2), if the provider is 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 upon rehiring and will continue to accrue paid sick leave hours as usual at the beginning of each fiscal year. Therefore, any provider who ceases employment with the IHSS program for longer than one year shall be considered inactive and must complete the provider enrollment process again in order to be enrolled as an IHSS provider. The inactive provider will not be paid for any unused paid sick leave from his previous time of employment as an IHSS provider and would 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 amount of paid sick leave hours earned, available for usage, and previously used will be set forth on the provider's pay warrant.

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 who has met the 100 hours of work requirement to accrue sick leave will accrue the full amount of sick leave at the beginning of each 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.

An IHSS provider will lose any unused paid sick leave hours at the end of each fiscal year regardless of how many paid sick leave hours he/she has remaining or when he/she received the paid sick leave hours during the previous fiscal year.

Reasons for Paid Sick Leave Usage

Pursuant to LC section 246.5(a), all workers throughout the State of California (including IHSS providers) may use paid sick leave hours 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 stalking; 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 (PA) should stress to providers the vital importance of submitting timesheets on time. Without timely timesheet submission, the Case Management, Information, and Payrolling System

(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/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.” For purposes of the IHSS program, 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), which the provider can obtain either through the CDSS website or through the county IHSS office. The SOC 2302 details the name and number of the provider and the date and times of the paid sick leave. Providers are not required under statute or CDSS policy or procedures to disclose on the SOC 2302 the specific reason why he/she needs to use paid sick leave hours. The SOC 2302 must then be signed and dated by both the provider and the recipient impacted by the use of the paid sick leave or that recipient’s authorized representative. If the recipient is blind or visually impaired, he/she may use the Telephone Timesheet System (TTS), as described in ACL 15-60 (July 22, 2015), to review and verify the information provided on the SOC 2302.

If the provider is the recipient’s authorized representative, he/she cannot sign his/her own SOC 2302 unless he/she falls under one of the exceptions outlined in ACL 12-19 (April 11, 2012). Namely, a provider can only sign the SOC 2302 as the recipient’s authorized representative if he/she is:

- The parent, guardian, or person having legal custody of a minor recipient;
- The spouse or registered domestic partner of an adult recipient; or
- The conservator of an adult recipient.

Each provider should be advised that, once the SOC 2302 form is completed and signed, he/she is responsible for submitting the form to the CMIPS vendor, Enterprise Services (ES), prior to the end of the pay period in which he/she used the paid sick leave time, or he/she should submit the form concurrently when he/she submits his/her timesheet for processing. This will ensure accurate accounting of paid sick leave usage and allow for timely payment of paid sick leave wages. However, the county should

inform providers that, if the SOC 2302 is submitted concurrently with the timesheet, the two documents should be mailed in separate envelopes as they are sent to two separate locations (the timesheet to the central payroll processing facility in Chico and the SOC 2302 to ES). If paid sick leave time is taken on or just before the final day of the pay period, the SOC 2302 should be completed and submitted by the end of the next pay period. Receipt of the SOC 2302 after these deadlines will not result in the paid sick leave being denied but could result in a delay in the timely processing and payment to the provider of his/her used paid sick leave hours.

ES 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. Once the SOC 2302 is received, ES will verify 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.

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 should provide the recipient with reasonable advance notice to allow the recipient time to make arrangements for a back-up provider to attend to his/her authorized service needs during the time the provider will be unavailable. For IHSS purposes, reasonable advance notice is determined to be at least 48 hours (2 days) 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 sufficient time to ensure his/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.

The CDSS has also developed a new notice that ES 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.

The SOC 2302 (IHSS Program Provider Sick Leave Request Form) and the SOC 2303 (IHSS Program Notice to Provider of Incomplete Paid Sick Leave Request Form) will be transmitted in the forthcoming ACL discussing CMIPS modifications.

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. Providers will be responsible for informing their recipients of the number of paid sick leave hours available to them and the amount used. There is no statutory requirement to provide an IHSS provider's paid sick leave balance information to his/her recipient.

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.

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. If the county

delegates responsibility for informing and educating providers on the IHSS program requirements to the PA, then the county can similarly delegate responsibility for educating providers on the paid sick leave policy and requirements to the PA.

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 between the implementation of the paid sick leave requirements (July 1, 2018) and 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,

Original Document Signed By:

DEBBI THOMSON
Deputy Director
Adult Programs Division