

Governor Signs New Paid Sick Leave Law: Healthy Workplaces, Healthy Families Act of 2014 [AB 1522]

Background

On September 10, 2014, Governor Brown signed into law the **Healthy Workplaces, Healthy Families Act of 2014 ("the Act")** that provides three (3) days of paid sick leave per year for eligible full and part-time employees, beginning July 1, 2015. The Act applies to employees with medical conditions requiring time off as well as employees who require time off because of a medical condition of a family member. Citing paid sick leave laws implemented in San Francisco (2006) and Washington, D.C. (2008) and a state law adopted by Connecticut in 2011, the Act is intended to put California at the forefront of efforts to provide security for lower wage earners, in particular the estimated 40% of the private workforce that is currently without paid time off for illness. The Act also adopts the view that workers who are victims of domestic violence are also entitled to paid time off.

The Act's Requirements

Covered Employers: All private and public employers, of any size.

Eligible Employees: Employees who work in California for at least 30 days within a year from the start of employment – including full-time, part-time, seasonal and exempt employees.

Excluded Employees:

- Employees covered by a valid collective bargaining agreement if the agreement expressly provides for paid sick days or a paid leave or paid time off policy that permits the use of sick days for those employees, final and binding arbitration of disputes concerning the application of its paid sick leave provisions, and a regular hourly rate of pay of not less than 30 percent more than the state minimum wage rate.
- Employees in the construction industry covered by a valid collective bargaining agreement if the agreement (a) was entered into before January 1, 2015, or (b) expressly waives the requirements of the Act in clear and unambiguous terms.
- Employees providing in-home supportive services under the Welfare and Institutions Code.
- Employees of an air carrier (flight deck or cabin crew



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member) that is subject to the Federal Railway Labor Act (45 U.S.C. 181 et seq.), provided that the individual receives paid time off equal to or greater than the amount provided under the Act.

Paid Sick Leave Entitlement:

Amount: One (1) hour for every 30 hours worked, beginning at the start of employment or July 1, 2015, whichever is later.

Accrual/Use: Employees accrue sick leave from the first day of employment, but do not have the right to use it until they have been employed for 90 days. An employer can limit the use of paid sick leave to 3 days or 24 hours per 12-month period.

Carryover: Employees may carry over accrued but unused sick leave to the following year, but an employer may cap the accrual at 6 days or 48 hours.

Paid Sick Leave Purposes:

- 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.

Family member includes: A child (biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis; regardless of age or dependency status); a biological, adoptive, or foster parent, stepparent, 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; a spouse; a registered domestic partner; a grandparent; a grandchild; a sibling.

Prohibition Against Retaliation: The Act prohibits retaliation against employees who use paid sick time, oppose a policy or action that violates the new requirements, cooperate in an investigation or prosecution of an alleged violation of the Act, or file complaints with the Labor Commissioner. Under the Act, there is a rebuttable presumption that an employer has unlawfully retaliated if an employee is denied the right to use accrued sick days, is discharge/threatened with discharge, is demoted, is suspended, or in any manner suffers discrimination within 30 days after the employee has exercised a right under the Act.

Potential Questions

- **The legislation says an employee is entitled to use paid sick days beginning on the 90th day of employment. Is that with ANY employer, or 90 days with the same employer?**
- This would mean 90 days with the same employer. The statute does not address this distinction specifically, but the wording of the entitlement and related provisions (i.e., eligibility is from "the commencement of employment," and one provision discusses eligibility when there is a break in service) indicates employment with the same employer is intended.
- **We already offer at least three days of paid sick leave to our full-time employees each year? Does that policy need to change for them?**
- Your policy may be sufficient. The statute provides that a paid sick leave or paid time off (PTO) policy may substitute if:
 - *the employer's policy makes available an amount of leave that may be used for the same purposes and under the same conditions as specified in the Act*

- *and the policy does either of the following:*
 - *permits equivalent accrual, carryover, and use as compared to the requirements of the Act, or*
 - *provides no less than 24 hours or three days of paid sick leave, or equivalent paid leave or paid time off, for employee use for each year of employment or calendar year or 12-month basis.*
- In addition, the local policy must provide equivalent or more favorable terms for eligibility for paid sick leave than provided by the statute (i.e., eligibility if employed for 30 or more days within a year from commencement of employment).
- **Do the paid sick leave policies need to be the same for part-time and full-time employees, or do they just need to both provide the minimum 24-hours/3-days of paid sick leave accrual per year.**
- The policies can be the same for part-time and full-time employees, with the possible exception of ensuring that the accrual of paid sick leave for part-time employees under a local policy meets or exceeds the statutory requirement (i.e., one hour per every 30 hours worked). In addition, as noted in the preceding question, eligibility terms must also be comparable. Note that exempt employees are deemed to work 40 hours per workweek unless the employee's normal workweek is less than 40 hours, in which case the employee accrues paid sick days based upon that normal workweek.
- **Is sick leave restricted to truly medical-related needs for employees and their family members?**
- The leave is available for "*diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member*" and for an employee who requires time off under Labor Code Section 230 or Labor Code Section 230.1 (victims of domestic violence, sexual assault, or stalking). Because of the references to the other sections of the Labor Code, non-medical needs may in certain circumstances justify use of the leave.
- **As employers, what notifications do we have to provide employees about paid sick leave?**
- Employers must display in a conspicuous place a poster containing the following information:
 - *That an eligible employee is entitled to accrue, request, and use up to 24 hours/3 days of paid sick days each calendar year, year of employment, or other 12-month period.*
 - *When and how sick leave may be used.*
 - *A warning against retaliation or discrimination.*
- [Under the statute, the Labor Commissioner is required to create a conforming poster and make it available to employers.]
- In addition, employers must provide employees with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement or in a separate writing provided on the designated pay date with the employee's payment of wages. Employers also must include a notice about paid sick leave in the written wage notice provided to employees at the time of hire under Labor Code Section 2810.5.
- **Does AB 1522 interfere with our local policy for how employees request a sick-day or time-off for a doctor's appointment?**
- The statute does not address specific procedures for requesting paid time off other than to provide that paid sick days are to be granted "upon the oral or written request of an employee." In addition, the statute notes 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, and if the need for paid sick leave is foreseeable, the employee shall provide reasonable advance notification.

- These provisions are likely consistent with most policies. However, the statute does not refer to "documentation" necessary to qualify for the leave, meaning it may be considered a violation of the statute to require such (particularly if the requirement is not uniformly enforced under other policies). We are conducting further research to determine whether the legislature intended to require the employer to accept only the word of the employee as to the need for time off and should have guidance on this point later in the month.
- **What are the penalties for not complying?**
- There is no private right of action to enforce the statute (meaning an employee cannot file a lawsuit based solely on violation of the statute), but employees can report violations to the Labor Commissioner. The Labor Commissioner has authority to enforce the statute, including investigating an alleged violation, and ordering appropriate temporary relief to mitigate the violation or to maintain the status quo pending the completion of a full investigation or hearing. The Labor Commissioner, after a hearing has been held, may order any appropriate relief, including reinstatement, backpay, the payment of sick days unlawfully withheld, and the payment of an additional sum in the form of an administrative penalty to an employee or other person whose rights under this article were violated. If a violation of the statute results in other harm to the employee or person, such as discharge from employment, the "administrative penalty" shall include a sum of \$50 for each day that the violation occurred or continued, up to an aggregate penalty of \$4,000. If paid sick days were unlawfully withheld, the dollar amount of paid sick days withheld from the employee multiplied by three, or \$250, whichever amount is greater, but not to exceed an aggregate penalty of \$4,000, is included in the administrative penalty.
- Where prompt compliance by an employer is not forthcoming, the Labor Commissioner may take any appropriate enforcement action to secure compliance, including the filing of a civil action. The Labor Commissioner may seek an order for the violating employer to pay a fine of up to \$50 for each day a violation occurs or continues for each employee or other person whose rights under the Act were violated.
- Finally, an employer who willfully violates the posting requirements of this section is subject to a civil penalty of up to \$100 per each offense.

Practical Steps

The law becomes effective July 1, 2015. Employers need not change their policies at this time, but for many employers the start of a new year is a good time for reviewing and updating employment policies and handbooks. Accordingly, employers should be thinking now about this new requirement and the extent to which it may require modification of existing policies and practices. For example, some employers will need to assess the impact of extending paid time off benefits to employees who did not qualify for the employer's paid sick leave because they are less than full-time.

In addition, employers should consider providing training/information to employees regarding the paid sick leave benefit. Because this law is likely to be the subject of much public attention, clarifying that the new law does not affect current policies/entitlements (if you already have a paid sick leave policy in place that meets the requirements of the Act) or explaining new rights to eligible employees, is a useful step to avoid misunderstandings and potential disputes

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