

October 14, 2014

## **Paid Sick Leave Law Becomes Law in California**

California Governor Jerry Brown has signed into law the Healthy Workplaces, Healthy Families Act of 2014 (A.B. 1522). The new law adds a provision to the California Labor Code requiring all employers to provide paid sick leave to employees as of July 1, 2015. Below is an overview of the new requirements.

### **Employer and Employee Coverage**

- The law generally covers all employers, public and private, regardless of how many employees the employer has.
- The law applies to all employees who work in California for 30 or more days in a year, and covers employees whether they are full-time, part-time or temporary. However, the law does not apply to: 1) employees who are covered by a collective bargaining agreement that provides for paid sick days; 2) employees in the construction industry covered by a collective bargaining agreement that was entered into before January 1, 2015, or that expressly waives the new law's paid sick leave requirements; 3) providers of in-home supportive services; or 4) individuals employed by an air carrier as a flight deck or cabin crew member provided they receive compensated time off at least as generous as under the new law.
- An employer is not required to provide *additional* paid sick days under the new law if it already has a paid leave or PTO policy that provides leave for the same purposes and under the same conditions as specified in the new law and satisfies the new accrual, carryover and use requirements.
- The new law does not supersede other laws that provides for greater accrual or use of paid or unpaid sick days. (Employers that are also covered by San Francisco's Paid Sick Leave Ordinance (PSLO) should be aware that they will need to ensure that their paid sick leave or PTO policies satisfy both the PSLO and the new law.)

### **Paid Sick Leave Accrual**

- Employees will accrue one hour of paid sick leave for every 30 hours worked. Although the law does not address the subject, paid sick leave will likely accrue on all hours worked, including overtime hours. Alternatively, an employer can choose to provide 24

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hours or three days of paid sick leave at the beginning of each year.

- Employees who are exempt under the white-collar overtime exemptions (*i.e.*, administrative, executive, or professional employees), will accrue paid sick days based on either a 40-hour workweek or their regular work hours if they regularly work fewer than 40 hours a week.
- Sick leave begins accruing on July 1, 2015 or the commencement of employment, whichever is later. Employees must be employed at least 90 days before they may use any accrued paid sick leave, and at that point employees may use paid sick days as they accrue.
- Employees are entitled to carry over accrued and unused paid sick leave hours, but employers can cap accruals at 48 hours or six days. Note that no carryover is required if 24 hours of leave is received at the beginning of each year.
- The law permits employers to “lend” paid sick leave to employees in advance of accrual, provided the advance is documented.
- Employers are not required to cash out accrued and unused paid sick leave at termination. However, employees who terminate but are rehired within one year must have their accrued and unused paid sick days reinstated for immediate use. Keep in mind that employers that have a PTO policy that combines vacation and paid sick leave will still be required to pay out accrued, unused PTO at termination of employment, in compliance with existing California law; it is unclear under the new law whether PTO that is paid out in this manner will have to be reinstated as paid sick leave if an employee is rehired.

#### **Use of Paid Sick Leave**

- Employers must allow employees to use at least 24 hours (three days) of paid sick leave per year, although employers can set a reasonable minimum increment for the use of paid sick leave, not to exceed two hours.
- Paid sick leave may be used for the diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee’s family member. A family member includes children of any age (whether biological, foster, adopted, step, etc.), spouse or registered domestic partner, grandparent, grandchild, or sibling. Paid sick leave may also be used by an employee who is a victim of domestic violence, sexual assault, or stalking.

- Employees must provide reasonable advance notification for the use of paid sick leave that is foreseeable; in other cases, the employee must provide notice as soon as practicable. Notice may be written or oral. The law does not indicate whether employers may require documentation from an employee, such as a health care provider note, to establish that sick time is being used for a covered purpose.
- An employer cannot require, as a condition of using paid sick leave, that the employee search for or find a replacement worker to cover the days the employee will be off.
- Payment for sick leave must be made no later than the payday for the next regular payroll period, and it must be paid at the employee's regular hourly wage. For employees who are paid on different hourly rates, commissions, piece rate pay, or are salaried nonexempt, the rate of pay is calculated by dividing the employee's total wages, excluding overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

#### **Posting, Notice and Recordkeeping Requirements**

- The law requires a new workplace posting regarding paid sick leave. The Labor Commissioner will prepare a poster; we will provide a link to the new poster when it is available.
- The law also amends the Wage Theft Prevention Act's New Hire Notice, to require employers to include information regarding employee rights to take paid sick leave.
- The employer must provide an employee written notice each pay day reflecting the amount of paid sick leave (or PTO) available to the employee. This can be satisfied by including the accrual information on itemized wage statements.
- Employers must retain for three years records of hours worked and paid sick days accrued and used. An employer's failure to retain records will lead to a presumption that an employee is entitled to the maximum number of hours accruable, unless the employer can demonstrate otherwise.
- The employer must make paid sick leave records available to employees in accordance with existing rules for employee inspection of payroll records.

#### **Retaliation and Penalties**

- The law prohibits retaliation for an employee's use of, or attempt to use, paid sick leave. Further, the law creates a rebuttable presumption that unlawful retaliation occurred if the

employer denies an employee's request to use paid sick leave, or discharges or discriminates against the employee, within 30 days of an employee's opposition to a policy or practice prohibited by the new law, making a complaint to the Labor Commissioner, or cooperating in an investigation regarding the new law.

- The law sets a civil penalty of up to \$100 per offense for employers who willfully violate the workplace posting requirement.
- For other violations, the Labor Commissioner may award reinstatement, back pay, the payment of sick days unlawfully withheld, and the payment of an additional sum in the form of an administrative penalty to an employee, not to exceed \$4,000. If paid sick days were unlawfully withheld, the administrative penalty will include the dollar amount of paid sick days withheld multiplied by three, or \$250, whichever amount is greater. If the employee suffered harm (discharge, etc.), the administrative penalty shall also include \$50 for each day that the violation occurred or continued.
- The Labor Commissioner or Attorney General may also bring a civil court action against an employer for violations.
- Penalties will not be assessed where violations were due to isolated and inadvertent payroll or clerical errors. A relevant factor in this situation will be whether the employer, prior to the violation, adopted and was in compliance with policies and practices that comply with the paid sick leave law.

### **What to Do Now**

Employers should review their existing sick leave or paid time off policies, if any, to determine whether such policies will meet the new law's requirements regarding accrual, caps, reinstatement, etc., and what adjustments are needed. Keep in mind that policies that are compliant under the San Francisco Paid Sick Leave Ordinance may need to be revised to satisfy the new California law. Also, employers that do not currently offer paid sick leave or other paid time off should promptly begin the process of adopting compliant paid sick leave policies and practices.

Employers should be certain to update their itemized wage statements to properly report paid sick leave accruals each pay day. Employers should also review their timekeeping, payroll and record keeping systems and procedures to ensure proper tracking of paid sick leave accrual and use, as well as compliance with the law's records retention requirements.

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