

July 20, 2015

## California Fixes the Paid Sick Leave Law; Amendments Now in Effect

On July 1, 2015, key provisions of California's new paid sick leave law – A.B. 1522 – went into effect. And on July 13, 2015, Governor Jerry Brown signed A.B. 304, a “fix-it” measure that amends and clarifies various terms of the original sick leave law and is effective immediately. Here is an overview of the changes employers need to know about.

- *30-day eligibility requirement.* The original paid sick leave law specifies that an employee must work in California for 30 days in a year to be eligible for sick leave accruals. A.B. 304 clarifies that the 30 days must be worked for the same employer.
- *Sick leave accrual methods.* Under the original law, paid sick leave must be accrued at the rate of one hour per 30 hours worked (or it can be frontloaded at the beginning of each year). A.B. 304 now provides employers with *additional* accrual methods. In particular, sick leave can accrue at a rate other than one hour per 30 hours worked so long as the accrual is on a regular basis and the employee has at least 24 hours/3 days of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year or 12-month period.
- *Frontloading sick leave.* The original law allows employers to meet their paid sick leave obligations by frontloading “the full amount of leave” at “the beginning of each year,” rather than by accruals. The amendments make clear that frontloading can be done each year of employment, calendar year, or 12-month period, and that “full amount of leave” means 24 hours/3 days. Also, for new employees, the time must be available to an employee to use by the completion of his or her 120th calendar day of employment.
- *Grandfathered policies.* A.B. 304 grandfathers certain policies that use a different accrual method than specified under the law and were in existence prior to January 1, 2015. The employer can retain such a policy – without change – if it provided for regular accrual of paid sick leave or paid time off of no less than one day or 8 hours within three months of employment of each calendar year or each 12-month period, and the employees (including those hired after January 1, 2015) were

111 SUTTER STREET

SUITE 700

SAN FRANCISCO

CA 94104

415 464 4300 T

415 464 4336 F

12121 WILSHIRE BLVD.

SUITE 1375

LOS ANGELES

CA 90025

310 943 8500 T

310 943 8501 F

eligible to earn at least 24 hours/3 days of sick leave or paid time off within nine months of employment.

It is important to note that once the employer modifies the accrual method in a “grandfathered” policy, the policy must then strictly comply with the specific accrual or frontloading methods provided for under the sick leave law. However, this does not prohibit an employer from increasing the accrual amount or rate for a class of employees.

- *Annual limit on sick leave use.* The paid sick leave law permits employers to limit sick leave use to 24 hours/3 days each year. The amendments clarify that the use limitation may be applied in each year of employment, calendar year, or 12-month period.
- *Pay for sick days.* The original paid sick leave law was confusing with respect to how employees must be paid for sick days, particularly when commissions or other variable pay is involved. A.B. 304 amends the law to provide these specific options for paying out sick time:
  - For nonexempt employees, paid sick time must be calculated by either of these methods: 1) in the same manner as the regular rate of pay for the workweek in which the employee uses the sick time, regardless of whether the employee works overtime in that same week; or 2) by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days of employment.
  - For exempt employees, paid sick time must be calculated in the same manner as the employer calculates wages for other forms of paid leave.
- *Reinstatement of unused days on rehire.* The paid sick leave law does not require an employer to pay out unused sick days on termination, but unused sick days must be reinstated if the employee is rehired within a year. A.B. 304 provides that an employer is not required to reinstate accrued paid time off that was paid out at termination. The amendments also clarify that any reinstated sick leave is subject to the use and accrual limitations of the statute.

- *Notice of paid sick leave each pay period.* As of July 1, 2015, employers are required to provide employees each pay period with notice of their paid sick leave or PTO balance, either in their wage statement or in another writing. A.B. 304 delays the effective date of this requirement, until January 1, 2016, for employers covered by Wage Orders 11 and 12 (motion picture and broadcasting industries).
- *Unlimited sick leave.* A.B. 304 requires that employers with so-called “unlimited” sick leave or PTO must indicate “unlimited” on employee wage statements, to satisfy the requirement of reporting sick leave balances to employees each pay day.
- *Recordkeeping.* Employers are required to keep records for three years documenting the hours worked and paid sick days accrued and taken by employees. However, it has been unclear whether this means that employers with PTO policies must track when PTO days are used as sick leave. A.B. 304 now specifies that notwithstanding the recordkeeping or other provisions of the statute, an employer is not obligated to inquire into or record the purposes for which an employee uses paid leave or PTO.
- *Exemptions.* The paid sick leave law contains a number of exemptions for certain employees, including those covered by collective bargaining agreements and construction industry collective bargaining agreements, in-home supportive care workers, air carrier employees, and some others. A.B. 304 adds an exemption for certain public-sector retired annuitants. The law also modifies the construction exemption by deleting the requirement that the employee perform “onsite work.”

Employers should promptly review their paid sick leave and PTO policies and practices to ensure compliance with the modified requirements. For a full discussion of the paid sick leave law and the new amendments – and questions that still remain – join Miller Law Group for a webinar on Wednesday, July 22 from 10am-11:30am PDT, *Paid Sick Leave Update: The Laws, Your Policy, and Implementation Issues*. You can register for the webinar [here](#).

**Miller Law Group exclusively represents business in all aspects of California employment law, specializing in litigation, wage and hour class actions, trials, appeals, compliance advice and counseling.** If you have questions about your



workplace obligations, please contact us at (415) 464-4300. To learn more about our firm, visit our website at [www.millerlawgroup.com](http://www.millerlawgroup.com).

**This Alert is published by Miller Law Group to review recent developments in employment law. This material is designed to provide informative and current information as of the date of the Alert, and should not be considered legal advice.**