
New California Legislation Mandates Paid Sick Days for Employees.

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On September 10, 2014, California Governor Jerry Brown signed into law AB 1522, the Healthy Workplaces, Healthy Families Act of 2014 (“the Act”). The Act grants nearly all California employees the right to at least three days of paid sick leave per year and imposes new requirements on private employers, with enforcement set to begin July 1, 2015.

California is now the second state in the nation, after Connecticut, to require almost all public and private-sector employers to provide their employees with paid sick days. The Act follows the passage of paid sick leave ordinances in several cities across the country, including three in California: San Francisco, San Diego, and Long Beach, which are summarized below. The Act is expected to require provision of paid sick leave to about 6.5 million California workers, or 40% of California’s workforce who do not currently receive this benefit from their employers.

In addition to mandating paid sick leave, the Act requires private employers to comply with certain notice, posting, and record retention requirements. It forbids employers from requiring employees to find replacement workers before using paid sick leave, and from discriminating or retaliating against employees for using it. The Act also includes an enforcement procedure that can levy steep administrative penalties and civil damages on employers that do not comply.

Before the Act takes effect on July 1, 2015, employers with California employees should evaluate their current leave policies and employee handbooks and make revisions to ensure compliance with the new law, which is described below.

Covered Employees

The Act affects both large and small employers, entitling nearly all California employees who work 30 or more days within one year of commencing employment to accrue one hour of paid sick time for every 30

hours worked. A late amendment to AB 1522 exempted unionized employees, home health care workers, and flight deck and cabin crew members employed by air carriers.¹

Sick Leave Accruals and Payouts

Although paid sick leave begins to accrue on the 30th day of employment, employees may not use accrued paid sick leave until their 90th day of employment. The employee determines how much paid sick leave to use, though employers may set a reasonable minimum increment, not to exceed two hours.

The Act mandates that sick days carry over to the following year of employment, but permits employers to limit an employee's use of paid sick days to 24 hours or 3 days per year and limit total accrued paid sick leave to 48 hours or 6 days. The carry-over provision insures that sick days will be available at the start of the following year. Thus, an employee who works as little as 720 hours in a year will accrue the 24 hours or three days of paid sick leave he or she is entitled to use that year and an employee who works 1440 hours in a year will accrue enough paid sick leave to use three days in the first year and begin the second year with that year's full three days available.

The Act permits employers to lend paid sick days to employees in advance of accrual. Employers may also provide employees with the full amount of paid sick leave at the beginning of the calendar year, in lieu of using an accrual system. Employers with paid leave or paid time off policies that already give employees three or more paid sick days per year, and permit these paid sick days to accrue, will not need to change that aspect of their policies to comply with the Act.

Employers must provide paid sick leave upon the oral or written request of the employee for the following purposes:

- (1) the diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member;²
- (2) for an employee who is a victim of domestic violence, sexual assault, or stalking, for taking time off work to obtain or attempt to obtain, medical attention, services, counseling, safety planning, or legal relief for the victim or the victim's child.³

The Act requires employees to provide "reasonable advance notification" to employers when the need for paid sick leave is foreseeable, and notice "as soon as practicable" when it is unforeseeable.

Employers must pay employees for sick leave no later than the pay day for the next regular payroll period after the qualifying sick leave was taken. However, employers need not pay employees for accrued

¹ Specifically, the Act does not apply to the following categories of employees: (1) employees covered by valid collective bargaining agreements that already provide for (i) paid sick days, leave or time off; (ii) arbitration of disputes over paid sick days; (iii) premium overtime pay; and (iv) hourly pay at a rate not less than 30% over minimum wage; (2) construction workers covered by valid collective bargaining agreements that provide for (i) premium overtime pay; (ii) hourly pay at a rate not less than 30% over minimum wage; and (iii) that were entered into before January 1, 2015, or expressly waive the requirements of the Act; (3) providers of in-home support services as defined by Labor Code Sections 14132.95, 14132.952, or 14132.956, or Article 7 (commencing with Section 12300), or Chapter 3 of Part 3 of Division 9 of the California Welfare & Institutions Code; (4) flight deck or cabin crew members employed by air carriers subject to Title II of the federal Railway Labor Act, 15 U.S.C. 181 *et seq.*, if they are provided with compensated time off equal to or exceeding that set by the Act.

² The Act defines "family member" as "a biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis... 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."

³ The specific purposes for which an employer must provide paid sick leave to victims of domestic violence, sexual assault, or stalking are described in California Labor Code Sections 230(c) and 230.1(a).

unused sick leave upon the employee's termination, resignation, retirement, or other separation from employment. If an employee is rehired within one year from the date of separation, any unused paid sick days must be reinstated.

Notice, Posting and Record Retention Provisions

The Act also requires private employers to comply with certain notice, posting and record retention requirements. Private employers must provide certain employees with written notice of certain provisions of the Act at the time of hiring,⁴ as well as display a poster in a conspicuous place of the workplace with these provisions. The notice and poster, which is to be provided to employers by the Labor Commissioner, must specify, among other things:

- that an employee may accrue, request and use sick leave;
- the amount of paid sick days provided;
- the terms of use of paid sick days;
- that an employee may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and
- that an employee has the right to file a complaint against an employer who retaliates.⁵

Private employers must notify employees in writing of any changes to the information set forth in the notice within seven days of the changes unless the changes are reflected on a timely wage statement or provided in another writing required by law within the seven-day period. Failure to comply with posting requirements subjects private employers to a civil penalty of not more than \$100 per offense.

Private employers must also retain for at least three years records documenting the hours worked and paid sick days accrued and used by an employee, and must permit access to these records by the employee and Labor Commissioner.⁶ Failure to maintain adequate records for three years results in a presumption that the employee is entitled to the maximum number of hours accruable under the Act, unless the employer can show otherwise by clear and convincing evidence.

Anti-Condition and Anti-Retaliation Provisions

The Act also includes anti-condition and anti-retaliation provisions. It prohibits employers from requiring an employee, as a condition of using paid sick days, to search for or find a replacement worker to cover the employee's paid sick days. It also prohibits employers from discriminating or retaliating against an employee who requests or uses paid sick days, files a complaint or cooperates in an investigation or prosecution related to a violation of the Act, or opposes any policy, practice or act prohibited by the Act. A rebuttable presumption of unlawful retaliation occurs if an employer denies an employee the right to use

⁴ Employers need not provide notice to employees that are exempt from the payment of overtime wages by statute or the wage orders of the Industrial Welfare Commission, or who are covered by valid collective bargaining agreements if the agreement expressly provides for the wages, hours of work, and working conditions of the employee, premium overtime pay, and hourly pay at a rate not less than 30% over minimum wage.

⁵ In addition to the provisions relating to paid sick leave, the notice and poster must specify (1) the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission or otherwise, including any rates for overtime, as applicable; (2) allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances; (3) the regular payday designated by the employer; (4) the employer's name, physical address, mailing address, and telephone number (and that of the legal entity for whom the employee will perform work if the employer is a temporary services employer, except for licensed security services companies); (5) the employer's workers' compensation insurance carrier's name, address, and telephone number; (6) any other information the Labor Commissioner deems material and necessary.

⁶ Access by the employee is governed by California Labor Code Section 226. Access by the Labor Commissioner is governed by California Labor Code Section 1174.

accrued sick days or in any manner discriminates against an employee within 30 days of the employee taking one of the above-described actions.

Enforcement Provisions and Administrative Penalties

The Act tasks the Labor Commissioner with its enforcement, including the investigation, mitigation and relief of violations of the Act's requirements. It authorizes the Labor Commissioner to impose specified administrative fines for violations and authorizes the Commissioner or Attorney General to recover specified administrative penalties against violators on behalf of the employee, as well as attorney's fees, costs and interest.

Specifically, the Act permits the Labor Commissioner, following a due process hearing, to order any appropriate relief on behalf of the employee(s), including reinstatement, backpay, payment of sick days unlawfully withheld, and payment of an administrative penalty. The administrative penalty for unlawful withholding of sick days is three times the dollar amount of the paid sick days withheld, or \$250, whichever is greater, not to exceed \$4,000. The administrative penalty for violation of an employee's rights or harm to the employee, such as by discharge from employment, is \$50 per day or violation, not to exceed \$4,000. An employer may also be charged up to \$50 per day for each day a violation occurs or each employee whose rights have been violated to compensate the state for costs associated with the investigation and remedying of the violation. The identities of employees or others who report suspected violations will be kept confidential, unless disclosure is authorized by the employee or individual in order to enforce the Act or for other appropriate purposes.

The Labor Commissioner may also bring a civil action to collect legal or equitable relief on behalf of the employee(s), including payment of the penalties described above, which are cumulative, as well as interest. Employers will not be assessed penalties or damages for isolated and unintentional errors, and a relevant factor in determining compliance is the employer's adoption of and compliance with a set of policies, procedures and practices that comply with the Act. Thus, it is imperative that employers ensure that their leave policies and procedures conform to the Act.

City-Specific Ordinances

San Francisco

Employers of employees working in the city of San Francisco continue to be subject to San Francisco's Paid Sick Leave Ordinance, in effect since February 5, 2007. Like the statewide Act, the San Francisco Ordinance requires all employers to provide employees working in San Francisco with one hour of paid sick leave for every 30 hours worked. The Ordinance is very similar to the Act, but has several distinguishing characteristics, including the following:

- The San Francisco Ordinance does not exempt any particular categories of employees. Thus, employers of unionized employees, home health care workers, and flight deck or cabin crew members employed by air carriers that work within San Francisco must comply with the San Francisco Ordinance's sick leave mandates.
- The San Francisco Ordinance does not cap the amount of paid sick leave an employee may use per year, and permits paid sick leave to accrue from year-to-year with no expiration date.
- The San Francisco Ordinance caps total accrued paid sick leave based on the size of the employer: employers with fewer than ten employees per week have a cap of 40 hours (or five days) of accrued paid sick leave; all other employers have a 72-hour (or nine day) cap.

- The San Francisco Ordinance permits employees with no spouse or registered domestic partner to designate one person for whom the employee may use paid sick leave to provide aid or care.
- The San Francisco Ordinance does not currently provide paid sick leave for victims of domestic violence, sexual assault or stalking.
- The San Francisco Ordinance requires employers to retain records for four years.
- The San Francisco Ordinance has its own enforcement system, authorizing the Office of Labor Standards Enforcement to investigate possible violations and order relief, which may include, among other things, civil penalties in the amount of three times the dollar amount withheld or \$250, whichever is greater, plus a \$50 administrative penalty.

San Diego

Employers of employees working in the city of San Diego will also soon be subject to a mandatory paid sick leave ordinance, scheduled to take effect April 1, 2015. Like the statewide Act and the San Francisco Ordinance, the San Diego Ordinance requires nearly all employers to provide employees working in San Diego with one hour of paid sick leave for every 30 hours worked. However, the Ordinance currently has its own distinguishing characteristics, including the following:

- The San Diego Ordinance applies to all employees except home care workers. It does not make exceptions for unionized employees or flight deck or cabin crew members employed by air carriers. Thus employers of these particular categories of employees must comply with the San Diego Ordinance's sick leave mandates.
- The San Diego Ordinance permits employers to limit paid sick leave to 40 hours (or five days) per year for all employees, regardless of the size of the business.
- The San Diego Ordinance also requires employers to provide paid sick leave for public health emergencies if an employee's place of business or an employee's child's school or child care provider are closed by order of a public health official.
- The San Diego Ordinance requires that employees provide "reasonable advanced notice" to employers within seven days when the need for paid sick leave is foreseeable.
- The San Diego Ordinance permits an employer to require medical documentation authorizing sick leave for absences of more than three consecutive days. However, employers may not require that the documentation specify the nature of the employee's or family member's injury, illness or medical condition, or condition paid sick leave on providing such information. Employers who do obtain such information must keep it confidential.
- The San Diego Ordinance has its own enforcement system, creating an Enforcement Office to investigate possible violations and order relief. It also permits the city or a harmed individual to bring a civil enforcement action and entitles the individual to legal and equitable relief, including, among other things, liquidated damages in the amount of double back wages withheld, as well as civil penalties of \$100 per employee not to exceed \$2,000 for non-compliance with notice and posting requirements and up to \$1000 per violation of other provisions.

Long Beach

Employers of hotel workers in the city of Long Beach are also subject to a mandatory paid sick leave law, which was part of a living wages measure passed on November 6, 2012. The law entitles hotel workers to, among other things, five paid sick days per year.

The web of mandated sick leave, both at the state and municipal levels, requires that all California employers, regardless of size, evaluate their current practices and take steps to ensure compliance. Violations of the law may not only give rise to expensive penalties, but will likely add to the ever-growing areas for California employment litigation in the retaliation and wage-hour contexts.

If you have any questions about the content of this alert, please contact the Pillsbury attorney with whom you regularly work, or the authors below.

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