



New California Law Entitles Employees To Paid Sick Leave

Insights

9.10.14

On September 10, 2014, Gov. Jerry Brown signed into law the “Healthy Workplaces, Healthy Families Act of 2014.” This law will require California employers to grant employees, including some part-time and temporary employees, at least three paid sick days each year.

Accrual Of Sick Leave

Beginning July 1, 2015, employees who have worked 30 or more days in California within a year of their employment will accrue paid sick leave. Paid sick days must accrue at a rate of one hour for every 30 hours worked beginning upon the commencement of employment or on the effective date of the statute. Employers may limit employees to using 24 hours (or three 8-hour work days) of paid sick leave per year, and employers may cap total accrual of paid sick days at 48 hours (or six 8-hour work days).

Employees can begin to use their accrued sick leave on the 90th day of their employment. Employees may decide the amount of leave they need to use, although employers may set a reasonable minimum increment of two hours. Accrued, but unused, sick days must carry over into the following year subject to the 48 hour/six-day accrual cap.

Employees are not entitled to be paid for accrued but unused sick days upon resignation or termination of employment. But if they are rehired within a year of their separation, the employer must reinstate any unused sick leave that was previously accrued.

Employers with existing sick leave or paid time off (PTO) policies do not have to provide additional leave, as long as their policies: 1) satisfy the law’s accrual, usage, and carry over requirements; and 2) provide no less than 24 hours of paid sick leave annually.

Qualified Use For Leave

Paid sick days may be used for the diagnosis, care, or treatment of an existing health condition for, or the preventive care of an employee, or an employee’s immediate family member. Covered family members include spouses, registered domestic partners, children (regardless of age), parents (including step-parents and parents-in-law), grandparents, and siblings. Paid sick days are also available for employees who are the victims of domestic violence, sexual assault, or stalking. Employees must provide “reasonable advance notification” of their need to use the leave as soon as practicable. The law specifically permits these requests to be made orally or in writing.

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Notice And Recordkeeping Requirements

You must provide employees with written notice of their available amount of paid sick leave or PTO leave provided in lieu of sick leave. This notice must be either on the employee's itemized wage statement or in a separate writing provided on the employee's pay date at the time wages are paid. The law also imposes new record-retention requirements.

Employee usage and accrual must be documented and retained for at least three years. These records must be made available for employee inspection within 21 days of a written or oral request. If you fail to keep adequate records, it will be presumed that the affected employee is entitled to the maximum number of accruable hours under the law.

At the time of hiring, new employees must be provided, as part of the Wage Theft Prevention Act notice, notice of their entitlement to paid sick leave and their right to file a complaint with the Labor Commissioner where violations occur. Employers will also be required to post a workplace notice from the Labor Commissioner regarding this new law.

Applicability

This law will not apply to individuals who provide in-home supportive services, certain air carrier employees such as flight deck or cabin crew members subject to the federal Railway Labor Act, or employees covered by a valid collective bargaining agreement that expressly provides for paid sick days. However, unlike other California leave laws, there is no exemption for small employers. Part-time and temporary employees are covered as well.

Enforcement And Penalties

Notably, this law establishes a rebuttable presumption of unlawful retaliation for any adverse employment action occurring within 30 days of an employee engaging in certain protected activity. Protected activity is broadly defined as: 1) filing a complaint with the Labor Commissioner for violations under this law; 2) cooperating with an investigation or prosecution of a violation of this law; or 3) opposing an employer's policy, practice, or act that violates this law. This presumption of retaliation is an unprecedented addition to California leave laws.

The Labor Commissioner is charged with the law's enforcement and regulation. Upon finding a violation of the law occurred, the Labor Commissioner may order "any appropriate relief" including reinstatement, backpay, payment of unlawfully withheld sick days, administrative penalties, and enforcement fines payable to the state. The law also authorizes the Labor Commissioner or the Attorney General to institute a civil action, on behalf of aggrieved employees, to seek as reinstatement, backpay, administrative penalties, liquidated damages, and reasonable attorney's fees.

Preparing For This Law

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In anticipation of these sweeping new changes, California employers should update their sick leave and record-retention policies to ensure compliance. Managers and supervisors need to be informed of the company's new policy changes and advised of their added responsibilities. Employers must also ensure that their employee wage statements for California employees comply with the new notice requirements.

You should also consider revising your company's employee handbook to account for these changes, as handbook language regarding sick leave that is not compliant with this new law might be used in an attempt to establish a violation of this new law.

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