

CALIFORNIA ENACTS “FIX-IT” LEGISLATION TO CURE ILLS OF PAID SICK LEAVE LAW

Insights
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California’s paid sick leave law went into effect on July 1, 2015, but soon found itself in the emergency room with many unpleasant side effects. On July 13, Governor Brown signed AB 304 into law, which fixes many of the defects and ambiguities in the original law (AB 1522) that confounded employers as they tried to enact paid sick leave policies by July 1. AB 304 primarily clarifies:

- **Accrual Rates:** The original law required that paid sick leave accrue at the rate of one hour per every 30 hours worked, rendering many employers’ existing paid sick leave or paid time off (PTO) policies noncompliant despite their being generous enough to satisfy the law’s total sick leave allowance threshold. Under AB 304, employers may use any accrual method that provides at least 24 hours of paid sick leave by the 120th calendar day of employment. This will allow employers to enact and maintain policies where sick leave accrues on a per-pay period basis.
- **No additional sick leave required:** Employers need not offer additional paid sick leave if, as of January 1, 2015, they had paid sick leave or PTO policies in effect that allowed employees to accrue at least one day or eight hours of paid sick leave or PTO within three months of employment, and ensured that employees are eligible to accrue at least three days or 24 hours of paid sick leave or PTO within nine months of employment.

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- **Reinstatement of Sick Leave:** The original law did not require employers to pay out accrued sick leave to employees upon termination; however, it did require reinstatement of accrued sick leave to employees rehired within a year of separation. Left unanswered: were employers required to reinstate paid sick leave that was paid upon termination? This question was significant to employers who had existing paid sick leave or PTO policies that provided for cashing out unused balances upon separation. AB 304 answers that question – employers who choose to pay out an employee’s accrued paid sick leave or PTO at termination need not reinstate that amount of sick leave or PTO upon rehire.

- **Unlimited Sick Leave:** The law required, and still requires, employers to communicate the amount of accrued sick leave an employee has on the itemized wage statement. It was unclear, however, how an employer should satisfy this requirement if it offered its employees unlimited paid sick leave. The new law provides that employers who provide unlimited sick time or PTO may show available paid sick leave on employees’ itemized wage statement by indicating that paid sick leave is “unlimited.”

- **Calculation of Paid Sick Leave for Commissioned and Piece Rate Employees:** AB 304 provides two options for how employers should calculate paid sick time for nonexempt employees who earn wages at a variable rate, such as commission or piece-rate. The new law says that it may be calculated by dividing the employee’s total wages, not including overtime pay, by the employee’s total hours worked in the full pay periods of the prior 90 days of employment. Alternatively, it may be calculated in the same manner as the regular rate for calculating overtime in the week the employee takes sick leave, regardless of whether overtime is worked in that week. The latter method is much simpler in most cases.

- **No Documentation of Reason for Use Required:** The original law requires employers to “keep at least three years of records” of paid sick leave usage, but did not clearly delineate whether those records included physicians notes and releases which are common with other forms of medical leave. The record-keeping requirements in AB 304 disclaim any requirement of

employers to inquire into or record purposes for which an employee uses any type of paid sick leave or PTO.

What Does This Mean for Employers?

Generally, this revised law is good for employers. It makes existing paid sick leave and PTO policies compliant if they meet certain minimum thresholds, which means that many employers will not have to write new policies. While it clarifies some other important ambiguities, AB 304 does not address all uncertainties in the original legislation. For example, it does not address whether an employer can require a doctor's excuse for a paid sick day. Given the strict non-retaliatory provisions in the law, our recommendation is that doctors' excuses not be required of employees who use paid sick days.

We encourage employers to engage with their labor and employment counsel to determine whether their existing policies satisfy the requirements of the paid sick leave law, especially if they did not do so before July 1, 2015.

If you have any questions about this law or how it may affect your business, please contact your Fisher Phillips attorney or one of our attorneys in our California offices.

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