

## Labor and Employment Client Service Group

To: Our Clients and Friends

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### California Enacts Paid Sick Leave Law

Beginning July 1, 2015, the Healthy Workplaces, Healthy Families Act of 2014 (AB 1522) will require employers to provide paid sick leave to employees working in California. The Act imposes burdensome recordkeeping and notice requirements on employers and provides substantial penalties for non-compliance.

#### Who is covered under the Act?

The Act applies to all public and private employers, regardless of the number of employees. Employees are entitled to paid sick days if they work in California for 30 or more days within a year from commencing employment. Thus, the Act could apply to employees who reside in other states but spend substantial time working in California. The Act does not apply to employees who provide in-home supportive services, certain employees covered by collective bargaining agreements, and certain employees of air carriers.

#### How does sick leave accrue?

Employees begin accruing sick leave on July 1, 2015 or the date they begin employment, whichever is later. Employees accrue one hour of paid sick leave for every 30 hours they work. Exempt employees are deemed to work 40 hours per week, unless their normal workweek is less than 40 hours. An employee working 2,080 hours per year would earn more than eight days of sick leave per year at this accrual rate, but employers can place caps on sick leave use and accrual. Employers can limit employees to using only 24 hours (three days) of paid sick leave per year. Sick leave carries over to the following year, but employers can limit the maximum accrual to 48 hours (six days) of paid leave.

Employers do not need to pay out unused, accrued paid sick leave on separation from employment, but if an employee is rehired within one year after separation, the employer must reinstate the employee's unused sick days that had accrued at the time of separation.

#### For what purposes can paid sick leave be used?

An employee can use sick leave in order to obtain diagnosis, care, or treatment of an existing health condition, or preventative care for the employee or employee's family member, meaning the employee's:

- (1) child (whether biological, adopted, foster, step child, legal ward, or a child to whom the employee stands in loco parentis, regardless of the child's age or dependency);
- (2) parent (whether biological, adoptive, foster, or step parent), legal guardian, or an individual who stood in loco parentis to the employee when the employee was a minor;
- (3) spouse's or registered domestic partner's parent (whether biological, adoptive, foster, or step parent) or legal guardian;
- (4) spouse or registered domestic partner;
- (5) grandparent;
- (6) grandchild; or
- (7) sibling.

An employee who is a victim of domestic violence can use sick leave to obtain legal relief, medical attention, psychological counseling, safety planning, or other services related to domestic violence.

### **How do employees use paid sick leave?**

Employees cannot use accrued sick leave until their 90th day of employment, then can use it as it accrues. Employers can advance paid sick leave to employees before they accrue it. Employers can require employees to use their leave in minimum increments of two hours or less. Employees are required to provide notice to the employer when they intend to use sick leave. If the need for sick leave is foreseeable, the employee must provide reasonable advance notice. If not, the employee must provide notice as soon as practicable. Employers cannot require employees to search for or find a replacement worker.

Sick leave must be paid no later than the payday for the next regular payroll period after the leave was taken. Sick leave is paid at the employee's hourly wage. The Act provides an alternative wage calculation for employees who had different hourly rates, were paid by commission or piece rate, or were salaried nonexempt during the 90 days before taking accrued sick leave.

### **What if my company already offers paid sick leave?**

Employers who already have a paid leave policy or paid time off policy are not required to provide additional sick days, so long as their existing policy (1) allows employees to take leave for the same purposes described above, and under the same conditions described above, and (2) either (a) satisfies the accrual, carryover, and use requirements described above; or (b) provides at least 24 hours (three days) of paid leave or time off for each year of employment, or calendar year, or 12-month period.

### **What are the employer's recordkeeping and notice requirements?**

Employers must provide employees with written notice setting forth the amount of paid sick leave available to the employee. This written notice must either be included in the itemized wage statement required by Labor Code section 226, or in a separate writing provided with the payment of wages on the designated pay date. Employers must retain records for at least three years documenting hours worked and paid sick days accrued. Employers must make those records available to both the Labor Commissioner and the employee. Failure to maintain those records results in a presumption that the employee is entitled to the maximum number of hours accruable under the Act.

Employers must include information regarding paid sick leave in the written notice to employees required by Labor Code section 2810.5. Employers must display a poster containing the key provisions of the Act.

### **What are the consequences for non-compliance with the Act?**

Employers can be subject to substantial penalties for unlawfully withholding paid sick days, failing to comply with the itemized wage statement requirements, or other violations of the Act. The Labor Commissioner has jurisdiction to enforce the Act through administrative proceedings. The Labor Commissioner and the Attorney General may also file a civil action seeking reinstatement, backpay, payment of sick days unlawfully withheld, administrative penalties not to exceed \$4,000 per employee, liquidated damages, equitable or injunctive relief, restitution, reasonable attorney's fees, costs, and interest. If a person seeks to enforce the Act as a private attorney general, remedies are limited to equitable, injunctive, or restitutionary relief, and reasonable attorney's fees and costs.

Employers may not be assessed penalties or liquidated damages for isolated and unintentional clerical payroll errors or written notice errors, or an inadvertent mistake regarding the accrual or available use of paid sick leave. The employer's prior adoption of fully compliant policies, practices, and procedures will be a factor in assessing compliance.

Employers are prohibited from retaliating against employees for using or attempting to use accrued sick days, filing a complaint, alleging a violation, cooperating in an investigation, or opposing an unlawful policy, practice, or action. A rebuttable presumption of retaliation arises if the employer takes adverse action within 30 days after the employee engages in certain protected conduct.

### **What should my company do now?**

Get a head start on compliance before the Act becomes effective July 1, 2015. If you already have paid leave or paid time off policies, review them now for compliance with the Act, and prepare to implement any necessary changes. Review employee handbooks and other documents to ensure they reflect the Act's requirements. If you do not currently offer paid leave or paid time off, begin preparing compliant policies and procedures and train staff to comply with the Act's requirements.

Review itemized wage statements for full compliance with Labor Code section 226(a) requirements. Work with your payroll service and internal payroll personnel to develop a system for tracking and recording hours worked and leave accrued. Ensure that itemized wage statements will provide accurate accrued sick leave information, or plan to provide a separate writing each payroll period with the required information. Ensure that payroll personnel will timely pay sick leave when used. Revise the written notice required by Labor Code section 2810.5 to include paid sick leave.

For questions or further information on this topic, please speak to your regular Bryan Cave contact or a member of our [Labor and Employment Client Service Group](#).