

# **CALIFORNIA BECOMES SECOND STATE TO MANDATE PAID SICK LEAVE**

**By Chris Micheli**

California became just the second state in the nation to mandate employers provide paid sick leave to employees. Assembly Bill 1522, authored by Assemblywoman Lorena Gonzalez (D-San Diego), imposes this mandate upon businesses by requiring both small and large employers to provide mandatory, protected, paid sick leave to their employees.

AB 1522 enacted the “Healthy Workplaces, Healthy Families Act of 2014” and provides that an employee who, on or after July 1, 2015, works in California for 30 or more days within a year from the commencement of employment is entitled to paid sick days for certain prescribed purposes, to be accrued at a rate of no less than one hour for every 30 hours worked. The rate of paid sick leave shall be the employee’s hourly wage. Exempt employees are deemed to work 40 hours per week.

The purpose of the paid sick leave mandate is for the employee to care for himself or herself, or for the employee to care for a sick family member. The employer must provide the paid sick days, upon the oral or written request of an employee, primarily for care or treatment of an existing health condition or preventive care, but also for victims of domestic violence or sexual assault.

An employer cannot require the employee to search for or find a replacement worker to cover the days during which the employee uses the paid sick leave. And an employer cannot deny an employee the right to use accrued sick days, or to take retaliatory action. The new law does allow existing employer policies that meet or exceed the new mandate to remain in place.

The allowance of any unused sick leave accrued in the preceding year to be carried over to the next year is a significant change in existing law. However, no accrual or carryover is required if the full amount of leave is received at the beginning of each year, and an employer is not required to provide compensation to an employee for accrued, unused paid sick days upon termination, resignation, retirement, or other separation from employment. An employer may cap total accrual at 48 hours or 6 days. An employer must provide an employee with written notice of available sick time on either the employee’s itemized wage statement or in a separate writing with the payment of wages.

AB 1522 provides that an employee “may determine how much paid sick leave he or she needs to use,” although the employer may set a reasonable minimum increment (not more than 2 hours).” There is also a notice requirement in that an employee shall provide “reasonable advance notification” if the need for sick leave is foreseeable. If the need is unforeseeable, then the employee must provide notice “as soon as practicable.”

The new law provides that an employee is entitled to use accrued sick days beginning on the 90th day of employment, but authorizes an employer to limit an employee’s use of paid sick days to 24 hours or 3 days in each year of employment. AB 1522 prohibits an employer from discriminating or retaliating against an employee who requests paid sick days, and it requires employers to satisfy specified posting, notice and recordkeeping requirements. The Labor Commissioner will create a poster containing the required information that the employer must display “in a conspicuous place”. Willful violation results in a \$100 civil penalty. Current state law already requires employers to post more than 15 different notices at their worksite.

AB 1522 requires the Labor Commissioner to enforce these requirements, including the investigation, mitigation, and relief of violations of these requirements. Moreover, the Labor Commissioner is authorized to impose specified administrative fines for violations and allows the Commissioner or the Attorney General to recover specified civil penalties against an offender who violated these provisions on behalf of the aggrieved, as well as attorney’s fees, costs, and interest.

While some larger employers in California provide paid sick leave or paid time off, AB 1522 mandates paid sick leave for part-time and seasonal workers, not just full-time employees. The term “employee” is only defined in the context of four exclusions. As such, it must be read expansively to apply to every employee, except those excluded.

The bill only exempts those covered by a valid collective bargaining agreement (CBA), an employee in the construction industry covered by a valid collective bargaining agreement, a provider of in-home supportive service workers, and an individual employed by an air carrier as either a flight deck or cabin crew member from the law's mandate.

Finally, the bill amends Section 2810.5 of the Labor Code by adding an additional requirement to the employer written notice that an employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

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