

Labor and Employment Alert

September 12, 2014

California to Mandate Paid Sick Leave

On September 10, California Governor Jerry Brown signed bill A.B. 1522—officially known as the Healthy Workplaces, Healthy Families Act of 2014—requiring California employers to provide employees with at least three paid sick days a year. California is only the second state, after Connecticut, to require that employers provide paid sick leave. The California law's reach is expansive, applying to both part-time and full-time employees, and to employers of any size. It excludes only certain employees covered by a collective bargaining agreement, employees providing in-home health care services and flight crew members. The law goes into effect on July 1, 2015.

Under the new law, an employee who works in California for 30 days or more within a year from the commencement of employment is entitled to paid sick time. Employees must earn a minimum of one hour of paid sick time for every 30 hours worked, and are entitled to use this time beginning the 90th day of employment. Employees who are exempt from overtime are deemed to work 40 hours per week for purposes of accrual, unless the normal workweek is less than 40 hours, in which case accrual is based on that normal workweek.

Unused accrued sick time must carry over to the following year of employment (with a permissible cap on accrual of six days); however, an employer may limit an employee's use of paid sick time to 24 hours, or three days, in each year of employment, and is not required to compensate an employee for unused sick time upon termination. No carry over is required if the full amount of leave is received at the beginning of each year. Also, as long as an employer has already implemented a paid leave or time off policy that meets the minimum requirements of A.B. 1522, the employer is not required to provide additional paid sick time.

The law expressly prohibits discrimination or retaliation against an employee who requests or uses paid sick time. It creates a rebuttable presumption of retaliation if an employer denies an employee the right to use accrued sick days, discharges, demotes, suspends, or in any other manner discriminates against an employee within 30 days of the employee's involvement in a complaint or investigation regarding compliance with A.B. 1522.

Several steps are recommended to ensure compliance with California's new paid sick time law. First, before the law comes into effect on July 1, 2015, employers should update written policies and either add the required paid sick time policy, or ensure current policies meet at least the minimum requirements of the law. Employers are also required to update their workplace postings, provide notice of available sick time to employees, and keep records documenting the hours worked and paid sick days accrued and used by employees. Further, because of the potentially onerous burden of overcoming a rebuttable

presumption of retaliation, it is advisable for employers to train managers and human resources personnel to ensure compliance with the sick leave and anti-retaliation provisions.

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