



## LEGAL UPDATE

March 2015

### NEW CALIFORNIA LAW REQUIRES EMPLOYERS TO PROVIDE EMPLOYEES PAID SICK LEAVE (AB 1522)

Effective July 1, 2015, the Healthy Workplaces, Healthy Families Act of 2014 will impose new paid sick leave requirements on California employers.

#### THE NEW LAW COVERS VIRTUALLY ALL EMPLOYERS

Almost all employers, regardless of size, are covered by the new law. The new law does not contain an exception for small employers or employers with fewer than a particular number of employees, and applies to full-time, part-time, temporary and even on-call employees. There are very narrow exceptions to the law, such as employees who are subject to some collective bargaining agreements. But, generally speaking, all employers need to review their sick leave policies to make sure they are compliant with the new law.

#### EMPLOYERS MUST GUARANTEE AT LEAST THREE PAID SICK DAYS PER YEAR

Once an employee works 30 days, an employer is required to provide an employee with at least one hour of sick leave for every 30 hours worked. In general, an employer must allow accrued paid sick leave to roll over to the next year. However, an employer may limit the use of paid sick leave in a year to 24 hours, or three days, in each year of employment. In order to do so, an employer must have a policy in place to limit the use of paid sick leave to three days.

No accrual or carry-over is required if an employer provides the full amount of sick leave at the beginning of each year, allowing the employee to take sick leave before he or she would have otherwise accrued it. An employer is also not required to allow an employee to accrue a total of paid sick leave in excess of 48 hours, or six days.

Employees are able to use paid sick time for preventive care for themselves or a family member.

An employee who uses sick leave is entitled to compensation for his or her sick day at his or her standard hourly rate; employees who earn commissions must have those commission payments factored into their sick leave payment. An employer is not required to pay out the sick leave upon termination.

#### NO RETALIATION

While employers can make employees give notice of paid sick time when foreseeable, they are prohibited from punishing employees who take time off that is not foreseeable, because the statute prevents retaliation against any employee for using sick leave (or even requesting to use it). In fact, the new law creates a rebuttable presumption of unlawful retaliation if an employer denies an employee the right to use accrued sick days, discharges, threatens to discharge, demotes, suspends, or in any manner discriminates against an employee

within 30 days of the filing of a complaint by the employee with the Labor Commissioner or alleging a violation of the law, the cooperation of an employee with an investigation or prosecution of an alleged violation of the law, or opposition by the employee to a policy, practice, or act that is prohibited by the law.

Employers are also prohibited from requiring employees to find a replacement worker to cover time off.

### **SOME EXISTING POLICIES MAY NEED TO BE MODIFIED TO MEET THE LAW'S PROVISIONS**

An employer is not required to increase the number of paid leave days provided for in existing policies if the paid leave policy (or paid time off policy) provides the same benefits as the new law (i.e., it provides at least 24 hours or three days of paid sick leave, or equivalent paid leave or paid time off, for employee use for each year of employment or calendar year or 12-month basis). Yet even these general PTO policies need to be examined to make sure that employees are advised that they need to use PTO time for sick leave.

### **NOTICE, POSTERS AND RECORDS REQUIREMENTS**

Employers must provide written notice to new employees specifying how paid sick leave accrues and their right to use paid sick leave. Furthermore, the employer must inform the employee of the right not to be retaliated against and of the right to file a complaint.

Additionally, employers will need to prominently place posters in the workplace which include information about the new sick leave rights. A willful violation of this requirement can result in a civil penalty of up to \$100 per offense.

Employers must keep records for at least three years pertaining to paid sick leave, such as worked hours, accrual, and utilization of paid sick leave. Failure to maintain compliant records will result in a presumption that an employee accrued the maximum number of hours, unless the employer proves by clear and convincing evidence that the employee accrued a lower number of hours.

The new law will affect almost all employers in California. Employers should check existing paid leave policies to determine whether they will need to add paid sick leave days to their policies. Furthermore, employers should make sure to comport with the new written notice requirements when hiring new employees, and obtain and prominently display the requisite posters in the workplace. All records of hours worked, as well as paid sick leave days accrued and utilized, should be documented carefully for at least three years.

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*The foregoing is merely a discussion of current case law and is not intended to provide legal advice. If you would like to learn more about this topic or how Magnanimo & Dean LLP can serve your legal needs, please contact **Frank A. Magnanimo** at [frank@magdeanlaw.com](mailto:frank@magdeanlaw.com) or (818) 305-3450, or **Lauren A. Dean** at [lauren@magdeanlaw.com](mailto:lauren@magdeanlaw.com) or (818) 305-3450.*

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