

Emergency Legislation to Amend California's Paid Sick Leave Requirements Signed by Governor, Effective Immediately

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Last year, the California Legislature enacted A.B. 1522, the *Healthy Workplaces, Healthy Families Act of 2014* (“Act”), which amended California Labor Code Section 245.5 to provide paid sick days to most California employees, effective July 1, 2015. In the months leading up to July 1, 2015, as employers readied themselves for compliance, it became apparent that some of the requirements of the law were unclear or onerous in operation.

In order to resolve many of these issues, on July 13, 2015, the California Legislature amended the Act to better address which workers are covered and how the paid time off (“PTO”) is accrued and to simplify requirements for employers that already provide paid sick leave. While the bill was deemed a “clarifying” measure, [A.B. 304](#) provides new methods for accrual and payment of paid sick time and is thus relevant to all California employers. The measure was passed as urgency legislation and took effect immediately upon signing by Governor Jerry Brown on July 13, 2015.

Summary of Changes to California Paid Sick Leave Requirements

A.B. 304 has made numerous changes and clarifications to California paid sick leave requirements under the Act. For example, A.B. 304:

- Revises the definition of “employee”:
 - A covered employee is specified as someone who works in California “for the same employer” for 30 or more days within a year.
 - Retired California Public Employee Retirement System annuitants have been expressly excluded from the definition of “employee.” This change permits such persons to return to work while still receiving their pension annuity.
 - The Act previously provided that coverage did not extend to certain “employees in the construction industry” who are subject to collective bargaining agreements and perform “onsite work” associated with construction. Under A.B. 304, the term “employee in the construction industry” has been redefined to remove the requirement of “onsite work.”
- Clarifies that employers with preexisting PTO or paid sick time plans need not provide additional paid sick days if the employer’s policy meets one or more of the following conditions:

- The accrual, carry-over, and use provisions meet the minimum requirements of the Act.
- The policy as of January 1, 2015, provided paid sick leave or PTO to the following:

[A] class of employees ... pursuant to a sick leave policy that used an accrual method different than providing one hour per every 30 hours worked, provided that the accrual is on a regular basis so that an employee, including an employee hired into that class after January 1, 2015, has no less than one day or eight hours of accrued leave within three months, and the employee was eligible to earn at least three days or 24 hours within nine months.

This language modifies the original statute by providing, among other things, that if an employer has modified (or hereafter modifies) the accrual method that it had in place prior to January 1, 2015, the employer will be required to comply with the accrual or frontloading requirements of the paid sick leave law.

- The benefits are provided to specified state employees or officers by statute or the provisions of a memorandum of understanding that meet the requirements of the law (a condition that was not present in the original statute).
- Permits employers to use a different accrual method, other than providing one hour per every 30 hours worked, provided that the accrual is on a regular basis so that an employee has no less than 24 hours of accrued sick leave or PTO by either (i) the 120th calendar day of employment, (ii) each calendar year, or (iii) in each 12-month period. This option was not in the original version of the statute but has been added based on the concern raised by many employers that their payroll systems do not track employees on an hourly basis.
- Allows employers to use alternative methods for calculating compensation owed for paid sick time. While the law was originally written to require employers to use a 90-day look-back period in order to calculate the hourly rate of an employee who performs work at variable rates of pay (due to commissions, piece rate, etc.), A.B. 304 permits employers to calculate paid sick time using any of the following calculations:
 - For nonexempt employees:
 - Paid sick time may be calculated in the same manner as the regular rate of pay for purposes of calculating overtime for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek, or
 - Paid sick time may be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

For exempt employees, paid sick time may be calculated in the same manner as the employer calculates wages for other forms of paid leave time, such as PTO or vacation.

- Provides that an employer is not required to reinstate accrued PTO to a rehired employee who was paid out at the time of termination, resignation, or separation of employment.
- States that if an employer provides unlimited paid sick leave or unlimited PTO, the employer may satisfy the requirement of providing written notice of available sick leave by indicating on the notice or the employee's itemized wage statement that such leave is "unlimited."
- Clarifies that an employer is not obligated to inquire into or record the purpose for which an employee uses sick leave or PTO. This clarification was added as a result of confusion as to how to comply with the notice requirements for available paid sick time if such time is provided as part of a general PTO policy that does not differentiate between sick leave, vacation leave, etc. Based on the clarification, an employer may deduct "available" paid sick time if PTO is taken without the need to inquire whether the time off was for a reason covered by the paid sick leave law.
- Extends the compliance date for notice requirements in the motion picture and broadcasting industries to January 21, 2016.

What Employers Should Do Now

- Review these changes with payroll providers to select the preferred method of calculating pay for paid sick time, and ensure that the accrual method meets the minimum requirement of 24 hours/three days accrued over 120 days.
- If you provide unlimited paid sick time or PTO, consider updating your notices to employees to account for "unlimited" available time.

Because paid sick time for exempt employees may be calculated in the same manner as an employer calculates wages for other forms of paid leave time (such as PTO or vacation), review and assure that your policies and practices regarding these calculations, payments, and entitlements are clear and compliant.