

UPDATE ON CALIFORNIA'S NEW PAID SICK LEAVE LAW

Employers are still struggling to fully understand California's new paid sick leave law (the Healthy Workplaces, Healthy Families Act of 2014). Recognizing the need for some clarification, Governor Brown signed AB 304, which became effective July 14, 2015, amending the still-new law. The amendments to the new sick leave law include the following:

Unlimited Sick Leave: The original version of the statute required employers to set forth the amount of paid sick leave or paid time off ("PTO") available in a written notice or on the employee's paystub each pay day. This left employers with unlimited paid sick leave or unlimited PTO policies scratching their heads because it seemed they would have no option but to start providing accrued or granted sick leave or PTO, just so there was something to track - even though that provided the employees with less time! Now, the statute permits such employers with "unlimited" policies to satisfy the tracking requirements of the law by indicating on the notice or the employee's itemized wage statement, "unlimited."

Accrual Methods: The law required that employees either accrue paid sick leave at the rate of one hour for every 30 hours worked, or be provided at least three days or 24 hours of paid sick leave up front each year. This requirement was burdensome to many employers who already provided more than 24 hours of paid sick leave per year to their employees, but did so on a different, non-compliant accrual method (for example, 3 hours per month). The amendments now permit employers to use a different accrual method (other than one hour per every 30 hours worked) so long as the sick leave is accrued on a regular basis and the employee accrues no fewer than 24 hours of sick leave or PTO by the 120th calendar day of employment, or each calendar year, or in each 12-month period.

The amendments also grandfathered in pre-existing paid sick leave policies that are otherwise non-compliant, if: (1) the policy existed before January 1, 2015 and applies to a class of employees, including employees hired into that class after January 1, 2015; (2) the policy provides that class of employees paid sick leave or PTO using an accrual method that provides no less than one day or eight hours of accrued sick leave or PTO within three months of employment each year; and (3) the employee is eligible to accrue at least three days or 24 hours of paid sick leave or PTO within nine months of employment. However, if the employer modifies the accrual method, the employer must comply with the accrual or grant methods permitted by the statute.

Same Employer: The law clarifies that, to be eligible for paid sick leave benefits, the employee must work in California for the same employer for 30 or more days within a year. This change makes clear

that an employee starting a new job with a new employer is not automatically qualified for paid sick leave benefits just by virtue of the fact that the employee has worked 30 or more days in California, generally.

Reinstatement of Sick Leave: The statute already provides that if an employee is rehired within one year of the date of separation from the employer, the employee is entitled to reinstatement of previously accrued and unused paid sick days. However, for employers who provide PTO, the law states that all accrued and unused PTO must be paid out at separation. Therefore, the amendments clarify that an employer who provides PTO and pays out the accrued and unused PTO at separation is not required to reinstate accrued PTO if an employee is rehired within one year from the date of separation.

Rate of Pay: Employers now have a couple methods available for calculating the rate of pay at which sick leave benefits must be paid to nonexempt employees:

- The employer may calculate the rate in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek; or
- The employer may now calculate the rate 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.

The law did not change for exempt employees.

Inquiries Into Use of Time: Finally, the law provides that an employer is not obligated to inquire into or record the purposes for which an employee uses paid sick leave or PTO. Notably, the law is still silent on whether employers may request doctor's notes certifying the need for leave is for a qualifying purpose.

In addition to whether employers are permitted to request doctor's notes, the amendments left other questions unanswered. For one, the law still says that it applies to employees who work 30 or more days within a year in California for the employer, but the effect of that eligibility requirement is unclear because employees begin accruing sick leave upon commencement of employment, and employers can require employees to complete 90 days of employment before using any accrued sick time. Further, the statute is unclear as to the significance of "three days or 24 hours" and "six days or 48 hours." Based on the State of California's Frequently Asked Questions ("FAQ") page, it appears that the intent of the law is that employees are entitled to use at least 24 hours of sick leave per year, even if they work a six-hour day. However, if they work a 10-hour day, the employees are entitled to use 30 hours of paid sick leave per year (3 days x 10 hours per day).

The State's FAQ page has not yet been updated with the amendments, but it says updates are coming soon. You can keep an eye on them here:

http://www.dir.ca.gov/dlse/Paid_Sick_Leave.htm

If you are making changes to your company policies, Hoge Fenton's employment law group can help ensure you are compliant.

Primary Contact

- Jenn Protas