Healthy Workplace Healthy Families – AB-1522

Take two Aspirin and call your favorite Employment Law Attorney for the Legal Rx

Not surprisingly, we have received plenty of questions since the passage of AB 1522, the new, "Healthy Workplace, Healthy Families Act of 2014" requiring almost all employers to provide three paid sick days per year to most of their employees. The state has also posted a new FAQ, which is somewhat helpful. (http://www.dir.ca.gov/dlse/Paid_Sick_Leave.htm) Here are some additional things to know about AB1522: (Please also see our past alert for the basics of the law, http://www.landeggeresq.com)

If you have a PTO policy that meets or exceeds the accrual requirements of AB1522 and allows the employee to use PTO time for all the reasons AB1522 requires, then that policy should satisfy AB1522.

Many employers without sick time policies are adopting policies that provide sick time to employees at the beginning of the year or "up front"; i.e. giving 3 days or 24 hours at the beginning of each year for use throughout the year, instead of having employees accrue one hour of sick time for every 30 hours worked. AB1522 allows employers to do this, but be aware that the State Labor Commissioner is interpreting the phrase "3 days or 24 hours" most beneficially to the employee. What this means to you is that your part-time employees get 24 hours of paid sick time per year, even if that works out to more than three work days. Conversely, employees whose shifts are typically longer than eight hours should get three days, even if that totals more than 24 hours. If challenged, this interpretation might not be upheld by the courts, but it is the State's current enforcement position and we recommend following it. You do not want to be the test case.

If you provide employees the sick time up front, then you have to provide them with all three days or 24 hours when the employees are hired. But you can prohibit new hires from using paid sick time for the first 90 days of their employment.

If you use the accrual method, it is important to note the difference between the "use" cap and the "accrual" cap. You can cap the yearly use of sick time at 3 days or 24 hours, but accrual of sick time can be capped at no less than 6 days or 48 hours. Therefore, paid sick time accrues even when employees have used their "maximum" paid sick time for the year. We understand that this could result in employees accruing more sick time than they can ever possibly use. (The Labor Commissioner has provided no good explanation for this. It is one reason why many employers are providing sick time up front instead of using accrual systems.)

For accrual purposes, exempt employees can be considered to work 40 hours per week unless they normally work less than 40 hours per week, in which case you measure accrual by actual hours worked. Under the accrual method, the "twelve month period" used to measure use of sick time will generally begin on an employee's anniversary date, or for current employees, July 1, if you are first implementing your sick time policy on July 1, 2015.

Whatever method you use, accrual or "up front," the accrual and use of sick time now has to be reflected on an employee's wage statement. Employers must keep accurate records of the amount of sick time accrued and used by all employees for three years.

Paid sick time of three days or 24 hours has to be provided for all of the purposes required by AB1522, including the employees' own illness or preventative care, care of certain family members, and domestic violence counseling, medical care and related court dates. Many current policies, even if they exceed the accrual requirements, are not this broad concerning permissible use of sick time and need to be updated. We strongly recommend that your policies be reviewed in advance of July 1st in order to ensure compliance with the new law.

The definition of "family members" in AB1522 is broader than the definition in the California kin care law. AB1522 requires you to provide paid sick time for care of a child (including adopted children, foster children, and step children), parent or legal guardian (including stepparent, foster or adoptive parent), parent-in-law, spouse, registered domestic partner, grandparent, grandchild, or sibling.

Employees can use paid sick leave for less than a full day, but the highest minimum increment an employer can require an employee to take for a partial day absence is two hours. (You can use a lower minimum increment that you require the employee to take, if desired, but not higher.) Other than that restriction, the employee decides how much paid sick time he or she needs to use.

Employers can have different sick time policies for different groups of employees (e.g. part time vs. full time), provided every policy complies with AB1522.

Accrued and unused sick time does not need to be paid out at termination. However, if you provide PTO time that can be used for both vacation and sick days, you do have to pay it out at termination the same as you are required to do with vacation wages.

If you are subject to local sick time laws, you must comply with both the local law and AB1522, and where there are conflicts, you should offer the benefit most generous to the employee.

We do not recommend adopting a strict requirement that the employee present a doctor's note to return to work after taking paid sick time. The employee might not have seen a doctor or might not have taken the time for their own illness (i.e. domestic violence reasons).

You should already be giving new hires the new "Notice to Employees" (revised 9/2014) required by Labor Code 2810.5, which has a section for your sick leave policy terms. The new form must be issued to all employees if your sick time policy has changed.

(https://www.dir.ca.gov/dlse/LC_2810.5_Notice.pdf)

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HEALTHY WORKPLACE HEALTHY FAMILIES- AB-1522

Amended by AB 304, signed by Governor Brown, July 13th, effective immediately

Now that companies have clamored to update their paid sick leave policies to comply with the "The Healthy Workplaces, Healthy Families Act of 2014", the California legislature has graciously amended that law in ways that would have made life easier for employers had the amendments passed months ago. The new bill AB 304, which was signed by Governor Brown very recently on July 13th and goes into effect immediately, amends the paid sick leave law in several ways:

- When non-exempt employees use paid sick time, employers can pay that sick time at the employee's "regular rate of pay." The "regular rate of pay" is the rate that would be used by employers to determine overtime wages for the work week or pay period. Employers can now use the "regular rate of pay" for the work week to pay sick time taken during that week, even if no overtime wages are paid in that week. This simpler method of calculation can be used instead of averaging the last 90 days of wages to determine an hourly rate for paying sick time.
- If an employer had a paid sick leave policy that was in effect prior to January 1, 2015, and provided at least 1 day or 8 hours of paid sick leave in each 3 month period of employment, and at least 3 days or 24 hours of paid sick leave within the first 9 months of each 12 month period, the employer is now permitted under AB 304 to continue to use the accrual rates provide by the old policy as long as the accrual rates are unchanged. Companies will still need to ensure the policy and their practices comply with other sections of the law, like allowable uses for paid sick leave, recordkeeping, and calculation of sick time pay.
- An employer can have accrual rates that are different than 1 hour for every 30 hours worked, as long as accrual occurs on a "regular basis" (which is not defined) and provides the employee with no less than 24 hours of paid sick time by the 120th calendar day of employment within each calendar year or 12 month period.
- The bill clarifies that, under the "front load" method (that allows for no carry over or accrual of paid sick time), 3 days or 24 hours of paid sick leave must be provided at the beginning of each calendar year, employment year, or 12 month period.
- The bill states that when an employee is terminated and rehired within 12 months of termination, an employer does not have to reinstate that employee's prior accrued sick time if it was fully paid to the employee at termination.

We are still analyzing AB 304 and are awaiting further guidance from the California Labor Commissioner on how the new provisions will be enforced and interpreted by it moving forward. Please watch for future alerts from our office and contact us if you have any questions.

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