



Summer 2015

## AMENDMENTS TO PAID SICK LEAVE LAW

Last week the legislature passed and the Governor signed a bill amending the Healthy Workplaces, Healthy Families Act of 2014. Since the bill was passed as an urgency measure it is effectively immediately. The following are some of the key provisions of the amendments.

To be eligible for paid sick leave under the law, an employee must have worked in California for the **same** employer for 30 or more days.

An employer can limit an employee's use of paid sick days to three (3) days or 24 hours in a year. The year can be measured based on a **year of employment (anniversary date), calendar year, or any 12-month period.**

An employer need not use the one (1) hour for every thirty (30) hours worked accrual method as long as the method used provides for **accrual on a regular basis** and the employee will have **24 hours of accrued sick leave available by the 120<sup>th</sup> calendar day of employment, each calendar year or each 12-month period.** This is very helpful for employers who prefer to accrue benefits on a per month or per payroll period basis. However, please note that accrual of the 24 hours by the 120<sup>th</sup> day applies also to part-time employees. So employers may want to determine whether using one accrual method for full-time employees and a different method for part-time employees works better for their workplace. Alternatively the employer can provide the requisite 24 hours of paid sick leave by making it available to use by the 120<sup>th</sup> calendar day of employment.

The amendments include a "**grandfather**" clause that allows employers to continue sick leave or PTO policies in effect on or before January 1, 2015 provided accrual is on a regular basis with no less **than one (1) day or eight (8) hours accrued within three (3) months** of employment, each calendar year or every 12-month period and the employee was eligible to earn **three days/24 hours of sick leave or PTO within nine (9) months of employment.** Many existing policies will not meet these requirements depending on whether there was a waiting period before

accrual began, the length of the waiting period, and the rate at which the employee accrues the paid sick leave or PTO.

For employees with **variable rates of pay** sick leave payments can be calculated based on the previous 90-day period (currently in the law) or it can be calculated using the regular rate of pay method for the workweek in which the sick leave is taken (amendment). Exempt employees (only) can be paid based on wages paid for other types of paid leave.

The employer is no longer obligated to inquire into or record the **purposes for which an employee uses sick leave or paid time off.** Particularly for employees providing PTO this would have been a problem because the employer generally does not ask an employee who is using PTO whether the time is being used for sick leave or other personal purposes.

The amended law permits employers who provide unlimited sick leave to employees to satisfy the notice requirements by indicating "unlimited" on the paycheck stub (or other notification form).

For a review of the requirements of the Healthy Workplaces, Healthy Families Act of 2014 (prior to the amendments) see the Employer's Legal Advisory (Spring 2015).

For more information or assistance in developing/revising a sick leave/PTO policy to comply with the law please contact Jeanne Flaherty.



*Jeanne Flaherty is the President and Managing Attorney of Employer's Legal Advisor, Inc., which represents and advises employers on all employment matters. The firm specializes in conducting employment practices compliance reviews and advising employers on day-to-day legal issues in the workplace.*