

AB 1522
Healthy Workplaces/Healthy Families Act, 2014

SUMMARY

EFFECTIVE DATE: July 1, 2015

PURPOSE:

Many workers in California do not have any paid sick days or have an inadequate number of paid sick days, to care for their own health or the health of family members. This bill will provide workers time off to attend to their own health care and the health care of family members to ensure a healthier and more productive workforce in California.

This Act establishes minimum requirements pertaining to paid sick days and does not preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for greater accrual or use by employees of sick days, whether paid or unpaid, or that extends other protections to an employee.

DEFINITIONS:

Employer:

Any person employing another under any appointment or contract of hire and includes the state, political subdivisions of the state and municipalities.

Employee:

All employees, “except” for the following:

- 1) An employee covered by a collective bargaining unit agreement (CBA), “if” the agreement expressly provides for the wages, hours of work, and working conditions of employees, and expressly provides for paid sick days or paid leave or paid time off policy that permits the use of sick days for those employees; final and binding arbitration of disputes concerning the application of its paid sick days provisions; premium wage rates for all overtime hours worked, and regular hourly rate of pay of not less than 30 percent more than the state minimum wage.
(Note: Many CBA’s do not meet the above criteria; however, all regular employees of local school agencies are already eligible to earn sick leave based upon the Education Code, and the rate of accrual required by the Education Code is greater than that required by AB 1522)
- 2) An employee in the construction industry covered by a valid collective bargaining unit agreement (same requirements as above).
- 3) A provider of in-home supportive services under Section 14132.95, 14132.952, or 14132.956 of, or Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code.
- 4) An individual employed by an air carrier as a flight deck or cabin crew member that is subject to the provisions of Title II or the Federal Railway Labor Act.

Family Member:

- 1) A child, which for purposes of this article means a biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis. This definition of a child is applicable regardless of age or dependency status.
- 2) A biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child.
- 3) A spouse.
- 4) A registered domestic partner.
- 5) A grandparent
- 6) A grandchild
- 7) A sibling.

Paid Sick Days:

Means time that is compensated at the same wage as the employee normally earns during regular work hours and is provided by an employer to an employee.

REQUIREMENTS OF THE ACT:

Eligibility:

An employee who works for 30 or more days within a year (does not have to be consecutive days) from the commencement of employment is entitled to paid sick days.

An employer is not required to provide additional paid sick leave days if the employer has a paid leave policy or paid time off policy, the employer makes available an amount of leave that may be used for the same purposes and under the same conditions as specified in this Act.

Sick Leave Accrual Rate:

An employee shall accrue paid sick days at the rate of not less than 1 hour per every 30 hours worked, beginning at the commencement of employment or the operative date of the Act, whichever is later.

Accrual Limits:

An employer may limit employee's use of paid sick days to 24 hours or 3 days in any given year of employment.

Accrued paid sick days shall carry over to the following year of employment.

An employer has no obligation under this Act to allow an employee's total accrual of paid sick leave to exceed 48 hours or 6 days, provided that an employee's rights to accrue and use paid sick leave are not otherwise limited.

Use of Sick Leave:

An employee shall be entitled to use accrued paid sick days beginning on the 90th day of employment, after which day the employee may use paid sick days as they are accrued.

An employee may use paid sick leave for the diagnosis, care, or treatment of an existing health condition, as well as preventive care, for the employee or family member. Additionally, sick leave may be used for a victim of domestic violence, sexual assault, or stalking.

An employee may determine how much paid sick leave he or she needs to use, provided that an employer may set a reasonable minimum increment, not to exceed two hours, for the use of paid sick leave.

If the need for paid sick leave is foreseeable, the employee shall provide reasonable advance notification. If the need for paid sick leave is unforeseeable, the employee shall provide notice of the need for the leave as soon as practicable, may require doctor's note.

Employment Separation:

An employer is not required to provide compensation to an employee for accrued, unused paid sick days upon termination, resignation, retirement, or other separation of employment.

If an employee separates from an employer and is rehired by the employer within one year from the date of separation, previously accrued and unused paid sick days shall be reinstated. The employee shall be entitled to use those previously accrued and unused paid sick days and to accrue additional paid sick days upon rehiring.

Sick leave can transfer to another school district or county office of education, pursuant to Education Code Sections 45202 (classified employee) or 44978 (certificated employee). This does not apply to classifications not covered by the Education Code (i.e.: substitutes, temporary employees, short-term employees, etc.)

Payment of Used Sick Leave:

An employer shall provide payment for sick leave taken by the employee no later than the payday for the next regular payroll period after the sick leave was taken.

The rate of pay shall be the employee's hourly wage. If the employee in the 90 days of employment before taking accrued sick leave had different hourly pay rates, was paid by commission or piece rate, or was a nonexempt salaried employee, then the rate of pay shall 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.

Notification/Posting Requirements:

An employer shall display a poster in each workplace in a conspicuous place containing all the information specified in subdivision (b). The Labor Commissioner shall create a poster containing this information and make it available to employers.

At the time of hiring, an employer shall provide to each employee a written notice, in the language the employer normally uses to communicate employment-related information to the employee, containing the following information:

- The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable.
- Allowances if any, claimed as part of the minimum wage, including meal or lodging allowances.
- The regular payday designated by the employer
- The name of the employer
- The address of the employer's main office or principal place of business, and mailing address, if different.
- The telephone number of the employer
- The name, address, and telephone number of the employer's workers' compensation carrier.
- That an employee: may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

The Labor Commissioner shall prepare a template that complies with this section and make available to employers in such manner as determined by the Labor Commissioner.

An employer shall provide an employee with written notice that sets for the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement or in a separate writing provided on the designated pay date with the employee's wages.

Recordkeeping Requirements:

An employer shall keep for at least three years, records documenting the hours worked and paid sick days accrued and used by an employee, and shall allow the Labor Commissioner to access these records. An employer shall make these records available to an employee in the same manner. If the employer does not maintain adequate records pursuant to this section, it shall be presumed that the employee is entitled to the maximum number of hours accruable under this article, unless the employer can show otherwise by clear and convincing evidence.

Penalties:

An employer who willfully violates the posting requirements of this section is subject to civil penalty of not more than \$100 per each offense.

If paid sick days were unlawfully withheld, the dollar amount of paid sick days withheld from the employee multiplied by three, or \$250, whichever is greater but not to exceed an aggregate penalty of \$4,000, shall be included in the administrative penalty.

If a violation of this article results in harm to the employee, the administrative penalty shall include a sum of \$50 for each day or portion thereof that the violation occurred or continued, not to exceed an aggregate penalty of \$4,000.

Other penalties may be assessed based on extent of investigation and litigation.

This Act establishes minimum requirements pertaining to paid sick days and does not preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for greater accrual or use by employees of sick days, whether paid or unpaid, or that extends other protections to an employee.