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California Requires Employers to Provide Paid Sick Leave to Employees

By Dwayne McKenzie, Partner at Cox, Castle & Nicholson

On September 10, 2014, Governor Brown signed into law the Healthy Workplaces, Healthy Families Act of 2014, Assembly Bill 1522 (the "Paid Sick Leave Law"). The Paid Sick Leave Law, Labor Code section 245, et seq., requires employers to provide up to 24 hours or 3 days of paid sick leave annually to their employees beginning July 1, 2015.

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Collective Bargaining Agreement Exemptions to Coverage

The Paid Sick Leave Law contains important exclusions for employees covered by collective bargaining agreements, with particular provisions applicable to construction industry employees.

- Employees are not covered under the Paid Sick Leave Law if they are covered by a valid collective bargaining agreement which (1) expressly provides for paid sick days or a paid leave or paid time off policy that permits the use of sick days for those employees and (2) contains other minimum hours and working condition provisions.
- In the construction industry, employees covered under a valid collective bargaining agreement entered into prior to January 1, 2015 are not subject to the Paid Sick Leave Law if the collective bargaining agreement contains minimum hours and working condition provisions. This exemption will cease to apply when each collective bargaining agreement is renewed after January 1, 2015.
- The Paid Sick Leave Law is not applicable to employees in the construction industry if they are covered by a collective bargaining agreement which



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expressly waives the requirements of the Paid Sick Leave Law and contains other minimum hours and working condition provisions. This exemption continues to apply after January 1, 2015.

The effect of these provisions is that construction industry employees covered under a collective bargaining agreement will generally be exempt from the Paid Sick Leave Law until their collective bargaining agreements come up for negotiation, at which time the bargaining parties can elect to waive Paid Sick Leave Law requirements or impose alternative sick leave requirements in the collective bargaining agreement. AGC will be addressing the Paid Sick Leave Law as negotiations with the construction trades occur.



Coverage of Employees not Covered by a Collective Bargaining Agreement

Employees who do not fall under a collective bargaining exemption will be covered under the Paid Sick Leave Law. This includes all employees of employers with no collective bargaining agreements. For employers with union employees, it also includes the employer's non-union employees – such as managerial, office and administrative staff – and to union employees if the collective bargaining agreement does not qualify for one of the above exemptions. Most employers, therefore, will have some employees who are covered by the new paid sick leave requirements.



Primary Paid Sick Leave Law Requirements

The following summarizes key obligations under the Paid Sick Leave Law:

- An employee who, on or after July 1, 2015, works in California for 30 or more days, begins accruing sick leave at a rate of at least one hour of leave for every 30 hours worked.
- Employees are entitled to use accrued sick leave beginning on the 90th day of employment. Employers may limit the use of accrued sick leave by an employee to 24 hours or 3 days in a year.
- Employers must permit employees to “carry over” to the following year of employment any accrued but unused sick leave. Sick leave accrual may be capped, but at not less than 48 hours or 6 days. Alternatively, an employer can avoid sick leave accrual and carry over obligations by providing the full amount of leave (i.e., 24 hours or 3 days) to employees at the beginning of

each year.

- Unlike vacation pay, accrued but unused sick leave does not need to be paid out to an employee upon termination of employment. However, if an employee is rehired by the employer within one year from the date of a separation, previously accrued and unused paid sick days must be reinstated.
- Employers must post notices in their workplaces, provide individual notices to employees concerning sick leave rights, and indicate amount of paid sick leave available on employee itemized wage statements or in a separate writing provided on each designated pay day with the employee's paycheck.
- Employers must maintain adequate records for at least three years.



Outstanding Issues

The Paid Sick Leave Law raises numerous questions in how it is to be applied, particularly in the construction industry. AGC has contacted the Director of the Department of Industrial Relations to obtain answers to questions posed by AGC and will continue to engage the Department as it finalizes guidance on the application of the Paid Sick Leave Act. Issues raised include:

- **Are fringe benefits included in the hourly rate for purposes of the calculating the amount of paid sick leave compensation?**
Further guidance is expected. AGC has proposed that construction industry employers account for paid sick leave in a manner similar to how they calculate vacation pay.
- **For employees that have various hourly rates of pay, how is the hourly rate for paid sick leave calculated?**
The Paid Sick Leave Law states that for an employee with various pay rates in the 90 days of employment before taking accrued sick leave (such as an employee paid by commission or piece rate and nonexempt salaried employee), 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. Further clarification is expected.
- **Can each employee accrue up to 6 days sick leave?**
Yes. For covered employees, an employer must allow sick leave hours to be carried over to the following year, unless the employer provides the full amount of leave (i.e., 24 hours or 3 days) to employees at the beginning of each year. Employers can cap the amount of accrued paid sick leave, provided the cap is not less than 48 hours or 6 days.
- **Since construction industry workers often work for multiple employers,**

can paid sick leave be funded by contributions to a fringe benefit fund?

Further guidance is expected, although it is anticipated that sick leave benefits for union employees could be paid through funds established under collective bargaining agreements so that contributions and payments to employees can be accounted for in a manner similar to vacation fund contributions.

- **The Paid Sick Leave Law states that employers may limit the use of accrued sick leave by an employee to 24 hours or 3 days in a year. Is there a difference between 24 hours and 3 days?**

The Paid Sick Leave Law defines “paid sick days” as time that is compensated “at the same wage as the employee normally earns during regular work hours.” For employees with alternative work schedules, their “paid sick days” may be calculated in the same manner as their normal work day. For example, employees working four ten-hour days may be entitled to 30 hours paid sick leave (three ten-hour days) instead of 24 hours. Further clarification is expected.

- **Will sick leave pay be included in the prevailing wage rate for each class and classification of construction trade worker?**

It is expected that each prevailing wage determination will indicate whether sick leave pay is included in the applicable prevailing wage rate. If the basis for the prevailing wage rate is a collective bargaining agreement which contains sick leave pay, then the prevailing wage determination is expected to include the sick leave pay in the prevailing wage.

- **How does the Paid Sick Leave Law apply in jurisdictions with local sick leave requirements, such as the City of San Francisco?**

The Paid Sick Leave Law establishes minimum requirements. It does not supersede local laws. Local laws may impose greater obligations on employers. Employer obligations under the Paid Sick Leave Law should be evaluated independently from any applicable local law, ordinance or regulation to ensure compliance with each. However, Paid Sick Leave Law requirements are not cumulative. For example, employers who must allow up to 72 hours of sick leave under the San Francisco Paid Sick Leave Ordinance will not have to allow an additional 24 hours of accrual under the state Paid Sick Leave Law.

- **What records satisfy the requirement to maintain “adequate records” under the Paid Sick Leave Law?**

Employers must maintain records that show the hours worked and the paid sick leave accrued and used by employees subject to the Paid Sick Leave Law. In the event paid sick leave is administered by a collectively bargained trust fund, the fund may maintain such records. But employers are advised to ensure that their payroll accounting system tracks and records the required information for all employees.



Recommendations

- Educate your Human Resources and supervisory staff on Paid Sick Leave Law requirements.
- Evaluate your current sick leave and paid time off (PTO) policies to determine compliance with the Paid Sick Leave Law and revise if necessary.
- Prepare to issue the required notices to employees and to post the required notice at employer worksites.
- Periodically review the California Labor Commissioner's web site located at <http://www.dir.ca.gov/dlse/> for updated guidance and revised notices and postings.
- Update payroll processes and systems to account for paid sick leave, to properly display sick leave information on employee wage statements, and to maintain records required under the Paid Sick Leave Law.

AGC will continue to seek clarification from the Department of Industrial Relations with respect to implementation of the Paid Sick Leave Law and will provide additional updates as further guidance is issued.

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