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California Amends Its New Paid Sick Leave Law

By Roger M. Mason, Esq.

Just when most employers were beginning to think they understood the Healthy Workplaces, Healthy Families Act of 2014 (the "Act"), California decided to change the rules. Less than two weeks after employers were to begin providing paid sick leave, the Act was amended, effective July 13, 2015. I will do my best to make the recent amendments understandable.

Eligibility

The amendments to the Act attempt to clarify that, to be entitled to paid sick days, an employee must work in California for 30 or more days within a year from the commencement of employment with the same employer. If the employee meets these requirements, the employee will be eligible to accrue paid sick days.

Accrual Methods

Employers now have two options with respect to the manner in which paid sick leave accrues:

1. An eligible employee may earn one hour of paid sick leave for every 30 hours worked beginning on July 1, 2015, or on the employee's first day of work, whichever is later. Both regular and overtime hours count toward the 30 hours worked; or
2. Employers may provide employees with paid sick leave on a basis other than 1 hour for each 30 hours worked, provided that (i) the accrual is on a regular basis and (ii) the employee has at least 24 hours of accrued sick leave or PTO by the 120th calendar day of employment in each calendar year or 12-month period.

Pre-January 1, 2015 Policies

Employers may continue to use paid sick leave or PTO policies in effect prior to January 1, 2015, and not provide an additional 24 hours of paid sick leave or PTO, if the pre-existing policy accrues on a regular basis and meets two requirements:

1. Employees accrue no less than 8 hours of sick time or PTO within 3 months of employment during each calendar year or 12-month period; and
2. Employees are eligible to earn at least 24 hours of paid sick leave or PTO within 9 months of employment.

Non-Accrual Method

Employers may still provide employees 24 hours of paid sick leave at the beginning of each year of employment, calendar year, or 12-month period. Employees may not carry over unused sick days, but receive 24 hours of paid sick leave at the beginning of each year of employment, calendar year, or 12-month period.

Limiting Use

Employers may now limit an employee's use of accrued paid sick days in each year of employment, each calendar year or each 12-month period. The Act originally referenced only "each year of employment."

Re-Hires/Reinstatement

The amendments to the Act clarify that an employer is not required to reinstate accrued PTO to an employee who is rehired within one year but received their PTO pay out at the end of their prior employment.

Pay Rate

Employers may now use one of two methods to calculate how to pay non-exempt employees who take paid sick time:

1. Pay the regular rate of pay for the workweek in which the employee uses the paid sick time. The regular rate of pay is the rate used to determine the overtime rate in a given workweek.
2. Pay 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.

Exempt employees are paid in the same manner as for other paid leave time.

Recordkeeping

The Act requires employers to maintain for 3 years records documenting the hours worked and paid sick days accrued and used by employees. The amendments to the Act clarify that employers are not required to ask about or record the purpose for which an employee uses paid sick leave or paid time off.

Doctor's Notes

Neither the Act nor the amendments to the Act address an employer's right to require a doctor's note for paid sick leave. However, the California Department of Industrial Relations has stated that requiring a doctor's note may be the basis for a retaliation claim against the employer in violation of the Act.

For assistance in implementing your company's paid sick leave policy or to discuss the Act or amendments in greater detail, please contact Roger M. Mason, Esq. at (408) 356-3000 or rmason@smwb.com.

For more information, please contact Roger M. Mason, Esq. at (408) 356-3000.

The information provided in this newsletter is general in nature and is not intended to answer every question that may arise under different fact situations and should not be relied on in the place of professional advice in a given case. If you have specific questions, please contact Sweeney, Mason, Wilson & Bosomworth.

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