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LEGAL UPDATE

August 31, 2015

To: Superintendents, Member School Districts (K-12)

From: Loren W. Soukup 
Associate General Counsel

Subject: **AB 304: California Paid Sick Leave Clean-Up Legislation**
Memo No. 20-2015

On September 25, 2014 we issued Legal Update No. 25-2014 entitled: AB 1522 – Employee Paid Sick Leave, which outlined the new paid sick leave requirements for all employers, including school districts, community colleges and county offices of education, under the California’s Healthy Workplaces, Healthy Families Act of 2014 (“Act”).

On July 13, 2015, Governor Brown signed Assembly Bill 304 (“AB 304”), which became effective immediately, to clarify certain requirements under the Act.

Below is a summary of the changes that AB 304 has made to the Act:

- CalPERS retired annuitants are not eligible to receive the paid sick leave under the Act. (Labor Code § 245.5(a)).
- The 30-day eligibility period begins to run on the first date of employment with the specified employer, not on the first date of employment with any California employer. (Labor Code § 246(a)).
- There are two new methods in calculating the accrual of paid sick leave (Labor Code § 246(b)):
 1. An employer may use an accrual method other than providing 1 hour of sick leave per every 30 hours worked, if the accrual method is provided on a regular base and provides the employee with no less than 24 hours of accrued sick-leave by the 120th calendar day of employment or each calendar year, or in each 12-month period.
 2. An employer will meet the accrual requirements if an employee receives not less than 24 hours or 3 days of paid sick leave by the completion of their 120th calendar day of employment.
- If an employer chooses to frontload the paid sick leave pursuant to Labor Code § 246(d), the employer is only required to provide 3 days or 24 hours of sick leave each year to meet the requirements of this section. In addition, AB 304 clarified that “each year” is defined as the beginning of the calendar year, year of employment, or 12-month basis as determined by the employer.



- Employers who have sick leave policies in effect prior to January 1, 2015 will be permitted to continue under their own policies for accrual purposes as long as their policies provide at least 1 day or 8 hours of paid sick leave within 3 months of employment and the employee can earn at least 3 days or 24 hours of paid sick leave within 9 months of employment. (Labor Code § 246(e)). However, any changes to these policies by the employer which lowers the employee accruals will become subject to the Act requirements.
- Employees who are rehired within 12 months of a separation of employment are only entitled to reinstatement of the Act’s accrual cap of 6 days or 48 hours of paid sick leave; employers who provide a more generous sick leave policy than the Act are not required to reinstate all of the earned sick leave upon the rehire of the employee. (Labor Code § 246(f)).
- Employers who provide unlimited sick leave to their employees can simply state “unlimited” on the itemized wage statement or written notice provided to the employee each pay period to meet the requirements set forth in Labor Code § 246(h).
- The rate of pay for paid sick leave for nonexempt employees (employees entitled to overtime) can be calculated using two different methods (Labor Code § 246(k):
 1. In the same manner as the calculation for the regular rate of pay for the workweek in which the employee uses paid sick time. This calculation method is recommended for employees who get paid a regular hourly wage.
 2. Dividing the employee’s total wages, not including overtime pay, by the employee’s total hours worked in the full pay periods for the previous 90 days of employment. This calculation method is recommended for employees who have varying rates of pay or who are paid on a commission basis.
- The rate of pay for overtime-exempt employees shall be calculated in the same manner as the employer calculates wages for other forms of paid leave time. (Labor Code § 246(k)).
- Employers are not required to ask about or record the purposes for which an employee uses paid sick leave, except to confirm that the use of the paid sick leave meets one of the purposes provided for in the Act.¹ (Labor Code § 247.5).

While AB 304 does provide some clarification concerning the new paid sick leave requirements, there are still quite a few unanswered questions. As such, our office will continue to provide updates as they become available.

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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¹ (1) The employee’s own or family member’s diagnostic, care, or treatment of an existing health condition, or preventative care or (2) An employee who is a victim of domestic violence, sexual assault, or stalking and who is seeking aid, treatment, or related assistance.