

THE ZAPPIA LAW FIRM

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— Labor & Employment Law —

SPECIAL UPDATE

PUBLIC AND PRIVATE EMPLOYERS

September 18, 2014

PAID SICK LEAVE BILL SIGNED INTO LAW

Last week Governor Brown signed Assembly Bill 1522, known as the “Healthy Workplaces, Healthy Families Act of 2014” into law. This new law requires almost all public and private-sector employers to give their employees at least three (3) paid sick days per year. Following please find pertinent questions and answers regarding the new law which will go into effect on July 1, 2015.

Who is an employer for the purposes of this law?

“Employer” is defined very broadly by the law and includes “any person employing another under any appointment or contract of hire and includes the state, political subdivisions of the state, and municipalities.”

Who is an employee?

“Employee” is defined as anyone who works more than 30 days in a year in California, including temporary and part-time employees, and has very few exceptions:

- Employees covered by a collective bargaining agreement (CBA), provided that the CBA expressly provides for at least three (3) paid sick days per year;
- A provider of in-home support services; and
- An individual who works for an air carrier as a flight deck or cabin crew member, and is provided at least three (3) paid sick days per year.

How many paid sick days must be provided?

As of July 1, 2015, employees will be entitled to at least three days (24 hours) of paid sick leave per year.

Employers will determine whether to use the accrual method or lump sum method in making the sick leave time available for employees.

- Under the accrual method, employees will earn one (1) hour for every thirty (30) hours worked.
 - Under the accrual method, an employee working full time could accrue slightly more than eight (8) days per year (8.6 days to be exact);
 - The employer, however, may cap the overall annual accrual at 6 days (48 hours);
 - Accrued paid sick days shall carry over to the following year;

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- An employee, who is exempt from overtime requirements as an administrative, executive, or professional, is deemed to work 40 hours per week for the purposes of this law, unless they actually work less than 40 hours.
- Under the lump sum method, an employer could make all paid sick leave time (a minimum of three (3) days per year) immediately available at the commencement of employment (or July 1, 2015) and each year thereafter.
- There is a 90-day wait period for new employees to use any accrued sick leave.
- The employer may cap the limit of sick days used per year at three (3).
- The employee may determine how much paid sick leave he or she needs to use, but the employer may set a reasonable minimum increment, not to exceed two (2) hours, if less than a full day is requested.

How much does the employer pay?

- The employer shall pay the employee's normal hourly wage.
- If the employee's pay fluctuates, because of commissions or piece rate pay, the hourly wage will be the total compensation for the 90 previous days divided by the total number of hours worked.

When must the employee be paid for the sick day?

- The payment for sick leave must be paid in the next regular payroll period after the leave was taken.

What happens to accrued sick days upon separation from employment?

- The employer is not required to provide compensation for accrued, unused paid sick days upon termination, resignation, retirement, or other separation from employment.
- However, if an employee separates and is rehired within one year, the previously accrued, unused paid sick days shall be reinstated.

What actions must employers take?

- Employers must amend the notice provided to new hires to include information regarding the employee's right to accrue and use sick leave;
- Employers must satisfy the new workplace-posting requirement;
- Employers must modify/amend their payroll and wage statements to reflect the sick leave time that has accrued and/or been used by employees. If not delineated on pay stub, it may be provided on another document issued the same day as the paycheck; and
- Employers must keep records documenting the hours worked and paid sick days accrued and used by an employee for three (3) years.