

Understanding California's New Paid Sick Leave Law

WITH THE 2014 HOLIDAY SEASON BEHIND US, THE CALIFORNIA GROCERY INDUSTRY MUST BEGIN COMPLYING WITH THE WAVE OF NEW LAWS GOING INTO EFFECT IN 2015. WHILE THE MINIMUM WAGE INCREASE HAS DOMINATED HEADLINES, GROCERS SHOULD BE MINDFUL THAT CALIFORNIA IS NOW THE SECOND STATE TO REQUIRE PAID SICK LEAVE.

Last year, Gov. Jerry Brown signed the Healthy Workplaces, Healthy Families Act of 2014. Although the law became operative on January 1, employers do not have to provide sick leave until July 1, 2015.

California's Paid Sick Leave Requirements

California's paid sick leave law requires employers to provide eligible employees with 24 hours or three days of paid sick leave per year starting July 1, 2015 (assuming 8-hour shifts). An eligible employee is an employee (exempt or non-exempt) who works in California for 30 or more days within a year from the date of hire.

Other than a few exceptions, the law applies regardless of whether the employee is part-time, full-time, regular or temporary, so long as the 30-day per year requirement is satisfied. The law does not require the 30 days to be continuous.

As a result, part time, seasonal, and temporary employees who work sporadic schedules may satisfy the 30-day requirement prior to the completion of a work year. For example, suppose a temporary employee works 20 days in July and then returns to work for the same employer on Dec. 1, 2015. The employee is entitled to paid sick days on the 30th day of work, i.e., after working 10 days in December.

Eligible employees may use sick leave upon reasonable request. They may use sick leave for diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member.

Additionally, an employee who is a victim of domestic violence, sexual assault, or stalking may use sick time under certain scenarios. See California Labor Code § 246.5(a). Employers may on their own, or as part of a collective bargaining agreement, adopt a more generous sick leave use policy so long as it satisfies the minimum requirements of the new law.

Upon termination, employers do not need to cash out an employee's accrued, but unused, sick leave. However, if the employer rehires the employee within a year, it must reinstate that employee's sick leave rights.

The policy reason behind the cap and use limit is to ensure that employees will always have at least 24 hours or three days of sick leave at the beginning of every year.

Employers who rely on the same seasonal workforce each year, or who use on-call employees should keep this requirement in mind. Failure to reinstate sick leave rights can incur penalties and litigation costs.

Sick Leave Options

Employers covered by the new law must decide the method they will use to provide sick leave. The law provides three options for providing sick leave that may be appropriate depending on the employer's planning goals. Options include the accrual method, the lump-sum method or a hybrid of the accrual method.

Under the accrual method, employees accrue sick leave at a rate of no less than one hour for every 30 hours worked. Similar to accrued vacation, an employee may carry over unused accrued sick leave to the next year. Employers may cap sick leave accrual at 48 hours or six days and can limit an employee's use of sick leave to 24 hours or three days for each year of employment.

The policy reason behind the cap and use limit is to ensure that employees will always have at least 24 hours or three days of sick leave at the beginning of every year. Sick leave policies may provide that an employee is entitled to use accrued sick days beginning no later than the 90th day of employment.

Alternatively, employers with existing paid sick leave or paid time off (PTO) policies may elect to provide sick leave pursuant to the lump-sum method. Under the lump sum method, employers can front load an employee's sick leave at the beginning of each year.

Employers do not have to provide additional sick days if their existing policy guarantees that an employee will have at least 24 hours or three days of paid sick leave per year. Notice that an employee who works 10-hour days could be entitled to 30 hours (three days) because the law uses the phrase "at least." Many employers are electing to use the lump-sum method, in order to avoid the administrative hassle of the accrual and carry over requirements.

Employers with existing paid sick leave or paid time off (PTO) policies may also elect to provide sick leave pursuant to a hybrid of the accrual method. Under the hybrid method, employers do not have to provide additional sick days if their existing policy satisfies the accrual, carry-over, and use requirements of the new law.

The cap on accrual, the cap on the number of days that can be used each year, and the list of reasons that paid sick leave may be taken are different than many existing policies and may necessitate updates to existing PTO policies.

Notably, employers using a PTO policy to satisfy the sick leave law must continue to pay out all of the PTO upon termination when sick leave is intermingled with vacation time. Further, employers must still comply with the posting, record keeping, and other requirements of the new law regardless of the option they choose to provide sick leave.

Posters, Recordkeeping and Notice Requirements

Simply providing sick leave is but one of the law's numerous requirements. Additionally, employers must display a poster on paid sick leave where employees can read it easily. They must provide written notice to employees of the company's sick policy at the time of hire. Pay stubs must now show the number of available sick days.

Employers must retain records showing how many hours the employee earned and used for three years. The law prohibits retaliation or discrimination against an employee who requests or uses paid sick leave. Finally, there are penalties for failing to comply

with these requirements. Grocers should start planning early to avoid such penalties.

Considerations

The law raises numerous concerns about the proper implementation of the new requirements to business practices in the grocery industry. For example, the new law is ambiguous as to what constitutes a sick day for employees who work variable work shifts, e.g., three 4-hour days followed by two 8-hour days.

Employers with existing paid sick leave or paid time off policies should carefully review such policies in light of the new paid sick leave law.

Employers using the accrual method must also cope with an ambiguity concerning the definition of "paid sick days" and the ability to limit the use of sick days to "24 hours or three days." For example, if an employee regularly works ten hours per day, it is unclear whether the limit is 24 hours or 30 hours (three paid sick days). Until the Labor Commissioner, courts, or administrative agencies provide additional guidance, employers should be mindful of the aforementioned ambiguities in the new law.

Conclusion

Although the objectives of the new law are straightforward, the failure to properly plan for and implement its requirements can be costly to employers. Employers with existing paid sick leave or paid time off policies should carefully review such policies in light of the new paid sick leave law.

Human resources departments should obtain and display the necessary notices and posters. Payroll departments should revise wage statements. In light of the complex and unclear requirements of the new law, employers should consider consulting with a knowledgeable employment law attorney. ■

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