

AB 1522: NEW PAID SICK LEAVE LAW QUESTIONS AND ANSWERS REGARDING IMPLEMENTATION

On May 7, 2015, Keenan presented a webinar on California's new paid sick leave law, the Healthy Workplaces, Healthy Families Act of 2014, which goes into full effect on July 1, 2015. Since that webinar, we have received a number of questions on how to implement the new law. In the absence of clarifying regulations, we have been working to get clarification on these questions from the Department of Industrial Relations, Division of Labor Standards Enforcement (DLSE). Below are a few questions where the DLSE has provided additional guidance.

Q1: Is the 90 day waiting period calendar days or working days?

A1: Calendar Days

Q2: With the front-loading method, does the 90 day waiting period still apply, or is the employee eligible to use sick pay on the first day of employment?

A2: The waiting period still applies. You grant the 24 hours at the start of the 12 month period; however, the employee is not eligible to use it until they have completed the 90 day waiting period.

Q3: How does the law interact with the law governing retired annuitants at public agencies? Some retired annuitants are allowed to return to employment, but they are subject to legal restrictions on how much they can earn as well as on receiving any other benefit, incentive, compensation in lieu of benefits, or other form of compensation.

A3: The DLSE's response to this question directed us to the exemptions listed in Labor Code §245.5 (collectively bargained employees who are entitled by bargaining agreement to paid sick time, providers of in-home support services and certain airline employees) as the "only" exemptions to the sick leave requirement. The DLSE did not explicitly say this, but unless a retired annuitant falls into one of those categories, then he or she is entitled to accrue and use paid sick leave under the new law. We also received versions of this question asking about students working for a college under Federal Work Study and salaried elected officials. We believe the safe course is that unless an employee is specifically exempted under Labor Code §245.5, you must provide them with paid sick leave benefits under the new law.

We received **no** guidance from the DLSE on the following questions:

1. How will AB 1522 work for on-call substitute teachers who choose which days they will work?

In the absence of additional guidance from the DLSE, we believe the approach recommended by School Services of California is best:

"If a substitute employee has a sick leave balance and meets the other criteria for use (past the 90th day of employment, hasn't used more than the maximum number of sick days allowed per year, etc.), they are eligible to use accrued sick leave. However, for a practical application of this, we believe that the sick leave

can only be used on a day when the substitute employee would have been working—in other words, only on a day when an assignment has been offered by the employer.” (“Questions and Answers About the New Sick Leave Law,” The Fiscal Report, May 1, 2015).

2. An employee who works less than 30 days for an employer in a year is not entitled to sick leave. After that person’s one year anniversary, does the 30-day clock start over?

The statute states, “An employee who, on or after July 1, 2015, works in California for 30 or more days **within a year from the commencement of employment** is entitled to paid sick days as specified in this section.” (Labor Code §246(a). Emphasis added.) We believe that this means the clock does not restart in the second year of employment.

For questions regarding this *Briefing*, please contact your Keenan Account Manager.

For more information please use the following link to view our May 7, 2015 webinar – Healthy Workplace Healthy Family Act - AB 1522 Paid Sick Leave: Get Ready!

<http://www.keenan.com/2015/webinar-california-pto-laws/>

Keenan & Associates is not a law firm and no opinion, suggestion, or recommendation of the firm or its employees shall constitute legal advice. Clients are advised to consult with their own attorney for a determination of their legal rights, responsibilities and liabilities, including the interpretation of any statute or regulation, or its application to the clients’ business activities.