

AB 304: CLARIFICATION EFFECTIVE IMMEDIATELY FOR CALIFORNIA'S PAID SICK LEAVE LAW AB 1522

On July 13, 2015, Governor Jerry Brown signed AB 304 into law which amends and clarifies The Healthy Workplaces, Healthy Families Act of 2014, commonly referred to as AB 1522.

AB 304 makes **10 changes** to the existing sick leave law, clarifying many of the areas of the law where employers had questions. The changes below are effective immediately.

1. **Entitlement to leave.** An employee is entitled paid sick leave under the law if the employee works at least 30 days within a year from commencement of employment. AB 304 clarifies that the employee must work at least 30 days for the same employer within a year from commencement of employment to qualify for paid sick leave.
2. **Retired annuitants not entitled to paid sick leave.** One of the open questions after the passage of AB 1522 was whether public agency retirees who returned to work would be entitled to paid sick leave under the law. AB 304 provides that the sick leave law does not apply to “an employee of the state, city, county, city and county, district, or any other public entity who is a recipient of a retirement allowance and employed without reinstatement into his or her respective retirement system.” Note that this provision only applies to retirees under the Public Employees’ Retirement Law (PERL) or the County Employees Retirement Law of 1937 (CERL). It does not apply to retirees under CalSTRS.
3. **Accrual of paid sick leave time.** AB 1522 required employers to provide one hour of sick leave per every 30 hours worked. AB 304 provides that an employer may use a different accrual method, provided that the accrual is on a regular basis so that an employee has no less than 24 hours of accrued sick leave or paid time off (PTO) by the 120th calendar day of employment, or in each calendar year, or in each 12-month period.
4. **Limits on use of paid sick time.** AB 1522 allowed employers to limit an employee’s use of paid sick days to 24 hours or 3 days in each year of employment. As amended by AB 304, the law now allows an employer to limit an employee’s use of paid sick days to 24 hours or 3 days in each year of employment, calendar year, or other 12-month basis. This will allow employers to simplify how they track and account for leave time.
5. **Accounting for unlimited leave on wage statements.** Employers who provide unlimited sick leave to their employees may satisfy the leave notice requirement by indicating “unlimited” on the employee’s wage statement.

6. **Calculation of sick pay.** AB 1522 provided that if an employee in the 90 days before taking accrued leave had different hourly rates, or was a non-exempt salaried employee, then the rate of pay would be calculated by dividing the employee's total wages (excluding overtime premium pay) by the employee's total hours worked in the full pay periods of the prior 90 days of employment. AB 304 revises this section to break out exempt employees and non-exempt employees. For non-exempt employees, the employer can use either of the following two methods:

1. Dividing the employee's total wages (excluding overtime premium pay) by the employee's total hours worked in the full pay periods of the prior 90 days of employment; **or**
2. Calculate paid sick time in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, regardless of whether the employee actually works overtime in that workweek.

For exempt employees, an employer would calculate paid sick time in the same manner as it calculates wages for other forms of paid leave time.

7. **Reinstatement of sick time for returning employees.** AB 1522 requires an employer to reinstate accrued paid sick leave time to an employee who is rehired within a year of termination. AB 304 makes it clear, however, that this obligation does **not** apply to accrued PTO for which the employee was paid at the time of termination, resignation or separation from employment. This will eliminate the double-dipping issue for employers that provide paid sick leave through PTO plans.

8. **An additional option for how an employer's existing PTO program can qualify as sufficient under the law.** AB 1522 provides that an employer is not required to provide additional paid sick days if it has a paid leave or PTO policy that makes leave available for the same purposes and under the same conditions as AB 1522 and satisfies its accrual, carry over and use requirements. In addition to this provision, AB 304 exempts an employer from providing additional paid sick days if it meets one of the following in lieu of the accrual, carryover and use requirements of AB 1522:

- a. It provided paid sick leave or PTO to a class of employees prior to January 1, 2015 pursuant to a policy that used an accrual method different than one hour per 30 hours worked. The accrual must be on a regular basis so that an employee (including one hired into that class of employees after January 1, 2015) has no less than one day or eight hours of accrued sick leave or PTO within three months of employment, of each calendar year, or each 12-month period and the employee was eligible to earn at least three days or 24 hours of accrued sick leave or paid time off (PTO) within nine months of employment. Note that this standard is similar to, but not exactly the same as, the alternate method for accrual outlined in #3, above.
- b. It modified the accrual method used in the policy it had in place prior to January 1, 2015. In this case, the employer must comply with any accrual method allowed under AB 304 or front-load leave at the beginning of each employment year, calendar year or 12-month period.

9. **State Workers Excluded.** The State of California is not required to provide additional paid sick time to state workers covered by mandatory leave statutes or bargaining agreements superseding those statutes. This exclusion applies only to state employees, and not employees of local agencies.

10. **Recordkeeping Obligation Clarified.** AB 1522 requires employers to keep records for three years documenting the hours worked and paid sick days accrued and used by an employee. AB 304 clarifies that an employer has no obligation to inquire into or record the purposes for which an employee uses sick leave or PTO. Therefore, if an employer has a PTO policy in place, it will be sufficient to keep records and document the hours worked, PTO accrued and PTO used by the employee.

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

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