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**LEGISLATORS TRY EMERGENCY SURGERY TO CURE NEW SICK LEAVE LAW**

Written by: Carl Larson

Lawmakers are rushing to the aid of the new sick leave law known as the Healthy Workplaces, Healthy Families Act of 2014 (The Act). Some poorly written provisions have employers experiencing symptoms of confusion and disorientation. The Act takes effect July 1, 2015, and employers are hoping the amendments proposed in AB 304 arrive in time. A flurry of activity on the bill in early June saw the bill ordered to a third reading on the assembly floor and tagged as urgency legislation in its fifth version. However, that tag requires the bill to pass with a 2/3 majority vote in both houses. The Senate hasn't even weighed in on the bill yet. As of June 18, 2015, the bill has been ordered to an additional third reading following further amendments. With precious time ticking away to save the patient, The Act's effective date may end up being pushed back (as happened in Massachusetts).

The biggest headaches stem from The Act's required accrual rate for paid sick leave (PSL). The law as currently written requires employers to track sick leave by each 30 hour period worked by an employee. Many employers accrue PSL on a per-pay period basis as opposed to an hourly basis. The amendments will allow an employer to use any accrual basis it chooses so long as the accrual period is regular (each week or each pay period) and will result in at least 24 hours of sick time accrual by the 120th calendar day of employment.

Another issue is when employers who choose the "frontloading" option of providing at least three days of sick leave credit are required to credit that leave. The Act provides that the leave must be provided "at the beginning of each year." It is not clear whether that means each calendar year, each year of employment or each 12-month period. The amendments provide that the employer can choose between the employment year, the calendar year or 12 month period. This would also make it very clear that prorating frontloaded leave would not comply with The Act.

The formula for how PSL is paid out to workers receiving varying rates of pay (commission, piece-rate, etc.) would also be changed by AB 304. The amendment makes clear that overtime is excluded from the 90 day average of hourly pay.

Along with the obligation to provide sick leave comes the obligation to track, record and report the number of sick days used. The amount of leave available and used must be provided on an employee's check stub and records kept for three years. The amendments clarify that certain employers who have an unlimited sick leave policy merely need to indicate that sick leave is unlimited on pay stubs. For employers that provide PTO that doesn't differentiate between sick leave and personal time, the amendments make clear that an employer is not required to inquire into the purpose of an employee's PTO day.

Employers are also worried about the reinstatement provisions for retaining sick leave. Employers are not required to cash out sick leave provided pursuant to The Act, but are required to restore any unused sick leave balance to any employees rehired within a year of separation. Employers that cash out sick leave and/or have seasonal employees rehired each year are concerned that the law would require them to restore leave credit previously cashed out. AB 304 makes clear they are not required to do this.

**Counsel to Management:** If these amendments pass they will take effect immediately as an "urgency statute." The Act is still tricky to navigate, even with the proposed amendments. The Act also provides for significant penalties for non-compliance. Careful training of your human resources and payroll staff, meticulous record-keeping and updating your employee handbooks are essential compliance tools. Use this next week wisely to get your company ready.

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