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HEALTHCARE LAWYERS

California's Mandatory Paid Sick Leave Law – Effective July 1, 2015

California's Mandatory Paid Sick Leave Law

Effective July 1, 2015, California law will require employers to meet the new paid sick leave requirements of the **Healthy Workplaces, Healthy Families Act of 2014**. California's new mandatory paid sick leave law applies to all employers broadly, including small employers and nonprofits. Employers with California employees should review their sick leave pay and paid time off policies to ensure they comply with the new California paid sick leave requirements.

Who is Entitled to Paid Sick Days?

- Employees who, on or after July 1, 2015, work in California for 30 or more days within a year from the commencement of employment are entitled to paid sick days.
- The law applies to full-time, part-time, and exempt employees.
- The law applies to non-California residents, seasonal employees, and migrant workers.
- The law does not apply to (i) employees covered by certain valid collective bargaining agreements, (ii) employees providing certain in-home supportive services under the Welfare and Institutions Code; or (iii) employees of air carriers as flight deck or cabin crew members who are provided with compensated time off equal to or exceeding the amount provided under the new law.

What Are the Requirements?

- **Election**. Beginning on July 1, 2015, or at the commencement of employment, whichever is later, Employers must choose one of two options:

a. Accrual. Paid sick days are accrued by an employee at the rate of not less than one hour per every 30 hours worked. Exempt employees are deemed to work 40 hours per workweek unless the employee's normal workweek is less than 40 hours.

b. Upfront Award. Employers may grant employees the full amount of paid sick leave at the beginning of each year. No accrual or carry over is required if the full amount of leave is granted at the beginning of each year.

- **Use of Paid Sick Leave**. Under the accrual election only, employees are entitled to use accrued paid sick days beginning on the 90th day of employment, after which day the employee may use paid sick days as they are accrued.
- **Cap on Use.** An employer may limit an employee's use of paid sick days to 24 hours or three days in each year of employment.
- **Purposes of Sick Leave.** Upon the oral or written request of an employee, an employer must provide paid sick days for (i) the diagnosis, care or treatment of an existing health condition of, or preventative care for, an employee or an employee's family member and (ii) an employee who is a victim of domestic violence, sexual assault, or stalking.
- **Rate of Pay.** Employees are entitled to a rate of pay equal to the employee's hourly wage.

- **Carry Over and Cap on Accrual.** Under the accrual election only, accrued paid sick days carry over to the following year of employment and may be capped at 48 hours or six days. If the employee is granted an upfront award of sick days no carry over is required.

- **Employers With Existing Paid Sick Leave or Paid Time Off Policies.** An employer is not required to provide additional paid sick days if the employer has a paid sick leave or paid time off policy that satisfies the accrual, use, and carry over requirements of the new law. Please note that sick leave must be an existing subcategory of paid time off under the policy for this exemption to apply.

- **No Pay-Out Upon Termination.** An employer is not required to provide compensation to an employee for accrued and unused paid sick days upon termination, resignation, retirement, or other separation from employment.

- **Notice by Employer.** Employers are required to provide employees with a written notice regarding paid sick leave entitlements at the time of hire. Additionally, employers must provide employees with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement or in a separate writing provided on the designated pay date with the employee's payment of wages.

- **Notice by Employee.** Employees must provide Employers with reasonable advance notification if the need for paid sick leave is foreseeable. If the need for paid sick leave is unforeseeable, employees are required to provide notice of the need for leave as soon as practicable.

- **Posting Requirements.** Employers are required to display a poster in a conspicuous place explaining employees' rights under the new law. The California Labor Commissioner has prepared a poster containing the required information.

- **Record-Keeping.** Employers are required to keep at least three years of records documenting the hours worked and paid sick days accrued and used by employees, and must allow the Labor Commissioner access to the records. If an employer does not maintain adequate records it is presumed that an employee is entitled to the maximum number of hours accruable.

- **No Retaliation or Discrimination.** Retaliation or discrimination against an employee who requests paid sick days or uses paid sick days is prohibited and an employee has a right to file a complaint with the Labor Commissioner against an employer who retaliates or discriminates against the employee.Upfront Award. Employers may grant employees the full amount of paid sick leave at the beginning of each year. No accrual or carry over is required if the full amount of leave is granted at the beginning of each year.

How is the Paid Sick Leave Law Enforced?

- The Labor Commissioner enforces violations of California's mandatory paid sick leave law.
- Employers that violate the paid sick leave law may be subject to administrative fines for up to three times the unpaid sick pay due as well as fines ranging from $50 to $4,000 per violation. Additionally, employers may be required to pay attorneys' fees and costs related to a civil action brought by the Labor Commissioner or Attorney General.

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