

CLIENT NEWS BRIEF

New Changes to Paid Sick Leave Law Effective Immediately

On July 13, 2015, Governor Brown signed Assembly Bill (AB) 304 into law, which clarifies the provisions of the Healthy Workplaces, Healthy Families Act of 2014 (Act), also known as AB 1522 or the "paid sick leave law." The Act expanded the right to paid sick leave to cover many more part-time employees in California. AB 304 clarifies portions of the Act and adds new options for compliance with the requirements of the Act. AB 304 was passed as an urgency measure and its provisions are effective immediately. Employers should ensure that their policies comply with AB 304.

The main changes to the Act made by AB 304 include:

- Exclusion for Some Retirees. The Act, as amended by AB 304, excludes specified retirees from the definition of "employee." This means that specified retirees are not entitled to paid sick leave benefits under the Act. The Act now provides that the term "employee" does not include a public employee who receives a retirement allowance and is employed without reinstatement into his or her respective retirement system under the Public Employees' Retirement System (CalPERS) or the County Employees Retirement Law of 1937. This new exclusion does not apply to the California State Teachers Retirement System (CalSTRS).
- Alternative Accrual Methods. Previously, the Act required that employees accrue at least one hour of paid sick leave for every 30 hours worked. In addition to this option, Labor Code section 246 now also allows employers to use the following accrual methods:
 - 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 by the 120th calendar day of employment or each calendar year, or in each 12-month period."
 - An employer may provide not less than "24 hours or three days of paid sick leave that is available to the employee to use by the completion of his or her 120th calendar day of employment."

While now a part of the Act, employers should use caution in applying these alternative accrual methods and be mindful that the Labor Commissioner may provide further clarification regarding their use.

- "Grandfather Clause" for Paid Leave Policies. An employer is not required to provide additional paid sick days if, prior to January 1, 2015, the employer provided a paid sick leave policy or paid time off (PTO) policy, that meets specified requirements, to a class of employees and the leave may be used for the same purposes and under the same conditions as specified in the Act. Under this option, the Act now allows these policies to continue for both current and new employees in the class covered by such policies if the policy: 1) provides at least one day

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or eight hours of paid sick leave or PTO within three months of employment of each calendar year, or each 12-month period; and 2) the employee was eligible to earn at least three days or 24 hours of paid sick leave or PTO within nine months of employment.

If the employer changes the accrual method used in the grandfathered paid sick leave or PTO policy it had in place, the policy will lose its grandfathered status and the Act's accrual requirements will apply.

The applicability of this "grandfather clause" will depend on the policy the employer had in place prior to January 1, 2015. We recommend employers work with legal counsel to determine whether the "grandfather clause" applies to a pre-existing paid sick leave or PTO policy.

- Alternative Method for Calculating Rate of Pay. The Act, as amended by AB 304, now provides two options for calculating the rate of pay for paid sick leave for nonexempt employees. The employer may either:
 - 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; or
 - Calculate paid sick time by dividing the employee's total wages, not including overtime pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.
- No Requirement to Reinstate Paid Sick Leave if Paid Out at Separation. AB 304 clarifies that an employer is not required to reinstate the paid time off that the employer paid at the time of termination, separation, or resignation of employment.

AB 304 addresses several of the questions that employers had raised as they worked to implement the Act. However, there are still a number of uncertainties regarding the Act's interpretation. If you have questions about how this legislation will affect any of your employee groups or classifications, please contact one of our [nine offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#), or download our [Client News Brief App](#).