REMINDER: California Employers Must Implement Paid Sick Leave By July 1

May 29, 2015

Last October, we sent out the following article about California's new Paid Sick Leave law. Because the law requires that virtually all California employers implement this paid sick leave starting July 1, 2015, we wanted to send out this alert again as a reminder.

True to its reputation as being friendly to employees and their families, the state of California has enacted SB 1522, requiring that effective July 2015, virtually all California employers, regardless of size, provide paid sick leave to all their employees.

Who is covered?

Except for domestic workers and certain union employees, all employees are covered under the new paid sick leave law. Once an employee has worked 30 hours, exempt or non-exempt, he or she is eligible for sick leave benefits.

Employers who already provide to all employees sick or paid time off ("PTO") benefits which exceed the requirements of SB 1522 need not implement a new policy. Employers who provide sick or PTO benefits but not to all employees will need to implement a new policy for all employees.

How much sick leave is required?

SB 1522 contemplates two ways for employers to comply with the sick leave law. First, employees can be allowed to accrue sick time as they work. In that case, employees must receive at least one hour of paid sick leave per every 30 hours worked. Employers are not obligated to allow total accrued paid sick leave to exceed 48 hours or six days. Employers may implement a policy that requires that employees wait 90 days until they can use whatever sick leave has been earned. They also limit the use to three days per year.

Under the new law, accrued sick leave "shall carry over to the following year of employment," however, the employer may cap the accrual at no less than 24 hours or three days.

As an option, if the employer wishes to grant three full days of sick leave to all employees at the start of the year and upon hire, then it need not deal with the accrual or carry over. The goal of the new law is for

employees to have three full days of sick leave to use at the start of every year.

How is the leave used?

How much paid sick leave time an employee uses at a time is employee's discretion, although the employer may implement a policy setting a reasonable minimum increment of sick leave to be used. The employer may not set a minimum increment greater than two hours.

Employees are entitled to use their paid sick time for their or a family member's existing health condition, for preventive care, or for employees who are victims of domestic violence. Family member is defined very broadly and includes grandparents and siblings.

Of particular note for restaurants and other hospitality employers, employers cannot require their employees to find other employees to cover shifts due to illness.

New pay stub rules?

Effective in July 2015, employers must track and display the number of paid sick days or hours available at that time on the employee's pay stub, or the employer can give the employee a separate writing each pay day providing that information.

The Act also requires employers to keep for at least three years records regarding employees' paid sick leave accrued and used, and employers must use a new Wage Theft Prevention Act Notice on hiring non-exempt employees.

Of course, there is also a new poster.

More areas for lawsuits?

SB 1522 makes it unlawful for an employer to deny accrued paid sick leave and to retaliate in any way for an employee attempting to use or using paid sick leave.

Under the Act, employees will be allowed to file complaints for violations with the Labor Commissioner, which will have authority to investigate and award damages and penalties. This will be a new area for lawsuits under California's already heavily used Private Attorney General Act ("PAGA").

Compliance

We have been busily updating our clients' employee handbooks and policies to comply with the new law for the past several months, but if you have not yet reviewed or amended your policies for compliance, now is the time. If you have even a single employee in California, you are affected. For assistance on how to comply with the new Paid Sick Leave law in California, please contact your Lathrop Gage attorney or any of the attorneys in the California Labor & Employment Group.