

# Amendments to California Paid Sick Leave Law Effective Immediately

July 20, 2015

On July 13, 2015, Governor Brown signed into law Assembly Bill (AB) 304. The legislation is intended to clarify and facilitate compliance with certain provisions of California's paid sick leave law, known as the Healthy Workplaces, Healthy Families Act of 2014.

As most California employers already know, the paid sick leave law became effective on July 1, 2015. That law requires employers to offer employees, subject to certain eligibility requirements, 3 days or 24 hours of paid sick leave per year, and it includes multiple requirements as to the manner in which employees accrue paid sick leave, the method by which employers calculate the amount to be paid to employees for sick leave, and the way in which employers notify employees of paid sick leave available.

AB 304 is effective immediately. Therefore, just two weeks after many employers implemented policies and revised employee handbooks to comply with the paid sick leave law, employers now may consider revising their policies and employee handbooks in light of the amendments to the law affected by AB 304. The good news for employers is that policies employers implemented to comply with the paid sick leave law will remain lawful and compliant. The changes to the law created by AB 304, however, provide employers with additional options that may reduce their compliance burden. Although it is important to review all the provisions of AB 304 and to consult legal counsel to ensure compliance, the following are some of the more salient changes created by AB 304:

1. AB 304 authorizes employers to use a different accrual method than the one hour for every 30 hours worked accrual rate. Specifically, AB 304 allows an alternative 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." This change is important because it relieves employees of the obligation to track actual hours worked in order to accrue sick pay and it provides employers with flexibility as to the accrual method, provided that employees accrue 24 hours of paid sick leave by the completion of their 120th calendar day of employment.
2. AB 304 clarifies the so-called 30-day rule in the paid sick leave law. Employers are only obligated to provide paid sick leave to employees who, on or after July 1, 2015, have worked 30 or more days within a year from the commencement of employment. AB 304 is clear that the 30 or more days worked must be "for the same employer."



3. AB 304 provides employers with an additional option with respect to disclosing the balance of available sick leave or paid time off to employees on the employees' pay stubs or other documents distributed on the designated date of pay. AB 304 allows employers to indicate "unlimited" on the employees' pay stub or notice provided that the employees, in fact, do receive unlimited paid sick leave or unlimited paid time off.
4. AB 304 provides employers with an additional option for calculating the rate of sick pay for non-exempt employees. Prior to the amendment, the law required employers to pay for sick leave at the employees' average rate of pay over the prior 90 day period. In other words, employers needed to divide the employees' total wages, not including overtime premium pay, by the employees' total hours worked in the prior 90 days of employment. AB 304 allows employers to utilize the alternative - and far simpler - method of applying the regular rate of pay for the workweek in which the employees used paid sick time.
5. AB 304 makes it clear that employers are not required to reinstate accrued sick pay to employees who return to work for the same employers within one year of discharge when the employees cashed out a PTO balance at the time of discharge. The law was previously ambiguous on this issue.
6. The paid sick leave law requires employers to maintain records documenting the accrual and use of sick pay for employees over the prior three years. AB 304 clarifies, however, that employers who provide PTO need not inquire into or record the purposes for which employees use paid leave. The employer need only record the date and amount of PTO used.

Although AB 304 improves the paid sick leave law by clarifying certain ambiguities and providing employers with additional options for compliance, there remain ambiguities and compliance with the law will continue to present challenges for employers. Prudent employers will take affirmative actions, including consulting with legal counsel, to ensure that their policies and practices are lawful.

For those employers who have already worked with Lathrop Gage to revise their handbooks, you may want to consider making changes to your policies to take advantage of some of these new options as part of your 2016 updates. If you wish to discuss how these alternatives may affect you in the meantime, feel free to contact your Lathrop Gage attorney or any one of us in the California Employment Law Group.