

BARTKIEWICZ, KRONICK & SHANAHAN

PAUL M. BARTKIEWICZ
RICHARD P. SHANAHAN
ALAN B. LILLY
RYAN S. BEZERRA
JOSHUA M. HOROWITZ
KATRINA C. GONZALES
ANDREW J. RAMOS

A PROFESSIONAL CORPORATION
1011 TWENTY-SECOND STREET
SACRAMENTO, CALIFORNIA 95816-4907
(916) 446-4254
FAX (916) 446-4018

E-MAIL bks@bkslawfirm.com

Of Counsel
STEPHEN A. KRONICK

MEMORANDUM

To: Public Agency Clients

From: Bartkiewicz, Kronick & Shanahan

Date: February 11, 2015

Re: Assembly Bill 1522 – New Paid Sick Leave Requirement

On September 10, 2014, Governor Brown signed into law Assembly Bill 1522, the Healthy Workplaces, Healthy Families Act (“AB 1522”). AB 1522 (codified as new Labor Code sections 245-249) requires all private and public employers, regardless of size, to provide paid sick leave to their employees under certain specified circumstances beginning on July 1, 2015. You will need to check your agency’s paid sick leave policy to determine whether it complies with AB 1522’s new requirements described below.

Entitlement to Paid Sick Leave

AB 1522 applies to all full-time and part-time employees who have worked for 30 or more days within a year of commencing their employment.

Excluded Employees

AB 1522’s paid sick leave requirements do not apply to employees who are covered by a valid collective bargaining agreement that: (1) provides for the wages, hours of work, and working conditions of employees; and (2) provides for paid sick days or a paid leave/paid time off policy that permits the use of sick days for covered employees, final and binding arbitration of disputes concerning the application of its paid sick day provisions, premium wage rates for all overtime hours worked, and regular hourly pay rates of not less than 30% more than the state minimum wage rate.

Employees in the construction industry who are covered by a valid collective bargaining agreement that meets all of the above requirements also are excluded from AB 1522’s paid sick leave requirements, provided that the agreement was entered into before January 1, 2015 or expressly waives AB 1522’s requirements. Other excluded employees include providers of in-home support services and certain airline industry employees who are covered by federal law.

Amount, Accrual, and Use of Paid Sick Leave

Eligible employees accrue one hour of paid sick leave for every 30 hours worked beginning either on July 1, 2015 or, if an employee is hired after July 1, on his or her first day of work. Employees who are exempt from state overtime pay requirements as administrative, executive, or professional employees under the Industrial Welfare Commission's wage orders are deemed to work 40 hours a week, unless their normal workweek is less than 40 hours. In that case, the employee accrues paid sick days based on the employee's normal workweek.

Employees may begin using their accrued paid sick days on the 90th day of employment, after which they may use paid sick days as they accrue. Accrued paid sick days may be carried over to the following year. However, an employer may limit an employee's use of paid sick days to 24 hours or three days in each year of employment, and may limit accrual of paid sick leave to a maximum of 48 hours or six days. An employer also may lend paid sick days to an employee in advance of accrual at the employer's discretion and with proper documentation.

An employee must give reasonable advanced notice of the need to use his or her paid sick leave when foreseeable; otherwise, the employee must give notice as soon as it is practicable.

An employer is not required to compensate an employee for his or her unused paid sick leave upon termination, resignation, retirement, or other separation from employment. However, if the employer rehires a former employee within one year of termination, that employee is entitled to use previously accrued paid sick leave.

Rate of Pay for Paid Sick Leave

The rate of pay for paid sick leave is the employee's normal rate of pay. If, during the 90 days prior to the employee's use of paid sick leave, he or she had a different pay rate, was paid on commission or piece rate, or was a non-exempt salaried employee, then the rate of pay must be calculated by dividing the employee's total wages (not including overtime premium pay) by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

Purposes for which Paid Sick Leave May Be Used

Paid sick leave may be used for the diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member (which includes a biological, step, adopted or foster child (regardless of age) or parent; spouse; registered domestic partner; grandparent; grandchild; and sibling). While AB 1522 does not define "health condition," it appears to encompass any absence that relates to illness or injury. In addition, employees who are victims of domestic violence, sexual assault, or stalking may use paid sick days to obtain legal or medical services relating to those circumstances.

Posting, Notice, and Recordkeeping Requirements

AB 1522 requires employers to keep, for at least three years, records documenting the hours worked and paid sick days accrued and used by its employees, and to allow the Labor Commissioner access to those records upon request. Employers also must make such records available to the employee upon reasonable request.

AB 1522 also requires employers to (1) display a new poster¹ explaining employees' rights under AB 1522, (2) provide an updated "Wage Theft Prevention Act" notice² (required to be given to new non-exempt employees under a 2012 law), (3) include accrued, available paid sick leave balances on their employees' itemized wage statements or provide this information in a separate writing on designated pay dates, and (4) provide written notice to new employees regarding their rights under AB 1522.

Employers with Existing Paid Sick Leave Policies

Employers that have existing paid sick leave policies are not required to provide additional paid sick leave under AB 1522 if their policies provide paid sick leave in the same amount, and which may be used under the same circumstances provided by AB 1522. Their policies also must meet at least one of the following conditions:

1. The policy satisfies the accrual, carry over, and use requirements provided by AB 1522; or
2. The policy provides no less than 24 hours or three days of paid sick leave, or equivalent paid leave or paid time off, for employee use for each year of employment or on a calendar or 12-month basis.

AB 1522 imposes several new requirements relating to the provision of paid sick leave to employees. If your agency already has an existing paid sick leave policy in place, you must review that policy to determine whether it complies with AB 1522. In addition, if your agency has collective bargaining agreements in place for some or all of your employees, you will need to check the provisions in those agreements to determine if your covered employees are "excluded employees" under AB 1522 as discussed above.

Please let us know if you would like assistance in reviewing and amending your current policy. If you have any questions or need additional information concerning AB 1522, please contact Katrina Gonzales at kcg@bkslawfirm.com or (916) 446-4254.

1 Poster template available at http://www.dir.ca.gov/DLSE/Publications/Paid_Sick_Days_Poster_Template_%2811_2014%29.pdf

2 Notice template available at http://www.dir.ca.gov/DLSE/Publications/LC_2810.5_Notice_%28Revised-11_2014%29.pdf.