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HEADS UP!
Lawsuit Prevention for Employers

CALIFORNIA'S MANDATORY PAID SICK LEAVE REQUIREMENTS

Effective July 1, 2015, California employers, regardless of size, are required to provide paid sick leave benefits to eligible employees. The new requirements are summarized as follows.

The new law applies to employees working in California and who work 30 days or more within a year from the commencement of employment, or July 1, 2015, whichever is later. Consequently, the earliest that employees can begin to accrue benefits is July 31, 2015.

Amount of Accrual

Eligible employees accrue sick leave at a rate of no less than one hour for every 30 hours worked, which may be used for specified purposes. Full time employees would therefore earn benefits of approximately eight and one-half days (or 69 hours) each year.

Employees who are exempt from overtime compensation requirements earn benefits at the same rate, except that such employees who work part time accrue benefits on a prorated basis based on the actual number of hours worked.

Unused Benefits

Employers are allowed to place restrictions on the amount of sick leave utilized each year. For example, employers may limit eligible employees to taking three days (24 hours) of benefits each year. Unused benefits will be added to the next year's accrual. Employers may limit total benefit accrual to a total of six days, or 48 hours, of paid benefits.

Alternatively, employers wishing to avoid carrying unused benefits from year to year can "frontload" the maximum usable annual accrual (three days) into the sick leave accounts of eligible employees.

Use of Benefits

Employers may restrict the minimum amount of sick leave that can be used at one time, as long as the minimum that can be used is not less than two hours.

Employees have the right to use accrued sick leave at any time with reasonable prior verbal notice after 90 days of employment.

Kin Care Rules Apply

Sick leave may be taken for the employee's own health condition, a family member's health condition, or if the employee is a victim of domestic assault, sexual violence and/or stalking. The same rights available under so-called "kin-care" statutes are applicable to paid sick leave under the new law.

While most states provide that employers are free to mandate that sick leave benefits will be available only when an employee is personally sick, California, by contrast, requires that employees be allowed to use at least half of their annual sick leave accrual to attend to the illness of a child, parent, spouse, domestic partner or child of a domestic partner.

In addition, California law allows employees to use sick leave benefits even though they are not ill. For example, Labor Code, section 230.2 provides victims of serious crimes the right to miss work and use sick leave benefits while participating in judicial proceedings relating to such crimes. This right extends to a crime victim's immediate family members, registered domestic partner and the children of a domestic partner.

Payment of Benefits

Unlike vacation benefits, which is governed by agreement and can include only the employee's base rate of pay, sick pay must be paid at the employee's regular rate of pay, which includes all forms of compensation, such as differentials, bonuses and commissions.

Similarly, employers are not required to pay accrued but unused sick leave benefits at the time of separation, unless such benefits are combined with vacation benefits in a single account, such as a personal time off (PTO) account.

If an employee is rehired within one year from the date of separation, previously accrued but unused sick leave must be reinstated.

Employers already utilizing sick leave policies consistent with the new law are not required to provide additional leave, but are required to comply with new posting and record keeping requirements as of July 1, 2015.