Good News for California Employers:
Clarifying Amendments to the Healthy Workplaces,

Effective July 13, 2015, California Governor Jerry Brown signed into law critical amendments that clarify many ambiguities to the state’s new sick leave law—known as the Healthy Workplaces, Healthy Families Act of 2014. The changes not only clarify some of the previously confusing provisions of the law, but also recognize the existing and varied structures of paid leave benefits utilized by California employers. The new changes include:

30 Day Rule Clarified—“Same Employer”
The original paid sick leave law required that an employee work in California for 30 or more days within a year from the commencement of employment (on or after July 1, 2015), but it did not specify that the employee must work for the same employer. The amendment clarifies that in order to qualify for paid sick leave, the employee must work for the same employer during that time.

Accrual Method Options Expanded
The original paid sick leave law required employers to either: (1) provide sick pay at the rate of at least one hour for every 30 hours worked; or (2) provide an upfront allocation of at least 24 hours of sick pay.

The amendments recognize that some employers may use a different accrual method, other than providing one hour per every 30 hours worked, and allows them to continue to do so, provided that the accrual is on a regular basis so that the employee has no less than 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment, each calendar year, or each 12-month period.

Existing Plans Protected
The amendments provide a safe harbor for employers who had existing sick leave or paid time off plans in place prior to January 1, 2015. The law allows employers to maintain their pre-existing policies so long as the plan provides paid time off accrual on a regular basis such that an employee has no less than one day, or eight hours, of accrued sick leave or paid time off within three months of each year of employment, and is eligible to earn at least three days or 24 hours of paid time off (PTO) within nine months.

If an employer changes its pre-existing accrual method, then it must comply with the accrual or front-load requirements of the law.

It should be noted, however, that even if an employer’s pre-existing sick leave or PTO plan is protected under the safe harbor provisions for accrual purposes, the employer must still comply with other requirements of the law (e.g., pay calculation, broad definition of family member, notice, and recordkeeping).

Sick Leave Inquiry And Recording Requirements Clarified
The amendments clarify that an employer has no obligation to inquire into or record the purposes for which an employee uses sick leave or PTO.

“Unlimited” Sick Leave Policies Addressed
The paid sick leave law requires employers to provide the balance of available sick leave or PTO on the employee’s wage statements. The amendments recognize that some employers have unlimited PTO or sick leave policies, and allow those employers to indicate “unlimited” on wage statements.

The amended law delays the requirement to provide the available sick pay balance on each wage statement for employers covered by Wage Order 11 (broadcasting industry) and Wage Order 12 (motion picture industry) until January 21, 2016.

Required Rate of Sick Pay Clarified

The original law required employers to pay sick pay at an employee’s average pay rate in the prior 90 days regardless of how the employee is paid (e.g., more than one pay rate, commissions, and piece rate).

The amendments now provide employers with more than one option for calculating the rate of sick pay.

Non-exempt Employees:

• The 90-Day Method. Employers may calculate the sick pay rate by dividing the employee’s total wages, excluding overtime premiums, by the employee’s total hours worked in the full pay periods of the prior 90 days of employment.

• The Workweek Method. Employers may calculate the sick pay rates in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek. Specifically, employers may calculate the rate of pay by taking the total compensation earned during the workweek, and dividing it by the total hours worked during the workweek.

Exempt Employees:

• Paid sick time for exempt employees can be calculated in the same manner that the employer calculates wages for other forms of paid leave time.

Sick Pay Reinstatement Rights Clarified

The new law clarifies that an employer is not required to reinstate accrued PTO to an employee who is rehired within one year of separation from employment, assuming the PTO was paid out at the time of termination, resignation, or separation. Note that under California law, an employee’s accrued and unused PTO are deemed “wages,” and accordingly must be paid to the employee at the time an employee voluntarily or involuntarily terminates.

Next Steps

The new amendments are a welcome change for employers because they help clarify and address some ambiguous language in the original law. Employers should review the amendments and begin the process of updating their policies, procedures, and forms to ensure compliance with the new amendments.

Employers can review the final text of the amended regulations here.

If you have questions, please contact any of the Winston & Strawn Labor and Employment Department attorneys listed on the next page or your usual Winston & Strawn LLP contact.
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