

Sick Leave for All

We have received many questions about Assembly Bill (AB) 1522 (Chapter 217/2014), the Healthy Workplaces, Healthy Families Act of 2014, which provides sick leave to California employees that work 30 days or more per year. The purpose of this article is to outline the major provisions of this new law, which goes into effect on July 1, 2015.

Inclusions and Exclusions

AB 1522 is applicable to all employers in California and specifically includes political subdivisions of the state, which includes local school agencies. There is no minimum size requirement-this new law applies to all employers.

There are some groups of employees that are excluded in this new law. The exclusion that may be applicable for local educational agencies (LEAs) is for employees covered by a collective bargaining agreement (CBA). The CBA must provide for all of the following:

- Paid sick leave
- Final and binding arbitration of disputes regarding sick leave
- Premium wage rates for overtime
- Regular hourly rate of pay of not less than 30% more than state minimum wage

Many local agency CBAs do not meet all of the above criteria. However, whether a local agency CBA meets the criteria or not, all regular employees of local school agencies are already eligible to earn sick leave based upon the Ed Code, and the rate of accrual required by the Ed Code is greater than that required by AB 1522. .

Other Employees

The most significant impact of AB 1522 on local schools and community colleges will be the added requirement to provide sick leave to those employees that do not earn sick leave now- substitutes, student workers, yard duty supervisors, etc. Although this will cause an additional expense, the added administrative burden could be felt more significantly than the cost if the local technology system does not provide the necessary functionality.

Most employers are already required to implement a method of tracking hours of service for all employees that are not scheduled to work at least 30 hours per week for purposes of the Affordable Care Act. This same methodology can be used to track days and hours worked for AB 1522 purposes:

- To determine when the employee has worked at least 30 days in a year and therefore becomes eligible to begin accruing sick leave
- To accrue sick leave at the rate of at least one hour for every 30 hours worked, retroactive to the first day worked, or July 1, 2015, whichever is later.

Employees exempt from the Fair Labor Standards Act (management and certificated employees) are assumed to work 40 hours per week, unless the standard work week is less, as is likely the case for certificated substitutes. Exempt employees will accrue sick leave based upon the number of hours in the standard work week.

For employees accruing sick leave under the provisions of this new law, the employer can limit the total accrued balance to 48 hours, or six days.

Use of Sick Leave

Employees are eligible to use sick leave beginning on the 9th day of employment. Sick leave can be used for the diagnosis, care, or treatment of an existing health condition, as well as preventive care, for the employee or family member. "Family member" is defined in AB 1522, Labor Code Section 245.5(4) (c) as:

- Child (biological , adoptive, foster, step, legal ward, or to whom employee stands in loco parentis), regardless of age or dependency status
- Parent (biological, adoptive , foster, step, legal guardian , or person who stood in loco parentis when employee was a minor) of the employee or the employee's spouse/registered domestic partner
- Spouse or registered domestic partner
- Grandparent
- Grandchild
- Sibling

In addition, sick leave can be used for an employee that is a victim of domestic violence, sexual assault, or stalking.

The employee is required to provide reasonable advance notification if the need to use sick leave is foreseeable. If not, the employee is required to provide notice as soon as practicable. The use of sick leave can be limited by the employer to 24 hours or three days per year of employment, calendar year, or 12-month basis. The employer can require a reasonable minimum increment- up to two hours-of sick leave to be used at a given time. The employer cannot require the employee to find a replacement worker.

Other Provisions

Unused sick leave carries over from year to year, and there is no requirement to pay out unused sick leave upon separation of employment. However, if the employee returns to the employer within one year, the sick leave balance is restored. The employee is eligible to use the sick leave balance and also begins accruing additional sick leave upon rehire.

AB 1522 requires that the accrued sick leave balance be provided in writing to each employee on or with each paycheck. This may be problematic for local agencies that do not have an automated system to handle leave accruals and usage.

How to Prepare

Local school agencies should do the following in preparation for the implementation of AB 1522:

- For regular employees, local policies and CBAs may need to be updated to ensure that "the employer makes available an amount of leave that may be used for the same purposes and under the same conditions ..." as specified in AB 1522. For example, the reasons for using the appropriate amount of sick leave need to include domestic violence, sexual assault, or stalking, and the definition of "family member" should be commensurate with AB 1522 for purposes of using sick leave.
- For other employees, a tracking mechanism should be developed to measure days and hours worked, and a system of accruing sick leave and posting sick leave usage should be developed.
- For all employees, a way to report the sick leave accrual balance on or with each paycheck should be developed.
- Some LEAs are in cities where there are already local ordinances regarding sick leave accrual and usage, so those provisions will need to be evaluated to determine whether the employer is compliant with AB 1522.

--Charlene Quilao, Suzanne Speck, and Sheila G. Vickers