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LEGAL UPDATE

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September 25, 2014

To: Superintendents, Member School Districts (K-12)

From: Loren W. Soukup, Associate General Counsel LS

**Subject: AB 1522 – Employee Paid Sick Leave
Memo No. 25-2014**

On September 10, 2014, the Governor signed AB 1522¹ which added California Labor Code §§ 245 through 248.5 and amended Labor Code § 2810.5. Effective July 1, 2015, AB 1522 requires that all employers, including school districts, community college districts and county offices of education, provide at least 24 hours or 3 days of paid sick leave per year to employees who work for 30 or more days in a school or calendar year. The paid sick leave will accrue at a rate of no less than one hour for every 30 hours worked and the employees will be entitled to begin using the sick leave after the 90th day of employment.

However, AB 1522 specifically exempts those employees who are covered by a collective bargaining agreement if the agreement includes all of the following:

- The wages, hours of work, and working conditions of the employees;
- Paid sick leave or a paid time off policy that permits the use of sick days for those 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 rate of pay is at least 30% more than the state minimum wage.

¹ Available at: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB1522

Substitute teachers, noon and yard duty aides, and temporary and short-term, non-continuing employees who are not covered by a collective bargaining agreement, whose rate of pay does not exceed 30% more than the state minimum wage and who are not otherwise eligible for the sick leave provided in Education Code §44978, 45191, 87781, or 88191, will be entitled to paid sick leave under this new law, provided they work at least 30 days during the year. The 30-work day accrual is not cumulative as to different school districts; for example, a substitute will be required to work a minimum of 30 days for each individual school district in order to be eligible for the paid sick leave.

Further, the compensation for the sick days must be at the same wage the employee normally earns during regular work hours. An employee who is exempt from overtime requirements, such as an administrative executive or professional employee, is deemed to work 40 hours per week unless the employee's work week is less than 40 hours, in which case the employee shall accrue sick days based upon that normal work week.

AB 1522 also requires employers to provide all employees, at the time of hiring, with a written notice containing information that an employee:

- May accrue and use sick leave
- Has a right to request and use accrued sick leave
- May not be terminated or retaliated against for using or requesting the use of accrued paid sick leave
- Has the right to file a complaint against the employer who retaliates.

In addition, employers will be required to display a poster in a conspicuous place which contains all of the information required under Labor Code § 247(b) and the employer must maintain all records documenting the hours worked and paid sick days accrued and used by an employee for at least three years.

The failure to comply with these new laws will have significant consequences for employers. The new law imposes enforcement mechanisms which allow the Labor Commissioner and Attorney General to bring a civil action against an employer and impose penalties for violations. In addition, the law creates a rebuttable presumption of retaliation against the employer if certain actions by the employer are taken.

In light of the above, it is recommended that educational agencies make a determination as to whether any employees come under this new law and if so, ensure that all proper policies and practices are in place before July 1, 2015. Further educational agencies should review their collective bargaining agreements to ensure that the agreements cover all of the sick leave requirements for exempt employees. Lastly, we advise that districts ensure a system is developed to track the number of days worked by substitute teachers, noon and yard duty aides, and temporary and short-term, non-continuing employees to ensure sick leave is appropriately offered to those employees who work at least 30 days during the year.

Please contact our office with questions regarding this or any other legal matter.