

AB 1522 Questions and Proposed Clean Up Language

Labor Code section 245.

(a) This article shall be known and may be cited as the Healthy Workplaces, Healthy Families Act of 2014.

(b) The provisions of this article are in addition to and independent of any other rights, remedies, or procedures available under any other law and do not diminish, alter, or negate any other legal rights, remedies, or procedures available to an aggrieved person.

Labor Code section 245.5.

As used in this article:

(a) “Employee” does not include the following:

(1) An employee covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of employees, and expressly provides for paid sick days or a paid leave or 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 days provisions or other alternative dispute resolution procedures as negotiated in the collective bargaining agreement, premium wage rates for all overtime hours worked in accordance with applicable law, and regular hourly rate of pay of not less than 30 percent more than the state minimum wage rate.

(2) An employee in the construction industry covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of employees, premium wage rates for all overtime hours worked, and regular hourly pay of not less than 30 percent more than the state minimum wage rate, and the agreement either (A) was entered into before January 1, 2015, or (B) expressly waives the requirements of this article in clear and unambiguous terms. For purposes of this subparagraph, “employee in the construction industry” means an employee performing onsite work associated with construction, including work involving alteration, demolition, building, excavation, renovation, remodeling, maintenance, improvement, repair work, and any other work as described by Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and other similar or related occupations or trades.

(3) A provider of in-home supportive services under Section 14132.95, 14132.952, or 14132.956 of, or Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of, the Welfare and Institutions Code.

(4) An individual employed by an air carrier as a flight deck or cabin crew member that is subject to the provisions of Title II of the federal Railway Labor Act (45 U.S.C. 181 et seq.), provided that the individual is provided with compensated time off equal to or exceeding the amount established in paragraph (1) of subdivision (b) of Section 246.

(5) Student workers.

(b) “Employer” means any person employing another under any appointment or contract of hire and includes the state, political subdivisions of the state, and municipalities.

(c) “Family member” means any of the following:

(1) A child, which for purposes of this article means a biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis. This definition of a child is applicable regardless of age or dependency status.

(2) A biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee’s spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child.

(3) A spouse.

(4) A registered domestic partner.

(5) A grandparent.

(6) A grandchild.

(7) A sibling.

(d) “Health care provider” has the same meaning as defined in paragraph (6) of subdivision (c) of Section 12945.2 of the Government Code.

(e) “Paid sick days” means time that is compensated at the same wage as the employee normally earns during regular work hours and is provided by an employer to an employee for the purposes described in Section 246.5.

Labor Code section 246.

(a) An employee who, on or after July 1, 2015, works in California for 30 or more days within a fiscal year ~~from the commencement of employment~~ is entitled to paid sick days as specified in this section.

(b) (1) An employee shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment or the operative date of this article, whichever is later.

(2) An employee who is exempt from overtime requirements as an administrative, executive, or professional employee under a wage order of the Industrial Welfare Commission is deemed to work 40 hours per workweek for the purposes of this section, unless the employee’s normal workweek is less than 40 hours, in which case the employee shall accrue paid sick days based upon that normal workweek.

(c) An employee shall be entitled to use accrued paid sick days beginning on the 90th day ~~of employment~~ of work, after which day the employee may use paid sick days as they are accrued.

(d) Accrued paid sick days shall carry over to the following year of employment. However, an employer may limit an employee’s use of paid sick days to 24 hours or three days in each year of

employment. This section shall be satisfied and no accrual or carry over is required if the full amount of leave is received at the beginning of each year, in accordance with subdivision (e).

(e) An employer is not required to provide additional paid sick days pursuant to this section, whether or not there is an applicable collective bargaining agreement, if the employer has a paid leave policy or paid time off policy, the employer makes available an amount of leave that may be used for the same purposes and under the same conditions as specified in this section, and the policy does either of the following:

(1) Satisfies the accrual, carry over, and use requirements of this section.

(2) 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 fiscal year of employment ~~or calendar year or 12-month basis~~. For substitute employees, employers may pay the substitute employee one day of paid sick leave for every 30 days worked. For purposes of this section, "substitute employee" is defined as any person who is employed to replace an employee, as defined in Section 245.5, who is temporarily absent from duty.

(f) (1) Except as specified in paragraph (2), an employer is not required to provide compensation to an employee for accrued, unused paid sick days upon termination, resignation, retirement, or other separation from employment.

(2) If an employee separates from an employer and is rehired by the employer within one year from the date of separation, previously accrued and unused paid sick days shall be reinstated. The employee shall be entitled to use those previously accrued and unused paid sick days and to accrue additional paid sick days upon rehiring.

(g) An employer may lend paid sick days to an employee in advance of accrual, at the employer's discretion and with proper documentation.

(h) An employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages. The penalties described in this article for a violation of this subdivision shall be in lieu of the penalties for a violation of Section 226. For employers listed in Section 226 (i), the written notice shall be provided to the employee upon eligibility to take paid sick days and thereafter, no later than 21 calendar days from the request of the employee.

(i) An employer has no obligation under this section to allow an employee's total accrual of paid sick leave to exceed 48 hours or 6 days, provided that an employee's rights to accrue and use paid sick leave under this section are not otherwise limited. Sick leave accrued under this section is not subject to the transfer requirements of the Education Code.

(j) An employee may determine how much paid sick leave he or she needs to use, provided that an employer may set a reasonable minimum increment, not to exceed two hours, for the use of paid sick leave.

(k) The rate of pay shall be the employee's hourly wage. If the employee in the 90 days of employment work before taking accrued sick leave had different hourly pay rates, was paid by commission or piece rate, or was a nonexempt salaried employee, then the rate of pay shall 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 work.

(l) If the need for paid sick leave is foreseeable, the employee shall provide reasonable advance notification. If the need for paid sick leave is unforeseeable, the employee shall provide notice of the need for the leave as soon as practicable.

(m) An employer shall provide payment for sick leave taken by an employee no later than the payday for the next regular payroll period after the sick leave was taken.

Labor Code section 246.5.

(a) Upon the oral or written request of an employee, an employer shall provide paid sick days for the following purposes:

(1) Diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member.

(2) For an employee who is a victim of domestic violence, sexual assault, or stalking, the purposes described in subdivision (c) of Section 230 and subdivision (a) of Section 230.1.

(b) An employer shall not require as a condition of using paid sick days that the employee search for or find a replacement worker to cover the days during which the employee uses paid sick days. However, an employer may require an employee, as part of the request for paid sick days, to certify that the employee is not working for another employer and is not being paid sick leave by another employer on the days requested for paid sick days.

(c) (1) An employer shall not deny an employee the right to use accrued sick days, discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using accrued sick days, attempting to exercise the right to use accrued sick days, filing a complaint with the department or alleging a violation of this article, cooperating in an investigation or prosecution of an alleged violation of this article, or opposing any policy or practice or act that is prohibited by this article. However, an employer may require an employee to complete a written form, which may be electronic, following an oral request for paid sick days within a reasonable time of the use of accrued sick days.

(2) There shall be a rebuttable presumption of unlawful retaliation if an employer denies an employee the right to use accrued sick days, discharges, threatens to discharge, demotes, suspends, or in any manner discriminates against an employee within 30 days of any of the following:

(A) The filing of a complaint by the employee with the Labor Commissioner or alleging a violation of this article.

(B) The cooperation of an employee with an investigation or prosecution of an alleged violation of this article.

(C) Opposition by the employee to a policy, practice, or act that is prohibited by this article.

Labor Code section 247.

(a) In each workplace of the employer, the employer shall display a poster in a conspicuous place containing all the information specified in subdivision (b). The Labor Commissioner shall create a poster containing this information and make it available to employers.

(b) The poster shall state all of the following:

(1) An employee is entitled to accrue, request, and use paid sick days.

(2) The amount of sick days provided for by this article.

(3) The terms of use of paid sick days.

(4) That retaliation or discrimination against an employee who requests paid sick days or uses paid sick days, or both, is prohibited and that an employee has the right under this article to file a complaint with the Labor Commissioner against an employer who retaliates or discriminates against the employee.

(c) An employer who willfully violates the posting requirements of this section is subject to a civil penalty of not more than one hundred dollars (\$100) per each offense.

Labor Code section 247.5.

An employer shall keep for at least three years records documenting the hours worked and paid sick days accrued and used by an employee, and shall allow the Labor Commissioner to access these records pursuant to the requirements set forth in Section 1174. An employer shall make these records available to an employee ~~in the same manner as described in Section 226, upon request, no later than 21 calendar days from the date of the request.~~ If an employer does not maintain adequate records pursuant to this section, it shall be presumed that the employee is entitled to the maximum number of hours accruable under this article, unless the employer can show otherwise by clear and convincing evidence.

Labor Code section 248.5.

(a) The Labor Commissioner shall enforce this article, including investigating an alleged violation, and ordering appropriate temporary relief to mitigate the violation or to maintain the status quo pending the completion of a full investigation or hearing.

(b) (1) If the Labor Commissioner, after a hearing that contains adequate safeguards to ensure that the parties are afforded due process, determines that a violation of this article has occurred, he or she may order any appropriate relief, including reinstatement, backpay, the payment of sick days unlawfully withheld, and the payment of an additional sum in the form of an administrative penalty to an employee ~~or other person~~ whose rights under this article were violated.

(2) If paid sick days were unlawfully withheld, the dollar amount of paid sick days withheld from the employee multiplied by three, or two hundred fifty dollars (\$250), whichever amount is greater, but not to exceed an aggregate penalty of four thousand dollars (\$4,000), shall be included in the administrative penalty.

(3) If a violation of this article results in other harm to the employee ~~or person~~, such as discharge from employment, or otherwise results in a violation of the rights of the employee or person, the administrative penalty shall include a sum of fifty dollars (\$50) for each day or portion thereof that the violation occurred or continued, not to exceed an aggregate penalty of four thousand dollars (\$4,000).

(c) Where prompt compliance by an employer is not forthcoming, the Labor Commissioner may take any appropriate enforcement action to secure compliance, including the filing of a civil action. In compensation to the state for the costs of investigating and remedying the violation, the commissioner may order the violating employer to pay to the state a sum of not more than fifty dollars (\$50) for each day or portion of a day a violation occurs or continues for each employee or other person whose rights under this article were violated.

(d) An employee or other person may report to the Labor Commissioner a suspected violation of this article. The commissioner shall encourage reporting pursuant to this subdivision by keeping confidential, to the maximum extent permitted by applicable law, the name and other identifying information of the employee or person reporting the violation. However, the commissioner may disclose that person's name and identifying information as necessary to enforce this article or for other appropriate purposes, upon the authorization of that person.

(e) The Labor Commissioner or the Attorney General may bring a civil action in a court of competent jurisdiction against the employer ~~or other person~~ violating this article and, upon prevailing, shall be entitled to collect legal or equitable relief on behalf of the aggrieved as may be appropriate to remedy the violation, including reinstatement, backpay, the payment of sick days unlawfully withheld, the payment of an additional sum, not to exceed an aggregate penalty of four thousand dollars (\$4,000), as liquidated damages in the amount of fifty dollars (\$50) to each employee ~~or person~~ whose rights under this article were violated for each day or portion thereof that the violation occurred or continued, plus, if the employer has unlawfully withheld paid sick days to an employee, the dollar amount of paid sick days withheld from the employee multiplied by three; or two hundred fifty dollars (\$250), whichever amount is greater; and reinstatement in employment or injunctive relief; and further shall be awarded reasonable attorney's fees and costs, provided, however, that any person or entity enforcing this article on behalf of the public as provided for under applicable state law shall, upon prevailing, be entitled only to equitable, injunctive, or restitutionary relief, and reasonable attorney's fees and costs.

(f) In an administrative or civil action brought under this article, the Labor Commissioner or court, as the case may be, shall award interest on all amounts due and unpaid at the rate of interest specified in subdivision (b) of Section 3289 of the Civil Code.

(g) The remedies, penalties, and procedures provided under this article are cumulative.

(h) An employer shall not be assessed any penalty or liquidated damages under this article due to an isolated and unintentional payroll error or written notice error, as applicable, that is a clerical or an inadvertent mistake regarding the accrual or available use of paid sick leave. In reviewing for compliance with this section, the factfinder may consider as a relevant factor whether the employer, prior to an alleged violation, has adopted and is in compliance with a set of policies, procedures, and practices that fully comply with this section.

Labor Code section 249.

(a) This article does not limit or affect any laws guaranteeing the privacy of health information, or information related to domestic violence or sexual assault, regarding an employee or employee's family member. That information shall be treated as confidential and shall not be disclosed to any person except to the affected employee, or as required by law.

(b) This article shall not be construed to discourage or prohibit an employer from the adoption or retention of a paid sick days policy more generous than the one required herein.

(c) This article does not lessen the obligation of an employer to comply with a contract, collective bargaining agreement, employment benefit plan, or other agreement providing more generous sick days to an employee than required herein.

(d) This article establishes minimum requirements pertaining to paid sick days and does not preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for greater accrual or use by employees of sick days, whether paid or unpaid, or that extends other protections to an employee.

SEC. 4.

Section 2810.5 of the Labor Code is amended to read:

Labor Code section 2810.5.

(a) (1) At the time of hiring, an employer shall provide to each employee a written notice, in the language the employer normally uses to communicate employment-related information to the employee, containing the following information:

(A) The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable.

(B) Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances.

(C) The regular payday designated by the employer in accordance with the requirements of this code.

(D) The name of the employer, including any "doing business as" names used by the employer.

(E) The physical address of the employer's main office or principal place of business, and a mailing address, if different.

(F) The telephone number of the employer.

(G) The name, address, and telephone number of the employer's workers' compensation insurance carrier.

(H) That an employee: may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

(I) Any other information the Labor Commissioner deems material and necessary.

(2) The Labor Commissioner shall prepare a template that complies with the requirements of paragraph (1). The template shall be made available to employers in such manner as determined by the Labor Commissioner.

(3) If the employer is a temporary services employer, as defined in Section 201.3, the notice described in paragraph (1) must also include the name, the physical address of the main office, the mailing address if different from the physical address of the main office, and the telephone number of the legal entity for whom the employee will perform work, and any other information the Labor Commissioner deems material and necessary. The requirements of this paragraph do not apply to a security services company that is licensed by the Department of Consumer Affairs and that solely provides security services.

(b) An employer shall notify his or her employees in writing of any changes to the information set forth in the notice within seven calendar days after the time of the changes, unless one of the following applies:

(1) All changes are reflected on a timely wage statement furnished in accordance with Section 226.

(2) Notice of all changes is provided in another writing required by law within seven days of the changes.

(c) For purposes of this section, “employee” does not include any of the following:

(1) An employee directly employed by the state or any political subdivision thereof, including any city, county, city and county, or special district.

(2) An employee who is exempt from the payment of overtime wages by statute or the wage orders of the Industrial Welfare Commission.

(3) An employee who is covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of the employee, and if the agreement provides premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than 30 percent more than the state minimum wage.