

ASSEMBLY BILL

No. 11

**Introduced by Assembly Member Gonzalez
(Coauthor: Assembly Member Bonta)**

December 1, 2014

An act to amend, repeal, and add Section 245.5 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 11, as introduced, Gonzalez. Employment: paid sick days: in-home supportive services.

The Healthy Workplaces, Healthy Families Act of 2014 provides, among other things, that an employee who, on or after July 1, 2015, works in California for 30 or more days within a year from the commencement of employment is entitled to paid sick days for prescribed purposes, to be accrued at a rate of no less than one hour for every 30 hours worked. Existing law provides that an employee under the act does not include a provider of in-home support services, as described.

This bill would revise the definition of an employee under the Healthy Workplaces, Healthy Families Act of 2014 to, as of July 1, 2016, include providers of in-home support services, as described.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares the following:

1 (a) Nearly every worker in the State of California will at some
2 time during the year need some time off from work to take care
3 of his or her own health or the health of family members.

4 (b) Many workers in California do not have any paid sick days,
5 or have an inadequate number of paid sick days, to care for their
6 own health or the health of family members.

7 (c) Providers of in-home supportive services under Section
8 14132.95, 14132.952, or 14132.956 of, or Article 7 (commencing
9 with Section 12300) of Chapter 3 of Part 3 of Division 9 of, the
10 Welfare and Institutions Code, do not qualify for the mandatory
11 paid sick leave benefit that had been provided under Assembly
12 Bill 1522, the Healthy Workplaces, Healthy Families Act of 2014.

13 (d) Providing workers time off to attend to their own health care
14 and the health care of family members will ensure a healthier and
15 more productive workforce in California.

16 (e) Paid sick days will have an enormously positive impact on
17 the public health of Californians by allowing sick workers paid
18 time off to care for themselves when ill, thus lessening their
19 recovery time, reducing the likelihood of spreading illness to other
20 members of the workforce, and increasing the likelihood that they
21 seek care from a primary health care provider instead of costly
22 emergency room services.

23 (f) Paid sick days will allow parents to provide personal care
24 for their sick children. Parental care ensures children's speedy
25 recovery, prevents more serious illnesses, and improves children's
26 overall mental and physical health.

27 (g) Providing paid sick days is affordable for employers.

28 (h) Employers who provide paid sick days enjoy greater
29 employee retention and reduce the likelihood of employees coming
30 to work sick. Studies have shown that costs of decreased
31 productivity caused by sick workers exceed the costs of employee
32 absenteeism.

33 (i) Workers whose jobs involve significant contact with the
34 public, such as providers of in-home support services, are very
35 unlikely to have paid sick days. Often, these workers have no
36 choice but to come to work when they are ill, thereby spreading
37 illness to coworkers and customers.

38 (j) Domestic violence and sexual assault affect many persons
39 without regard to age, race, national origin, sexual orientation, or
40 socioeconomic status.

1 (k) Domestic violence is a crime that has a devastating effect
2 on families, communities, and the workplace. It impacts
3 productivity, effectiveness, absenteeism, and employee turnover
4 in the workplace. The National Crime Survey estimates that
5 175,000 days of work each year are missed due to domestic
6 violence.

7 (l) Survivors of domestic violence and sexual assault may be
8 vulnerable at work when trying to end an abusive relationship
9 because the workplace may be the only place where the perpetrator
10 knows to contact the victim. Studies show that up to one-half of
11 domestic violence victims experience job loss. Forty percent
12 reported on-the-job harassment. Nearly 50 percent of sexual assault
13 survivors lose their jobs or are forced to quit in the aftermath of
14 the assaults.

15 (m) Affording survivors of domestic violence and sexual assault
16 paid sick days is vital to their independence and recovery.

17 SEC. 2. In enacting this act, it is the intent of the Legislature
18 to do the following:

19 (a) Ensure that workers in California can address their own
20 health needs and the health needs of their families by requiring
21 employers to provide a minimum level of paid sick days including
22 time for family care.

23 (b) Decrease public and private health care costs in California
24 by enabling workers to seek early and routine medical care for
25 themselves and their family members and to address domestic
26 violence or sexual assault.

27 (c) Protect employees in California from losing their jobs while
28 they use sick days to care for themselves or their families.

29 (d) Provide economic security to employees in California who
30 take time off from work for reasons related to domestic violence
31 or sexual assault.

32 (e) Safeguard the welfare, health, safety, and prosperity of the
33 people of and visitors to California.

34 (f) Extend equal protection of paid sick leave benefits to
35 providers of in-home supportive services.

36 SEC. 3. Section 245.5 of the Labor Code, as added by Section
37 3 of Chapter 317 of the Statutes of 2014, is amended to read:

38 245.5. As used in this article:

39 (a) "Employee" does not include the following:

1 (1) An employee covered by a valid collective bargaining
2 agreement if the agreement expressly provides for the wages, hours
3 of work, and working conditions of employees, and expressly
4 provides for paid sick days or a paid leave or paid time off policy
5 that permits the use of sick days for those employees, final and
6 binding arbitration of disputes concerning the application of its
7 paid sick days provisions, premium wage rates for all overtime
8 hours worked, and regular hourly rate of pay of not less than 30
9 percent more than the state minimum wage rate.

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

26 (3) A provider of in-home supportive services under Section
27 14132.95, 14132.952, or 14132.956 of, or Article 7 (commencing
28 with Section 12300) of Chapter 3 of Part 3 of Division 9 of, the
29 Welfare and Institutions Code.

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

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

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

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

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

9 (3) A spouse.

10 (4) A registered domestic partner.

11 (5) A grandparent.

12 (6) A grandchild.

13 (7) A sibling.

14 (d) "Health care provider" has the same meaning as defined in
15 paragraph (6) of subdivision (c) of Section 12945.2 of the
16 Government Code.

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

21 (f) *This section shall become inoperative on July 1, 2016, and,*
22 *as of January 1, 2017, is repealed.*

23 SEC. 4. Section 245.5 is added to the Labor Code, to read:

24 245.5. As used in this article:

25 (a) "Employee" does not include the following:

26 (1) An employee covered by a valid collective bargaining
27 agreement if the agreement expressly provides for the wages, hours
28 of work, and working conditions of employees, and expressly
29 provides for paid sick days or a paid leave or paid time off policy
30 that permits the use of sick days for those employees, final and
31 binding arbitration of disputes concerning the application of its
32 paid sick days provisions, premium wage rates for all overtime
33 hours worked, and regular hourly rate of pay of not less than 30
34 percent more than the state minimum wage rate.

35 (2) An employee in the construction industry covered by a valid
36 collective bargaining agreement if the agreement expressly provides
37 for the wages, hours of work, and working conditions of
38 employees, premium wage rates for all overtime hours worked,
39 and regular hourly pay of not less than 30 percent more than the
40 state minimum wage rate, and the agreement either (A) was entered

1 into before January 1, 2015, or (B) expressly waives the
2 requirements of this article in clear and unambiguous terms. For
3 purposes of this subparagraph, “employee in the construction
4 industry” means an employee performing onsite work associated
5 with construction, including work involving alteration, demolition,
6 building, excavation, renovation, remodeling, maintenance,
7 improvement, repair work, and any other work as described by
8 Chapter 9 (commencing with Section 7000) of Division 3 of the
9 Business and Professions Code, and other similar or related
10 occupations or trades.

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

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

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

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

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

29 (3) A spouse.

30 (4) A registered domestic partner.

31 (5) A grandparent.

32 (6) A grandchild.

33 (7) A sibling.

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

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

- 1 (f) This section shall become operative on July 1, 2016.

O