

AMENDED IN ASSEMBLY MARCH 11, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 11

Introduced by Assembly Member Gonzalez

(Principal coauthor: Assembly Member Alejo)

~~(Coauthor: Assembly Member Bonta,~~
Calderon, Chiu, Cristina Garcia, Gray, Holden, and Mark Stone)

(Coauthors: Senators Block, Galgiani, Hancock, Jackson, Leno, and Mitchell)

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 amended, 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:

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

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

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

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

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

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

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

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

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

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

4 (k) Domestic violence is a crime that has a devastating effect
5 on families, communities, and the workplace. It impacts
6 productivity, effectiveness, absenteeism, and employee turnover
7 in the workplace. The National Crime Survey estimates that
8 175,000 days of work each year are missed due to domestic
9 violence.

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

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

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

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

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

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

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

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

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

39 SEC. 3. Section 245.5 of the Labor Code, as added by Section
40 3 of Chapter 317 of the Statutes of 2014, is amended to read:

1 245.5. As used in this article:

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

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

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

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

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

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

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

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

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

10 (3) A spouse.

11 (4) A registered domestic partner.

12 (5) A grandparent.

13 (6) A grandchild.

14 (7) A sibling.

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

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

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

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

25 245.5. As used in this article:

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

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

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

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

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

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

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

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

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

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36 paragraph (6) of subdivision (c) of Section 12945.2 of the
37 Government Code.

38 (e) “Paid sick days” means time that is compensated at the same
39 wage as the employee normally earns during regular work hours

- 1 and is provided by an employer to an employee for the purposes
- 2 described in Section 246.5.
- 3 (f) This section shall become operative on July 1, 2016.