

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 304

Introduced by Assembly Member Gonzalez

February 12, 2015

An act to amend ~~Section 233~~ Sections 245.5, 246, and 248.5 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 304, as amended, Gonzalez. Sick ~~leave~~: *leave: accrual and limitations.*

(1) *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.*

This bill would require that the employee work for the same employer for 30 or more days within the previous 12 months in order to qualify for accrued sick leave under these provisions. This bill would exclude a retired annuitant of a public entity and a worker covered by the Railroad Unemployment Insurance Act, as specified, from the definition of employee under these provisions. The bill would also remove the definition of a health care provider under the act.

(2) *Existing law entitles an employee to use accrued paid sick days beginning on the 90th day of employment. Existing law permits an employer to limit an employee's use of paid sick days to 24 hours or 3 days in each year of employment. Existing law requires an employer to provide an employee with written notice of the amount of paid sick*

leave available, or paid time off leave an employer provides in lieu of sick leave, as specified.

The bill would authorize an employer to provide for employee sick leave accrual on a basis other than one hour for each 30 hours worked, provided that the accrual is on a regular basis and the employee will have 24 hours of accrued sick leave available by the 120th calendar day of employment. The bill would permit an employer who provides unlimited sick leave to its employees to satisfy notice requirements by indicating “unlimited” on the employee’s itemized wage statement. The bill would provide that if the employee receives a different hourly rate when the accrued sick leave is taken, the rate of pay would be calculated in the same manner as the regular rate of pay for purposes of overtime. The bill would provide that an employer is not required to reinstate accrued paid time off to an employee, rehired within one year of separation from employment, that was paid out at the time of termination, resignation, or separation. The bill would also make technical and conforming changes.

~~Existing law requires an employer who provides sick leave to employees, as specified, to allow the employees to use the sick leave to attend to the illness of a child, parent, spouse, or domestic partner.~~

~~This bill would make nonsubstantive changes to this provision.~~

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

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

- 1 SECTION 1. Section 245.5 of the Labor Code is amended to
- 2 read:
- 3 245.5. As used in this article:
- 4 (a) “Employee” does not include the following:
- 5 (1) An employee covered by a valid collective bargaining
- 6 agreement if the agreement expressly provides for the wages, hours
- 7 of work, and working conditions of employees, and expressly
- 8 provides for paid sick days or a paid leave or paid time off policy
- 9 that permits the use of sick days for those employees, final and
- 10 binding arbitration of disputes concerning the application of its
- 11 paid sick days provisions, premium wage rates for all overtime
- 12 hours worked, and regular hourly rate of pay of not less than 30
- 13 percent more than the state minimum wage rate.

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

17 (3) A provider of in-home supportive services under Section
18 14132.95, 14132.952, or 14132.956 of, or Article 7 (commencing
19 with Section 12300) of Chapter 3 of Part 3 of Division 9 of, the
20 Welfare and Institutions Code.

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

27 (5) *An employee of either the state, city, county, city and county,*
28 *district, or any other public entity who is a recipient of a retirement*
29 *allowance and employed without reinstatement into his or her*
30 *respective retirement system pursuant to either Article 8*
31 *(commencing with Section 21220) of Chapter 12 of Part 3 of*
32 *Division 5 of Title 2 of the Government Code, or Article 8*
33 *(commencing with Section 31680) of Chapter 3 of Part 3 of*
34 *Division 4 of Title 3 of the Government Code.*

35 (6) *An employee as defined by subsection (d) of Section 1 of the*
36 *Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.),*
37 *provided that the individual is provided with compensated time*
38 *off equal to or exceeding the amount established in paragraph (1)*
39 *of subdivision (b) of Section 246.*

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

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

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

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

13 (3) A spouse.

14 (4) A registered domestic partner.

15 (5) A grandparent.

16 (6) A grandchild.

17 (7) A sibling.

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

21 (e)

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

26 *SEC. 2. Section 246 of the Labor Code is amended to read:*

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

31 (b) (1) An employee shall accrue paid sick days at the rate of
32 not less than one hour per every 30 hours worked, beginning at
33 the commencement of employment or the operative date of this
34 article, whichever is later, *subject to the use and accrual limitations*
35 *set forth in this section.*

36 (2) An employee who is exempt from overtime requirements
37 as an administrative, executive, or professional employee under a
38 wage order of the Industrial Welfare Commission is deemed to
39 work 40 hours per workweek for the purposes of this section,
40 unless the employee’s normal workweek is less than 40 hours, in

1 which case the employee shall accrue paid sick days based upon
2 that normal workweek.

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

6 (d) Accrued paid sick days shall carry over to the following
7 year of employment. However, an employer may limit an
8 employee's use of *accrued* paid sick days to 24 hours or three days
9 in each year of employment. This section shall be satisfied and no
10 accrual or carry over is required if the full amount of leave is
11 received at the beginning of each *calendar year, year of*
12 *employment, or 12-month basis* in accordance with subdivision
13 (e). *The term "full amount of leave" means three days or 24 hours.*

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

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

22 (2) Provides no less than 24 hours or three days of paid sick
23 leave, or equivalent paid leave or paid time off, for employee use
24 for each year of employment or calendar year or 12-month basis.
25 *An employer may use a different accrual method, other than*
26 *providing one hour per every 30 hours worked, provided that the*
27 *accrual is on a regular basis so that employee has no less than 24*
28 *hours of accrued sick leave or paid time off by the 120th calendar*
29 *day of employment or each calendar year, or each 12-month basis.*

30 (3) *An employer may satisfy the accrual requirements of this*
31 *section by providing not less than 24 hours or 3 days of paid sick*
32 *leave that is available to the employee to use by the completion of*
33 *his or her 120th calendar day of employment.*

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

38 (2) If an employee separates from an employer and is rehired
39 by the employer within one year from the date of separation,
40 previously accrued and unused paid sick days shall be reinstated.

1 The employee shall be entitled to use those previously accrued
2 and unused paid sick days and to accrue additional paid sick days
3 upon ~~rehiring~~ *rehiring, subject to the use and accrual limitations*
4 *set forth in this section. An employer is not required to reinstate*
5 *accrued paid time off to an employee that was paid out at the time*
6 *of termination, resignation, or separation of employment.*

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

10 (h) An employer shall provide an employee with written notice
11 that sets forth the amount of paid sick leave available, or paid time
12 off leave an employer provides in lieu of sick leave, for use on
13 either the employee's itemized wage statement described in Section
14 226 or in a separate writing provided on the designated pay date
15 with the employee's payment of wages. *If an employer provides*
16 *unlimited paid sick leave or unlimited paid time off to an employee,*
17 *the employer may satisfy this section by indicating on the notice*
18 *or the employee's itemized wage statement "unlimited." The*
19 *penalties described in this article for a violation of this subdivision*
20 *shall be in lieu of the penalties for a violation of Section 226.*

21 (i) An employer has no obligation under this section to allow
22 an employee's total accrual of paid sick leave to exceed 48 hours
23 or 6 days, provided that an employee's rights to accrue and use
24 paid sick leave ~~under this section~~ are not ~~otherwise~~ limited *other*
25 *than as allowed under this section.*

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

30 (k) The rate of pay shall be the employee's hourly wage. If the
31 employee ~~in the 90 days of employment before taking accrued~~
32 ~~sick leave had different hourly pay rates, was paid by commission~~
33 ~~or piece rate, or was a nonexempt salaried employee, then the rate~~
34 ~~of pay shall be calculated by dividing the employee's total wages,~~
35 ~~not including overtime premium pay, by the employee's total hours~~
36 ~~worked in the full pay periods of the prior 90 days of employment.~~
37 *receives different hourly rates in the pay period when the accrued*
38 *paid sick leave is taken, then the rate of pay shall be calculated in*
39 *the same manner as the regular rate of pay for purposes of*
40 *overtime.*

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

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

8 *SEC. 3. Section 248.5 of the Labor Code is amended to read:*

9 248.5. (a) The Labor Commissioner shall enforce this article,
10 including investigating an alleged violation, and ordering
11 appropriate temporary relief to mitigate the violation or to maintain
12 the status quo pending the completion of a full investigation or
13 hearing.

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

22 (2) If paid sick days were unlawfully withheld, the dollar amount
23 of paid sick days withheld from the employee multiplied by three,
24 or two hundred fifty dollars (\$250), whichever amount is greater,
25 but not to exceed an aggregate penalty of four thousand dollars
26 (\$4,000), shall be included in the administrative penalty.

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

34 (c) Where prompt compliance by an employer is not
35 forthcoming, the Labor Commissioner may take any appropriate
36 enforcement action to secure compliance, including the filing of
37 a civil action. In compensation to the state for the costs of
38 investigating and remedying the violation, the commissioner may
39 order the violating employer to pay to the state a sum of not more
40 than fifty dollars (\$50) for each day or portion of a day a violation

1 occurs or continues for each employee or other person whose rights
2 under this article were violated.

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

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

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

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

39 (h) An employer shall not be assessed any penalty or liquidated
40 damages under this article due to an isolated and unintentional

1 payroll error or written notice error that is a clerical or an
2 inadvertent mistake regarding the accrual or available use of paid
3 sick leave. In reviewing for compliance with this section, the
4 factfinder may consider as a relevant factor whether the employer,
5 prior to an alleged violation, has adopted and is in compliance with
6 a set of policies, procedures, and practices that fully comply with
7 this section.

8 SECTION 1. ~~Section 233 of the Labor Code is amended to~~
9 ~~read:~~

10 233. ~~(a) Any employer who provides sick leave for employees~~
11 ~~shall permit an employee to use, in any calendar year, the~~
12 ~~employee's accrued and available sick leave entitlement, in an~~
13 ~~amount not less than the sick leave that would be accrued during~~
14 ~~six months at the employee's then current rate of entitlement, to~~
15 ~~attend to an illness of a child, parent, spouse, or domestic partner~~
16 ~~of the employee. All conditions and restrictions placed by the~~
17 ~~employer upon the use by an employee of sick leave also shall~~
18 ~~apply to the use by an employee of sick leave to attend to an illness~~
19 ~~of his or her child, parent, spouse, or domestic partner. This section~~
20 ~~does not extend the maximum period of leave to which an~~
21 ~~employee is entitled under Section 12945.2 of the Government~~
22 ~~Code or under the federal Family and Medical Leave Act of 1993~~
23 ~~(29 U.S.C. Sec. 2606 et seq.), regardless of whether the employee~~
24 ~~receives sick leave compensation during that leave.~~

25 ~~(b) As used in this section:~~

26 ~~(1) "Child" means a biological, foster, or adopted child, a~~
27 ~~stepchild, a legal ward, a child of a domestic partner, or a child of~~
28 ~~a person standing in loco parentis.~~

29 ~~(2) "Employer" means a person employing another under an~~
30 ~~appointment or contract of hire and includes the state, political~~
31 ~~subdivisions of the state, and municipalities.~~

32 ~~(3) "Parent" means a biological, foster, or adoptive parent, a~~
33 ~~stepparent, or a legal guardian.~~

34 ~~(4) "Sick leave" means accrued increments of compensated~~
35 ~~leave provided by an employer to an employee as a benefit of the~~
36 ~~employment for use by the employee during an absence from the~~
37 ~~employment for any of the following reasons:~~

38 ~~(A) The employee is physically or mentally unable to perform~~
39 ~~his or her duties due to illness, injury, or a medical condition of~~
40 ~~the employee.~~

1 ~~(B) The absence is for the purpose of obtaining professional~~
2 ~~diagnosis or treatment for a medical condition of the employee.~~

3 ~~(C) The absence is for other medical reasons of the employee,~~
4 ~~such as pregnancy or obtaining a physical examination.~~

5 ~~“Sick leave” does not include any benefit provided under an~~
6 ~~employee welfare benefit plan subject to the federal Employee~~
7 ~~Retirement Income Security Act of 1974 (Public Law 93-406, as~~
8 ~~amended) and does not include any insurance benefit, workers’~~
9 ~~compensation benefit, unemployment compensation disability~~
10 ~~benefit, or benefit not payable from the employer’s general assets.~~

11 ~~(e) No employer shall deny an employee the right to use sick~~
12 ~~leave or discharge, threaten to discharge, demote, suspend, or in~~
13 ~~any manner discriminate against an employee for using, or~~
14 ~~attempting to exercise the right to use, sick leave to attend to an~~
15 ~~illness of a child, parent, spouse, or domestic partner of the~~
16 ~~employee.~~

17 ~~(d) An employee aggrieved by a violation of this section shall~~
18 ~~be entitled to reinstatement and actual damages or one day’s pay,~~
19 ~~whichever is greater, and to appropriate equitable relief.~~

20 ~~(e) Upon the filing of a complaint by an employee, the Labor~~
21 ~~Commissioner shall enforce this section in accordance with the~~
22 ~~provisions of Chapter 4 (commencing with Section 79) of Division~~
23 ~~1, including, Sections 92, 96.7, 98, and 98.1 to 98.8, inclusive.~~
24 ~~Alternatively, an employee may bring a civil action for the~~
25 ~~remedies provided by this section in a court of competent~~
26 ~~jurisdiction. If the employee prevails, the court may award~~
27 ~~reasonable attorney’s fees.~~

28 ~~(f) The rights and remedies specified in this section are~~
29 ~~cumulative and nonexclusive and are in addition to any other rights~~
30 ~~or remedies afforded by contract or under other provisions of law.~~