

AMENDED IN ASSEMBLY APRIL 27, 2015

AMENDED IN ASSEMBLY APRIL 14, 2015

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 Sections ~~245.5, 246, and 248.5~~ 245.5 and 246 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

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

~~(1) The~~

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~~

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. Existing law provides that an employer is not required to provide additional paid sick days if the employer has a paid leave policy or paid time off policy, the employer makes available an amount of leave for specified uses, and the policy either satisfies specified accrual, carry over, and use requirements or provides no less than 24 hours or 3 days of paid sick leave for each year of employment or calendar year or 12-month basis.

~~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.~~

~~This bill would, for specified industries, delay the application of the notice requirement. 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 provide that an employer is not required to provide additional paid sick days if the employer has a paid leave policy or paid time off policy, the employer makes available an amount of leave for specified uses, and the policy either satisfies specified accrual, carry over, and use requirements or provides for no less than 24 hours or 3 days of paid sick leave at the beginning of each year of employment, calendar year, or 12-month period. The bill would also make technical and conforming changes.~~

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. 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.

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

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

34 (4) An individual employed by an air carrier as a flight deck or
35 cabin crew member that is subject to the provisions of Title II of
36 the federal Railway Labor Act (45 U.S.C. *Sec.* 151 et seq.),
37 provided that the individual is provided with compensated time

1 off equal to or exceeding the amount established in paragraph (1)
2 of subdivision (b) of Section 246.

3 ~~(5) An employee of either the state, city, county, city and county,~~
4 ~~district, or any other public entity who is a recipient of a retirement~~
5 ~~allowance and employed without reinstatement into his or her~~
6 ~~respective retirement system pursuant to either Article 8~~
7 ~~(commencing with Section 21220) of Chapter 12 of Part 3 of~~
8 ~~Division 5 of Title 2 of the Government Code, or Article 8~~
9 ~~(commencing with Section 31680) of Chapter 3 of Part 3 of~~
10 ~~Division 4 of Title 3 of the Government Code.~~

11 ~~(6)~~
12 (5) An employee as defined by subsection (d) of Section 351
13 of the Railroad Unemployment Insurance Act (45 U.S.C. *Sec.* 351
14 et seq.).

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

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

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

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

27 (3) A spouse.

28 (4) A registered domestic partner.

29 (5) A grandparent.

30 (6) A grandchild.

31 (7) A sibling.

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

35 ~~(d)~~

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

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

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

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

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

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

20 (d) Accrued paid sick days shall carry over to the following
21 year of employment. However, an employer may limit an
22 employee's use of accrued paid sick days to 24 hours or three days
23 in each year of employment. This section shall be satisfied and no
24 accrual or carry over is required if the full amount of leave is
25 received at the beginning of each ~~calendar year, year of~~
26 ~~employment, or 12-month basis~~ in accordance with subdivision
27 (e). ~~The term "full amount of leave" means three days or 24 hours.~~

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

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

36 (2) Provides no less than 24 hours or three days of paid sick
37 leave, or equivalent paid leave or paid time off, for employee use
38 at the beginning of each year of employment, calendar year, or
39 12-month period.

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

5 (2) If an employee separates from an employer and is rehired
6 by the employer within one year from the date of separation,
7 previously accrued and unused paid sick days shall be reinstated.
8 The employee shall be entitled to use those previously accrued
9 and unused paid sick days and to accrue additional paid sick days
10 upon rehiring, ~~subject to the use and accrual limitations set forth~~
11 ~~in this section. An employer is not required to reinstate accrued~~
12 ~~paid time off to an employee that was paid out at the time of~~
13 ~~termination, resignation, or separation of employment.~~ *rehiring.*

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

17 (h) An employer shall provide an employee with written notice
18 that sets forth the amount of paid sick leave available, or paid time
19 off leave an employer provides in lieu of sick leave, for use on
20 either the employee's itemized wage statement described in Section
21 226 or in a separate writing provided on the designated pay date
22 with the employee's payment of wages. If an employer provides
23 unlimited paid sick leave or unlimited paid time off to an employee,
24 the employer may satisfy this section by indicating on the notice
25 or the employee's itemized wage statement "unlimited." The
26 penalties described in this article for a violation of this subdivision
27 shall be in lieu of the penalties for a violation of Section 226. This
28 subdivision shall apply to employers covered by Wage Order 11
29 or 12 of the Industrial Welfare Commission only on and after
30 January 21, 2016.

31 (i) An employer has no obligation under this section to allow
32 an employee's total accrual of paid sick leave to exceed 48 hours
33 or 6 days, provided that an employee's rights to accrue and use
34 paid sick leave are not limited other than as allowed under this
35 section.

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

1 (k) The rate of pay shall be the employee's hourly wage. If the
2 employee receives different hourly rates in the pay period when
3 the accrued paid sick leave is taken, *in the 90 days of employment*
4 *before taking accrued sick leave had different hourly pay rates,*
5 *was paid by commission or piece rate, or was a nonexempt salaried*
6 *employee, then the rate of pay shall be calculated in the same*
7 *manner as the regular rate of pay for purposes of overtime: by*
8 *dividing the employee's total wages, not including overtime*
9 *premium pay, by the employee's total hours worked in the full pay*
10 *periods of the prior 90 days of employment.*

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

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

18 ~~SEC. 3. Section 248.5 of the Labor Code is amended to read:~~

19 ~~248.5. (a) The Labor Commissioner shall enforce this article,~~
20 ~~including investigating an alleged violation, and ordering~~
21 ~~appropriate temporary relief to mitigate the violation or to maintain~~
22 ~~the status quo pending the completion of a full investigation or~~
23 ~~hearing.~~

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

32 ~~(2) If paid sick days were unlawfully withheld, the dollar amount~~
33 ~~of paid sick days withheld from the employee multiplied by three,~~
34 ~~or two hundred fifty dollars (\$250), whichever amount is greater,~~
35 ~~but not to exceed an aggregate penalty of four thousand dollars~~
36 ~~(\$4,000), shall be included in the administrative penalty.~~

37 ~~(3) If a violation of this article results in other harm to the~~
38 ~~employee or person, such as discharge from employment, or~~
39 ~~otherwise results in a violation of the rights of the employee or~~
40 ~~person, the administrative penalty shall include a sum of fifty~~

1 dollars (\$50) for each day or portion thereof that the violation
2 occurred or continued, not to exceed an aggregate penalty of four
3 thousand dollars (\$4,000).

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

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

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

1 ~~injunctive, or restitutionary relief, and reasonable attorney's fees~~
2 ~~and costs.~~

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

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

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