

AMENDED IN ASSEMBLY MAY 22, 2015  
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**

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**Introduced by Assembly Member Gonzalez**

February 12, 2015

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An act to amend Sections ~~245.5 and 246~~ 245.5, 246, and 247.5 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

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

(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, as specified, from the definition of employee under these provisions.*

*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.*

**Existing**

(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. 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.*

*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 ~~also~~ 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.*

(3) *Existing law requires an employer to keep records for three years documenting the hours worked and paid sick days accrued and used by an employee and to make those records available to the Labor Commissioner upon request.*

*This bill would provide that the employer has no obligation to inquire into or record the purposes for which an employee uses sick leave or paid time off.*

(4) *The bill would specify that its provisions are severable and 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 as defined by subsection (d) of Section 351~~  
 4 ~~of the Railroad Unemployment Insurance Act (45 U.S.C. Sec. 351~~  
 5 ~~et seq.):~~

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

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

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

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

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

26 (3) A spouse.

27 (4) A registered domestic partner.

28 (5) A grandparent.

29 (6) A grandchild.

30 (7) A sibling.

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

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

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

39 246. (a) An employee who, on or after July 1, 2015, works in  
 40 California for *the same employer for* 30 or more days within a year

1 from the commencement of employment is entitled to paid sick  
2 days as specified in this section.

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

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

15 (3) *An employer may use a different accrual method, other than*  
16 *providing one hour per every 30 hours worked, provided that the*  
17 *accrual is on a regular basis so that employee has no less than 24*  
18 *hours of accrued sick leave or paid time off by the 120th calendar*  
19 *day of employment or each calendar year, or each 12-month basis.*

20 (4) *An employer may satisfy the accrual requirements of this*  
21 *section by providing not less than 24 hours or three days of paid*  
22 *sick leave that is available to the employee to use by the completion*  
23 *of his or her 120th calendar day of employment.*

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

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

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

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

3 (2) Provides no less than 24 hours or three days of paid sick  
4 leave, or equivalent paid leave or paid time off, for employee use  
5 at the beginning of each year of employment, calendar year, or  
6 12-month period.

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

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

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

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

37 (i) An employer has no obligation under this section to allow  
38 an employee's total accrual of paid sick leave to exceed 48 hours  
39 or 6 days, provided that an employee's rights to accrue and use

1 paid sick leave are not limited other than as allowed under this  
2 section.

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

7 ~~(k) The rate of pay shall be the employee's hourly wage. If the  
8 employee in the 90 days of employment before taking accrued  
9 sick leave had different hourly pay rates, was paid by commission  
10 or piece rate, or was a nonexempt salaried employee, then the rate  
11 of pay shall be calculated by dividing the employee's total wages,  
12 not including overtime premium pay, by the employee's total hours  
13 worked in the full pay periods of the prior 90 days of employment.~~

14 *(k) Paid sick time for nonexempt employees shall be calculated  
15 in the same manner as the regular rate of pay for the workweek  
16 in which the employee uses paid sick time, whether or not the  
17 employee actually works overtime in that workweek. Paid sick  
18 time for exempt employees shall be calculated in the same manner  
19 as the employer calculates wages for other forms of paid leave  
20 time.*

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

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

28 *SEC. 3. Section 247.5 of the Labor Code is amended to read:*

29 247.5. (a) An employer shall keep for at least three years  
30 records documenting the hours worked and paid sick days accrued  
31 and used by an employee, and shall allow the Labor Commissioner  
32 to access these records pursuant to the requirements set forth in  
33 Section 1174. An employer shall make these records available to  
34 an employee in the same manner as described in Section 226. If  
35 an employer does not maintain adequate records pursuant to this  
36 section, it shall be presumed that the employee is entitled to the  
37 maximum number of hours accruable under this article, unless the  
38 employer can show otherwise by clear and convincing evidence.

1     ***(b) Notwithstanding any other provision of this article, an***  
2     ***employer is not obligated to inquire into or record the purposes***  
3     ***for which an employee uses paid leave or paid time off.***

4     ***SEC. 4. The provisions of this measure are severable. If any***  
5     ***provision of this measure or its application is held invalid, that***  
6     ***invalidity shall not affect other provisions or applications that can***  
7     ***be given effect without the invalid provision or application.***