

AMENDED IN ASSEMBLY JUNE 2, 2015
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

Introduced by Assembly Member Gonzalez

February 12, 2015

An act to amend Sections 245.5, 246, and 247.5 of the Labor Code, relating to ~~employment~~ *employment, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 304, as amended, Gonzalez. Sick 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, 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.

(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 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.

(5) *This bill would declare that it is to take effect immediately as an urgency statute.*

Vote: ~~majority~~^{2/3}. 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

1 the federal Railway Labor Act (45 U.S.C. Sec. 151 et seq.),
 2 provided that the individual is provided with compensated time
 3 off equal to or exceeding the amount established in paragraph (1)
 4 of subdivision (b) of Section 246.

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

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

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

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

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

25 (3) A spouse.

26 (4) A registered domestic partner.

27 (5) A grandparent.

28 (6) A grandchild.

29 (7) A sibling.

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

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

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

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

1 year from the commencement of employment is entitled to paid
2 sick 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, subject to the use and accrual limitations
7 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 calendar year, year of
33 employment, or 12-month basis in accordance with subdivision

34 (e). 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, subject to the use and accrual limitations set forth
17 in this section. An employer is not required to reinstate accrued
18 paid time off to an employee that was paid out at the time of
19 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) Paid sick time for nonexempt employees shall be calculated
8 in the same manner as the regular rate of pay for the workweek in
9 which the employee uses paid sick time, whether or not the
10 employee actually works overtime in that workweek. Paid sick
11 time for exempt employees shall be calculated in the same manner
12 as the employer calculates wages for other forms of paid leave
13 time.

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

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

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

22 247.5. (a) An employer shall keep for at least three years
23 records documenting the hours worked and paid sick days accrued
24 and used by an employee, and shall allow the Labor Commissioner
25 to access these records pursuant to the requirements set forth in
26 Section 1174. An employer shall make these records available to
27 an employee in the same manner as described in Section 226. If
28 an employer does not maintain adequate records pursuant to this
29 section, it shall be presumed that the employee is entitled to the
30 maximum number of hours accruable under this article, unless the
31 employer can show otherwise by clear and convincing evidence.

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

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

39 SEC. 5. *This act is an urgency statute necessary for the*
40 *immediate preservation of the public peace, health, or safety within*

1 *the meaning of Article IV of the Constitution and shall go into*
2 *immediate effect. The facts constituting the necessity are:*
3 *In order to clarify provisions of Article 1.5 (commencing with*
4 *Section 245) of Chapter 1 of Part 1 of Division 2 of the Labor*
5 *Code, for the purposes of ensuring an effective and smooth*
6 *implementation of the Healthy Workplaces, Healthy Families Act*
7 *of 2014, it is necessary that this act take effect immediately.*

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