

AMENDED IN ASSEMBLY JUNE 18, 2015  
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**

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**Introduced by Assembly Member Gonzalez**

February 12, 2015

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An act to amend Sections 245.5, 246, and 247.5 of the Labor Code, relating to 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~~ *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 authorize an employer to limit an employee's use of paid sick days to 24 hours or 3 days in each year of employment, a calendar year, or a 12-month period. 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 applicable to employees for specified uses, and the policy satisfies specified accrual, carry over, and use requirements, or that provided paid sick leave or paid time off to employees before January 1, 2015, as specified, or that are provided pursuant to specified*

*provisions of law or of a memorandum understanding that meet the requirements of these provisions.*

(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:  $\frac{2}{3}$ . 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

1 industry” means an employee performing onsite work associated  
2 with construction, including work involving alteration, demolition,  
3 building, excavation, renovation, remodeling, maintenance,  
4 improvement, repair work, and any other work as described by  
5 Chapter 9 (commencing with Section 7000) of Division 3 of the  
6 Business and Professions Code, and other similar or related  
7 occupations or trades.

8 (3) A provider 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.

12 (4) 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. 151 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 (5) An employee of the state, city, county, city and county,  
19 district, or any other public entity who is a recipient of a retirement  
20 allowance and employed without reinstatement into his or her  
21 respective retirement system pursuant to either Article 8  
22 (commencing with Section 21220) of Chapter 12 of Part 3 of  
23 Division 5 of Title 2 of the Government Code, or Article 8  
24 (commencing with Section 31680) of Chapter 3 of Part 3 of  
25 Division 4 of Title 3 of the Government Code.

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

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

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

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

38 (3) A spouse.

39 (4) A registered domestic partner.

40 (5) A grandparent.

1 (6) A grandchild.

2 (7) A sibling.

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

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

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

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

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

20 (2) An employee who is exempt from overtime requirements  
21 as an administrative, executive, or professional employee under a  
22 wage order of the Industrial Welfare Commission is deemed to  
23 work 40 hours per workweek for the purposes of this section,  
24 unless the employee’s normal workweek is less than 40 hours, in  
25 which case the employee shall accrue paid sick days based upon  
26 that normal workweek.

27 (3) An employer may use a different accrual method, other than  
28 providing one hour per every 30 hours worked, provided that the  
29 accrual is on a regular basis so that *an* employee has no less than  
30 24 hours of accrued sick leave or paid time off by the 120th  
31 calendar day of employment or each calendar year, or ~~each~~  
32 ~~12-month basis.~~ *in each 12-month period.*

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

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

1 (d) Accrued paid sick days shall carry over to the following  
2 year of employment. However, an employer may limit an  
3 employee's use of accrued paid sick days to 24 hours or three days  
4 in each year of ~~employment~~. *employment, calendar year, or*  
5 *12-month period*. This section shall be satisfied and no accrual or  
6 carry over is required if the full amount of leave is received at the  
7 beginning of each *year of employment* calendar year, ~~year of~~  
8 ~~employment~~, or 12-month ~~basis in accordance with subdivision~~  
9 ~~(e)~~. *period*. The term "full amount of leave" means three days or  
10 24 hours.

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

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

20 ~~(2) Provides no less than 24 hours or three days of paid sick~~  
21 ~~leave, or equivalent paid leave or paid time off, for employee use~~  
22 ~~at the beginning of each year of employment, calendar year, or~~  
23 ~~12-month period.~~

24 (2) *Provided paid sick leave or paid time off to a class of*  
25 *employees before January 1, 2015, pursuant to a sick leave policy*  
26 *or paid time off policy that used an accrual method different than*  
27 *providing one hour per 30 hours worked, provided that the accrual*  
28 *is on a regular basis so that an employee, including an employee*  
29 *hired into that class after January 1, 2015, has no less than one*  
30 *day or eight hours of accrued sick leave or paid time off within*  
31 *three months of employment of each calendar year, or each*  
32 *12-month period, and the employee was eligible to earn at least*  
33 *three days or 24 hours of sick leave or paid time off within nine*  
34 *months of employment. If an employer modifies the accrual method*  
35 *used in the policy it had in place prior to January 1, 2015, the*  
36 *employer shall comply with any accrual method set forth in*  
37 *subdivision (b) or provide the full amount of leave at the beginning*  
38 *of each year of employment, calendar year, or 12-month period.*  
39 *This section does not prohibit the employer from increasing the*

1 *accrual amount or rate for a class of employees covered by this*  
2 *subdivision.*

3 *(3) Notwithstanding any other law, sick leave benefits provided*  
4 *pursuant to Article 3 (commencing with Section 19859) of Chapter*  
5 *2.5 of Part 2.6 of Division 5 of Title 2 of the Government Code,*  
6 *or annual leave benefits provided pursuant to Article 2.5*  
7 *(commencing with Section 19858.3) of Chapter 2.5 of Part 2.6 of*  
8 *Division 5 of Title 2 of the Government Code, that meet the*  
9 *requirements of this section.*

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

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

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

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

1 (i) An employer has no obligation under this section to allow  
 2 an employee’s total accrual of paid sick leave to exceed 48 hours  
 3 or 6 days, provided that an employee’s rights to accrue and use  
 4 paid sick leave are not limited other than as allowed under this  
 5 section.

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

10 (k) *An employer shall calculate paid sick leave using either of*  
 11 *the following calculations:*

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

19 (2) *For purposes of this section, if the employee, in the 90 days*  
 20 *of employment before taking accrued sick leave, had different*  
 21 *hourly pay rates, was paid by commission or piece rate, or was a*  
 22 *nonexempt salaried employee, the rate of pay shall be calculated*  
 23 *by dividing the employee’s total wages, not including overtime*  
 24 *premium pay, by the employee’s total hours worked in the full pay*  
 25 *periods of the prior 90 days of employment.*

26 (l) If the need for paid sick leave is foreseeable, the employee  
 27 shall provide reasonable advance notification. If the need for paid  
 28 sick leave is unforeseeable, the employee shall provide notice of  
 29 the need for the leave as soon as practicable.

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

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

34 247.5. (a) An employer shall keep for at least three years  
 35 records documenting the hours worked and paid sick days accrued  
 36 and used by an employee, and shall allow the Labor Commissioner  
 37 to access these records pursuant to the requirements set forth in  
 38 Section 1174. An employer shall make these records available to  
 39 an employee in the same manner as described in Section 226. If  
 40 an employer does not maintain adequate records pursuant to this

1 section, it shall be presumed that the employee is entitled to the  
2 maximum number of hours accruable under this article, unless the  
3 employer can show otherwise by clear and convincing evidence.

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

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

11 SEC. 5. This act is an urgency statute necessary for the  
12 immediate preservation of the public peace, health, or safety within  
13 the meaning of Article IV of the Constitution and shall go into  
14 immediate effect. The facts constituting the necessity are:

15 In order to clarify provisions of Article 1.5 (commencing with  
16 Section 245) of Chapter 1 of Part 1 of Division 2 of the Labor  
17 Code, for the purposes of ensuring an effective and smooth  
18 implementation of the Healthy Workplaces, Healthy Families Act  
19 of 2014, it is necessary that this act take effect immediately.