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AMENDED IN ASSEMBLY JUNE 18, 2015
AMENDED IN ASSEMBLY JUNE 2, 2015
AMENDED IN ASSEMBLY MAY 22, 2015
AMENDED IN ASSEMBLY APRIL 27, 2015
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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, 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 *do that* 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 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.~~ *require an employer to calculate paid sick leave based upon an employee's regular rate of pay, total wages divided by total hours worked in a 90-day period, or the wages for other forms of paid leave, as specified.* 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

1 state minimum wage rate, and the agreement either (A) was entered
2 into before January 1, 2015, or (B) expressly waives the
3 requirements of this article in clear and unambiguous terms. For
4 purposes of this subparagraph, “employee in the construction
5 industry” means an employee performing onsite work associated
6 with construction, including work involving alteration, demolition,
7 building, excavation, renovation, remodeling, maintenance,
8 improvement, repair work, and any other work as described by
9 Chapter 9 (commencing with Section 7000) of Division 3 of the
10 Business and Professions Code, and other similar or related
11 occupations or trades.

12 (3) A provider of in-home supportive services under Section
13 14132.95, 14132.952, or 14132.956 of, or Article 7 (commencing
14 with Section 12300) of Chapter 3 of Part 3 of Division 9 of, the
15 Welfare and Institutions Code.

16 (4) An individual employed by an air carrier as a flight deck or
17 cabin crew member that is subject to the provisions of Title II of
18 the federal Railway Labor Act (45 U.S.C. Sec. 151 et seq.),
19 provided that the individual is provided with compensated time
20 off equal to or exceeding the amount established in paragraph (1)
21 of subdivision (b) of Section 246.

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

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

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

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

38 (2) A biological, adoptive, or foster parent, stepparent, or legal
39 guardian of an employee or the employee’s spouse or registered

1 domestic partner, or a person who stood in loco parentis when the
2 employee was a minor child.

3 (3) A spouse.

4 (4) A registered domestic partner.

5 (5) A grandparent.

6 (6) A grandchild.

7 (7) A sibling.

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

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

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

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

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

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

32 (3) An employer may use a different accrual method, other than
33 providing one hour per every 30 hours worked, provided that the
34 accrual is on a regular basis so that an employee has no less than
35 24 hours of accrued sick leave or paid time off by the 120th
36 calendar day of employment or each calendar year, or in each
37 12-month period.

38 (4) An employer may satisfy the accrual requirements of this
39 section by providing not less than 24 hours or three days of paid

1 sick leave that is available to the employee to use by the completion
2 of his or her 120th calendar day of employment.

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, calendar year, or 12-month period.
10 This section shall be satisfied and no accrual or carry over is
11 required if the full amount of leave is received at the beginning of
12 each year of ~~employment~~ *employment*, calendar year, or 12-month
13 period. The term "full amount of leave" means three days or 24
14 hours.

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

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

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

1 (3) Notwithstanding any other law, sick leave benefits provided
2 pursuant to ~~Article 3 (commencing with Section 19859) of Chapter~~
3 ~~2.5 of Part 2.6 of Division 5 of Title 2~~ *the provisions of Sections*
4 *19859 to 19868.3, inclusive*, of the Government Code, or annual
5 leave benefits provided pursuant to ~~Article 2.5 (commencing with~~
6 ~~Section 19858.3) of Chapter 2.5 of Part 2.6 of Division 5 of Title~~
7 ~~2~~ *the provisions of Sections 19858.3 to 19858.7, inclusive*, of the
8 Government Code, ~~that~~ *or by provisions of a memorandum of*
9 *understanding reached pursuant to Section 3517.5 that incorporate*
10 *or supersede provisions of Section 19859 to 19868.3, inclusive,*
11 *or Sections 19858.3 to 19858.7, inclusive of the Government Code,*
12 meet the requirements of this section.

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

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

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

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

1 or 12 of the Industrial Welfare Commission only on and after
 2 January 21, 2016.

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

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

12 (k) ~~An~~ *For the purposes of this section, an employer shall*
 13 *calculate paid sick leave using either any of the following*
 14 *calculations:*

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

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

30 (3) *Paid sick time for exempt employees shall be calculated in*
 31 *the same manner as the employer calculates wages for other forms*
 32 *of paid leave time.*

33 (l) If the need for paid sick leave is foreseeable, the employee
 34 shall provide reasonable advance notification. If the need for paid
 35 sick leave is unforeseeable, the employee shall provide notice of
 36 the need for the leave as soon as practicable.

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

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

1 247.5. (a) An employer shall keep for at least three years
2 records documenting the hours worked and paid sick days accrued
3 and used by an employee, and shall allow the Labor Commissioner
4 to access these records pursuant to the requirements set forth in
5 Section 1174. An employer shall make these records available to
6 an employee in the same manner as described in Section 226. If
7 an employer does not maintain adequate records pursuant to this
8 section, it shall be presumed that the employee is entitled to the
9 maximum number of hours accruable under this article, unless the
10 employer can show otherwise by clear and convincing evidence.

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

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

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

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