

KD Alert: California Enacts Broad Sick Leave Law

By Philip R. Voluck, Esq. and Gabriel Neil Rubin, Esq.
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This week, the State of California enacted sweeping legislation granting most employees guaranteed paid sick leave. California now joins Connecticut and several cities, including San Francisco, Washington, D.C., New York City, Seattle, Portland, and Jersey City, which have similar laws.

The Law's Requirements.

The law, which becomes effective July 1, 2015, requires employers to provide employees who work thirty (30) or more days within one (1) year with paid sick leave, which employees can use after the ninetieth day of his or her employment. The paid sick leave accrues at one (1) hour for every thirty (30) hours worked. Employers may cap the sick leave to twenty-four (24) hours or three (3) days per year (the San Francisco ordinance is more onerous, requiring employers to provide up to five (5) to nine (9) days of sick leave depending on the employer's size).

Employees can use the sick leave for their own or a family member's preventative care or diagnosis, treatment, or care for an existing health condition. Because victims of domestic violence, sexual assault, or stalking are particularly vulnerable at work when perpetrators know the location, they may use paid sick leave as well.

The law prohibits employers from retaliating against employees who use or request available sick leave. Employees alleging retaliation and/or denial of sick leave can file a complaint with the California Labor Commissioner, which will investigate.

There are also new notice requirements – employers must display a poster detailing employees' rights under the law. Records documenting hours worked and paid sick leave accrued and used by employees must be maintained for three (3) years – and three-year record keeping requirements for employers to maintain records.

Strict Penalties for Non-Compliance.

Violations of this new law carry serious penalties. For instance, the employer may be ordered to reinstate the employee with back-pay, payment of sick days withheld, and penalties totaling three (3) times the amount of paid sick days withheld or \$250.00, whichever is greater. If an employee is unlawfully terminated, the employer may face additional penalties in the amount of \$50.00 per day. Additionally, the state can collect \$50.00 for each day that the violation occurred. These penalties are cumulative and coupled with the back-pay damages, can lead to significant exposure for employers found to violate the law, particularly if multiple employees are involved.

With Few Exceptions, Most California Employees are Covered.

A large portion of California's work-force will be impacted, but there are narrow classes of employees exempted:

- Employees covered by a valid collective bargaining agreement (“CBA”) that expressly provides for paid sick leave or a paid leave policy allowing the use of sick days with final and binding arbitration of disputes concerning the application of the sick leave provisions. The CBA must also provide employees with premium wages for overtime hours worked and a regular hourly rate that is at least 30% more than the state minimum wage (i.e., a regular hourly rate that currently is at least \$11.70 per hour);
- Employees in the construction industry covered by a valid CBA that provides a regular hourly rate that is at least 30% more than the state minimum wage. The CBA must either (1) have been entered into before January 1, 2015 or (2) expressly waive the requirements of the sick leave law in clear and unambiguous terms;
- In-home care workers who are California state employees; and
- Flight deck or cabin crew members employed by an air carrier.

What Should Employers Do?

Employers who have covered employees performing work in California should be aware that they will need to review and potentially update their handbooks, personnel policies and procedures to comply with this new law by providing the required paid sick leave as of July 1, 2015.

KD is available to assist employers as they review and update their procedures to ensure they comply with applicable state and local law.