

ASSEMBLY BILL

No. 400

Introduced by Assembly Member Ma

February 14, 2011

An act to amend Section 226 of, and to add Article 1.5 (commencing with Section 245) to Chapter 1 of Part 1 of Division 2 of, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 400, as introduced, Ma. Employment: paid sick days.

Existing law authorizes employers to provide their employees paid sick leave.

This bill would provide that an employee who works in California for 7 or more days in a calendar year is entitled to paid sick days, as defined, which shall be accrued at a rate of no less than one hour for every 30 hours worked. An employee would be entitled to use accrued sick days beginning on the 90th calendar day of employment. The bill would require employers to provide paid sick days, upon the request of the employee, for diagnosis, care, or treatment of health conditions of the employee or an employee's family member, or for leave related to domestic violence or sexual assault. An employer would be prohibited from discriminating or retaliating against an employee who requests paid sick days. The bill would require employers to satisfy specified posting and notice and recordkeeping requirements. The bill would also make conforming changes.

This bill would require the Labor Commissioner to administer and enforce these requirements, including the promulgation of regulations, investigation, mitigation, and relief of violations of these requirements. This bill would authorize the Labor Commissioner to impose specified

administrative fines for violations and would authorize an aggrieved person, the commissioner, the Attorney General, or an entity a member of which is aggrieved to bring an action to recover specified civil penalties against an offender, as well as attorney's fees, costs, and interest.

The bill would specify that it does not apply to employees covered by a collective bargaining agreement that provides for paid sick days, nor does it lessen any other obligations of the employer to employees. This bill would further specify that it does not apply to employees in the construction industry covered by a collective bargaining agreement if the agreement expressly waives the requirements of this article in clear and unambiguous terms. However, the bill would specify that it applies to certain public authorities, established to deliver in-home supportive services, except where a collective bargaining agreement provides for an incremental wage increase sufficient to satisfy the bill's requirements for accrual of sick days.

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. The Legislature finds and declares the following:
- 2 (a) Nearly every worker in the State of California will at some
- 3 time during the year need some time off from work to take care
- 4 of his or her own health or the health of family members.
- 5 (b) Many workers in California do not have any paid sick days,
- 6 or have an inadequate number of paid sick days, to care for their
- 7 own health or the health of family members.
- 8 (c) Low-income workers are significantly less likely to have
- 9 paid sick time than other workers.
- 10 (d) Providing workers time off to attend to their own health care
- 11 and the health care of family members will ensure a healthier and
- 12 more productive workforce in California.
- 13 (e) Paid sick days will have an enormously positive impact on
- 14 the public health of Californians by allowing sick workers paid
- 15 time off to care for themselves when ill, thus lessening their
- 16 recovery time and reducing the likelihood of spreading illness to
- 17 other members of the workforce.
- 18 (f) Paid sick days will allow parents to provide personal care
- 19 for their sick children. Parental care ensures children's speedy

1 recovery, prevents more serious illnesses, and improves children's
2 overall mental and physical health.

3 (g) Providing paid sick days is affordable for employers and
4 good for business.

5 (h) Employers who provide paid sick days enjoy greater
6 employee retention and reduce the likelihood of employees coming
7 to work sick. Studies have shown that costs of decreased
8 productivity caused by sick workers exceed the costs of employee
9 absenteeism.

10 (i) Many adults have significant elder care responsibilities
11 requiring them to take time off from work or to work reduced
12 hours.

13 (j) Employees frequently lose their jobs or are disciplined for
14 taking sick days to care for sick family members or to recover
15 from their own illnesses.

16 (k) Workers whose jobs involve significant contact with the
17 public, such as service workers and restaurant workers, are very
18 unlikely to have paid sick days. Often, these workers have no
19 choice but to come to work when they are ill, thereby spreading
20 illness to coworkers and customers.

21 (l) Domestic violence and sexual assault affect many persons
22 without regard to age, race, national origin, sexual orientation, or
23 socioeconomic status.

24 (m) Domestic violence is a crime that has a devastating effect
25 on families, communities, and the workplace. It impacts
26 productivity, effectiveness, absenteeism, and employee turnover
27 in the workplace. The National Crime Survey estimates that
28 175,000 days of work each year are missed due to domestic
29 violence.

30 (n) Survivors of domestic violence and sexual assault may be
31 vulnerable at work when trying to end an abusive relationship
32 because the workplace may be the only place where the perpetrator
33 knows to contact the victim. Studies show that up to one-half of
34 domestic violence victims experience job loss. Forty percent
35 reported on-the-job harassment. Nearly 50 percent of sexual assault
36 survivors lose their jobs or are forced to quit in the aftermath of
37 the assaults.

38 (o) Affording survivors of domestic violence and sexual assault
39 paid sick days is vital to their independence and recovery.

SEC. 2. In enacting this act, it is the intent of the Legislature to do the following:

(a) Ensure that workers in California can address their own health needs and the health needs of their families by requiring employers to provide a minimum level of paid sick days including time for family care.

(b) Decrease public and private health care costs in California by enabling workers to seek early and routine medical care for themselves and their family members and to address domestic violence or sexual assault.

(c) Protect employees in California from losing their jobs while they use sick days to care for themselves or their families.

(d) Provide economic security to employees in California who take time off from work for reasons related to domestic violence or sexual assault.

(e) Safeguard the welfare, health, safety, and prosperity of the people of and visitors to California.

SEC. 3. Section 226 of the Labor Code is amended to read:

226. (a) ~~Every~~*An* employer shall, semimonthly or at the time of each payment of wages, furnish ~~each of his or her employees to each employee~~, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately ~~when if~~ wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, ~~except for any employee whose unless the employee's~~ compensation is solely based on a salary and ~~who the employee~~ is exempt from payment of overtime under subdivision (a) of Section 515 or ~~any an~~ applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and ~~any the~~ applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement, (8) the name and address of the legal entity that is the employer, ~~and~~ (9) *paid sick leave accrued and used pursuant to Article 1.5*

1 (*commencing with Section 245*), and (10) all applicable hourly
2 rates in effect during the pay period and the corresponding number
3 of hours worked at each hourly rate by the employee. The
4 deductions made from payments of wages shall be recorded in ink
5 or other indelible form, properly dated, showing the month, day,
6 and year, and a copy of the statement or a record of the deductions
7 shall be kept on file by the employer for at least three years at the
8 place of employment or at a central location within the State of
9 California.

10 (b) An employer that is required by this code or ~~any~~ a regulation
11 adopted pursuant to this code to keep the information required by
12 subdivision (a) shall afford current and former employees the right
13 to inspect or copy the records pertaining to that current or former
14 employee, upon reasonable request to the employer. The employer
15 may take reasonable steps to assure the identity of a current or
16 former employee. If the employer provides copies of the records,
17 the actual cost of reproduction may be charged to the current or
18 former employee.

19 (c) An employer who receives a written or oral request to inspect
20 or copy records pursuant to subdivision (b) pertaining to a current
21 or former employee shall comply with the request as soon as
22 practicable, but no later than 21 calendar days from the date of the
23 request. A violation of this subdivision is an infraction.
24 Impossibility of performance, not caused by or a result of a
25 violation of law, shall be an affirmative defense for an employer
26 in any action alleging a violation of this subdivision. An employer
27 may designate the person to whom a request *is made* under this
28 subdivision ~~will be made~~.

29 (d) This section does not apply to ~~any~~ an employer of ~~any~~ a
30 person employed by the owner or occupant of a residential dwelling
31 whose duties are incidental to the ownership, maintenance, or use
32 of the dwelling, including the care and supervision of children, or
33 whose duties are personal and not in the course of the trade,
34 business, profession, or occupation of the owner or occupant.

35 (e) An employee suffering injury as a result of a knowing and
36 intentional failure by an employer to comply with subdivision (a)
37 is entitled to recover the greater of all actual damages or fifty
38 dollars (\$50) for the initial pay period in which a violation occurs
39 and one hundred dollars (\$100) per employee for each violation
40 in a subsequent pay period, not exceeding an aggregate penalty of

1 four thousand dollars (\$4,000), and is entitled to an award of costs
2 and reasonable attorney's fees.

3 (f) A failure by an employer to permit a current or former
4 employee to inspect or copy records within the time set forth in
5 subdivision (c) entitles the current or former employee or the Labor
6 Commissioner to recover a seven-hundred-fifty-dollar (\$750)
7 penalty from the employer.

8 (g) An employee may also bring an action for injunctive relief
9 to ensure compliance with this section, and is entitled to an award
10 of costs and reasonable attorney's fees.

11 (h) This section does not apply to the state, to ~~any~~ a city, county,
12 city and county, district, or to any other governmental entity, except
13 that if the state or a city, county, city and county, district, or other
14 governmental entity furnishes its employees with a check, draft,
15 or voucher paying the employee's wages, the state or a city, county,
16 city and county, district, or other governmental entity shall, by
17 January 1, 2008, use no more than the last four digits of the
18 employee's social security number or shall use an employee
19 identification number other than the social security number on the
20 itemized statement provided with the check, draft, or voucher.

21 SEC. 4. Article 1.5 (commencing with Section 245) is added
22 to Chapter 1 of Part 1 of Division 2 of the Labor Code, to read:

23
24 Article 1.5. Paid Sick Days
25

26 245. This article shall be known and may be cited as the
27 Healthy Workplaces, Healthy Families Act of 2011.

28 245.5. For the purposes of this article the following terms have
29 the following meanings:

30 (a) "Employee" does not include the following:

31 (1) An employee covered by a valid collective bargaining
32 agreement if the agreement expressly provides for the wages, hours
33 of work, and working conditions of employees, and expressly
34 provides for paid sick days or a paid leave or paid time off policy
35 that permits the use of sick days for those employees, final and
36 binding arbitration of disputes concerning the application of its
37 paid sick days provisions, premium wage rates for all overtime
38 hours worked, and regular hourly rate of pay of not less than 30
39 percent more than the state minimum wage rate.

(2) An employee in the construction industry covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of employees, premium wage rates for all overtime hours worked, and regular hourly pay of not less than 30 percent more than the state minimum wage rate, and the agreement expressly waives the requirements of this article in clear and unambiguous terms. For purposes of this subparagraph, “employee in the construction industry” means an employee performing onsite work associated with construction, including work involving alteration, demolition, building, excavation, renovation, remodeling, maintenance, improvement, repair work, and any other work as described by Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and other similar or related occupations or trades.

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

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

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

(3) A spouse.

(4) A registered domestic partner.

(5) A grandparent.

(6) A grandchild.

(7) A sibling.

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

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

(e) “Small business” means an employer who employs 10 or fewer employees during 20 or more calendar workweeks in the current or preceding calendar year.

1 246. (a) An employee who works in California for seven or
2 more days in a calendar year is entitled to paid sick days as
3 specified in this section.

4 (b) (1) An employee shall accrue paid sick days at the rate of
5 not less than one hour per every 30 hours worked, beginning at
6 the commencement of employment or the operative date of this
7 article, whichever is first.

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 will accrue paid sick days based upon
14 that normal workweek.

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

18 (d) Accrued paid sick days shall carry over to the following
19 calendar year. However, an employer may limit an employee's
20 use of paid sick days as follows:

21 (1) A small business employer may limit an employee's use to
22 40 hours or five days in each calendar year.

23 (2) All other employers may limit an employee's use to 72 hours
24 or nine days in each calendar year.

25 (e) An employer is not required to provide additional paid sick
26 days pursuant to this section if the employer has a paid leave policy
27 or paid time off policy and the employer makes available an
28 amount of leave that satisfies the accrual requirements of this
29 section and that may be used for the same purposes and under the
30 same conditions as specified in this section.

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

35 (2) If an employee separates from an employer and is rehired
36 by the employer within one year, previously accrued and unused
37 paid sick days shall be reinstated. The employee shall be entitled
38 to use those paid sick days and to accrue additional paid sick days
39 upon rehiring.

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

4 246.5. (a) Upon the oral or written request of an employee,
5 an employer shall provide paid sick days for the following
6 purposes:

7 (1) Diagnosis, care, or treatment of an existing health condition
8 of, or preventive care for, an employee or an employee's family
9 member.

10 (2) For an employee who is a victim of domestic violence or
11 sexual assault, the purposes described in subdivision (c) of Section
12 230 and subdivision (a) of Section 230.1.

13 (b) An employer shall not require as a condition of using paid
14 sick days that the employee search for or find a replacement worker
15 to cover the days during which the employee uses paid sick days.

16 (c) (1) An employer shall not deny an employee the right to
17 use sick days, discharge, threaten to discharge, demote, suspend,
18 or in any manner discriminate against an employee for using sick
19 days, attempting to exercise the right to use sick days, filing a
20 complaint with the department or in a court alleging a violation of
21 this article, cooperating in an investigation or prosecution of an
22 alleged violation of this article, or opposing any policy or practice
23 or act that is prohibited by this article.

24 (2) There shall be a rebuttable presumption of unlawful
25 retaliation if an employer denies an employee the right to use sick
26 days, discharges, threatens to discharge, demotes, suspends, or in
27 any manner discriminates against an employee within 90 days of
28 any of the following:

29 (A) The filing of a complaint by the employee with the Labor
30 Commissioner or in a court alleging a violation of this article.

31 (B) The cooperation of an employee with an investigation or
32 prosecution of an alleged violation of this article.

33 (C) Opposition by the employee to a policy, practice, or act that
34 is prohibited by this article.

35 247. (a) An employer shall give each employee written notice
36 of the requirements of this article in English, Spanish, Chinese,
37 and any other language spoken by at least 5 percent of the
38 employees. The written notice shall state the following:

39 (1) That an employee is entitled to accrue, request, and use paid
40 sick days.

1 (2) The amount of paid sick days provided for by this article.

2 (3) The terms of use of paid sick days.

3 (4) That retaliation or discrimination against an employee who
4 requests paid sick days or uses paid sick days, or both, is prohibited
5 and that an employee has the right under this article to file a
6 complaint or bring a civil action against an employer who retaliates
7 or discriminates against the employee.

8 (b) In each workplace of the employer, the employer shall
9 display a poster in a conspicuous place containing all the
10 information specified in subdivision (a). The Labor Commissioner
11 shall create a poster containing this information and make it
12 available to employers.

13 (c) An employer who willfully violates the notice and posting
14 requirements of this section is subject to a civil penalty of not more
15 than one hundred dollars (\$100) per each offense.

16 247.5. An employer shall keep for at least five years records
17 documenting the hours worked and paid sick days accrued and
18 used by an employee. An employer shall allow the Labor
19 Commissioner access to these records with appropriate notice and
20 at a mutually agreeable time to monitor compliance with this
21 article. An employer shall make these records available to an
22 employee pursuant to Section 226. If an employer does not
23 maintain adequate records pursuant to this section, it shall be
24 presumed that the employee is entitled to the maximum number
25 of hours accruable under this article, unless the employer can show
26 otherwise by clear and convincing evidence.

27 248. The Labor Commissioner is authorized and directed to
28 coordinate implementation and enforcement of this article and to
29 promulgate guidelines and regulations for those purposes.

30 248.5. (a) The Labor Commissioner is authorized and directed
31 to enforce this article, including investigating an alleged violation,
32 and ordering appropriate temporary relief to mitigate the violation
33 or to maintain the status quo pending the completion of a full
34 investigation or hearing.

35 (b) If the Labor Commissioner, after a hearing that contains
36 adequate safeguards to ensure that the parties are afforded due
37 process, determines that a violation of this article has occurred, he
38 or she may order any appropriate relief, including reinstatement,
39 backpay, the payment of sick days unlawfully withheld, and the
40 payment of an additional sum in the form of an administrative

1 penalty to an employee or other person whose rights under this
2 article were violated. If paid sick days were unlawfully withheld,
3 the dollar amount of paid sick days withheld from the employee
4 multiplied by three, or two hundred fifty dollars (\$250), whichever
5 amount is greater, shall be included in the administrative penalty.
6 In addition, if a violation of this article results in other harm to the
7 employee or person, such as discharge from employment, or
8 otherwise results in a violation of the rights of the employee or
9 person, the administrative penalty shall include a sum of fifty
10 dollars (\$50) for each day or portion thereof that the violation
11 occurred or continued.

12 (c) Where prompt compliance by an employer is not
13 forthcoming, the Labor Commissioner may take any appropriate
14 enforcement action to secure compliance, including the filing of
15 a civil action. In compensation to the state for the costs of
16 investigating and remedying the violation, the commissioner may
17 order the violating employer to pay to the state a sum of not more
18 than fifty dollars (\$50) for each day or portion of a day a violation
19 occurs or continues for each employee or other person whose rights
20 under this article were violated. These funds shall be allocated to
21 the Labor Commissioner to offset the costs of implementing and
22 enforcing this article.

23 (d) An employee or other person may report to the Labor
24 Commissioner a suspected violation of this article. The
25 commissioner shall encourage reporting pursuant to this
26 subdivision by keeping confidential, to the maximum extent
27 permitted by applicable law, the name and other identifying
28 information of the employee or person reporting the violation.
29 However, the commissioner may disclose that person's name and
30 identifying information as necessary to enforce this article or for
31 other appropriate purposes, upon the authorization of that person.

32 (e) The Labor Commissioner, the Attorney General, a person
33 aggrieved by a violation of this article, or an entity a member of
34 which is aggrieved by a violation of this article may bring a civil
35 action in a court of competent jurisdiction against the employer
36 or other person violating this article and, upon prevailing, shall be
37 entitled to such legal or equitable relief as may be appropriate to
38 remedy the violation, including reinstatement, backpay, the
39 payment of sick days unlawfully withheld, the payment of an
40 additional sum as liquidated damages in the amount of fifty dollars

1 (\$50) to each employee or person whose rights under this article
2 were violated for each day or portion thereof that the violation
3 occurred or continued, plus, if the employer has unlawfully
4 withheld paid sick days to an employee, the dollar amount of paid
5 sick days withheld from the employee multiplied by three; or two
6 hundred fifty dollars (\$250), whichever amount is greater; and
7 reinstatement in employment or injunctive relief; and further shall
8 be awarded reasonable attorney's fees and costs, provided,
9 however, that any person or entity enforcing this article on behalf
10 of the public as provided for under applicable state law shall, upon
11 prevailing, be entitled only to equitable, injunctive, or restitutionary
12 relief, and reasonable attorney's fees and costs.

13 (f) In an administrative or civil action brought under this article,
14 the Labor Commissioner or court, as the case may be, shall award
15 interest on all amounts due and unpaid at the rate of interest
16 specified in subdivision (b) of Section 3289 of the Civil Code.

17 (g) The remedies, penalties, and procedures provided under this
18 article are cumulative.

19 249. (a) This article does not limit or affect any laws
20 guaranteeing the privacy of health information, or information
21 related to domestic violence or sexual assault, regarding an
22 employee or employee's family member. That information shall
23 be treated as confidential and shall not be disclosed to any person
24 except to the affected employee, or as required by law.

25 (b) This article shall not be construed to discourage or prohibit
26 an employer from the adoption or retention of a paid sick days
27 policy more generous than the one required herein.

28 (c) This article does not lessen the obligation of an employer to
29 comply with a contract, collective bargaining agreement,
30 employment benefit plan, or other agreement providing more
31 generous sick days to an employee than required herein.

32 (d) This article establishes minimum requirements pertaining
33 to paid sick days and does not preempt, limit, or otherwise affect
34 the applicability of any other law, regulation, requirement, policy,
35 or standard that provides for greater accrual or use by employees
36 of sick days, whether paid or unpaid, or that extends other
37 protections to an employee.

38 249.5. (a) A public authority created under Section 12301.6
39 of the Welfare and Institutions Code shall be required to meet the
40 requirements of this article for individuals who perform domestic

1 services comprising in-home supportive services under Article 7
2 (commencing with Section 12300) of Chapter 3 of Part 3 of
3 Division 9 of the Welfare and Institutions Code.

4 (b) A public authority may satisfy the requirements of this article
5 by entering into a collective bargaining agreement that provides
6 an incremental hourly wage adjustment in an amount sufficient to
7 satisfy the accrual requirements of Section 246.

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