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AMENDED IN SENATE AUGUST 22, 2014
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CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1522

Introduced by Assembly Member Gonzalez
(Principal coauthor: Assembly Member Levine)
(Coauthors: Assembly Members Alejo, Ammiano, Bonta, Campos,
Dickinson, Roger Hernández, Lowenthal, Pan, Rendon, Stone,
Ting, Wieckowski, and Williams)
(Coauthors: Senators Corbett, Hueso, Lara, Leno, and Padilla)

January 16, 2014

An act to amend Section 2810.5 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 1522, as amended, Gonzalez. Employment: paid sick days.
Existing law authorizes employers to provide their employees paid sick leave.

This bill would enact the Healthy Workplaces, Healthy Families Act of 2014 to provide 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. An employee would be entitled to use accrued sick days beginning on the 90th day of employment. The 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. The bill would prohibit an employer 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 define terms for those purposes.

The bill would require the Labor Commissioner to ~~administer and enforce these requirements, including the promulgation of regulations, and the investigation, mitigation, and relief of violations of these requirements.~~ The bill would authorize the Labor Commissioner to impose specified administrative fines for violations and would authorize the commissioner or the Attorney General to recover specified civil penalties against an offender who violated these provisions on behalf of the aggrieved, as well as attorney's fees, costs, and interest.

The bill would not apply to certain categories of employees that meet specified requirements.

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.

1 (e) Paid sick days will have an enormously positive impact on
2 the public health of Californians by allowing sick workers paid
3 time off to care for themselves when ill, thus lessening their
4 recovery time and reducing the likelihood of spreading illness to
5 other members of the workforce.

6 (f) Paid sick days will allow parents to provide personal care
7 for their sick children. Parental care ensures children's speedy
8 recovery, prevents more serious illnesses, and improves children's
9 overall mental and physical health.

10 (g) Providing paid sick days is affordable for employers and
11 good for business.

12 (h) Employers who provide paid sick days enjoy greater
13 employee retention and reduce the likelihood of employees coming
14 to work sick. Studies have shown that costs of decreased
15 productivity caused by sick workers exceed the costs of employee
16 absenteeism.

17 (i) Many adults have significant elder care responsibilities
18 requiring them to take time off from work or to work reduced
19 hours.

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

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

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

31 (m) Domestic violence is a crime that has a devastating effect
32 on families, communities, and the workplace. It impacts
33 productivity, effectiveness, absenteeism, and employee turnover
34 in the workplace. The National Crime Survey estimates that
35 175,000 days of work each year are missed due to domestic
36 violence.

37 (n) Survivors of domestic violence and sexual assault may be
38 vulnerable at work when trying to end an abusive relationship
39 because the workplace may be the only place where the perpetrator
40 knows to contact the victim. Studies show that up to one-half of

1 domestic violence victims experience job loss. Forty percent
2 reported on-the-job harassment. Nearly 50 percent of sexual assault
3 survivors lose their jobs or are forced to quit in the aftermath of
4 the assaults.

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

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

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

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

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

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

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

24 SEC. 3. Article 1.5 (commencing with Section 245) is added
25 to Chapter 1 of Part 1 of Division 2 of the Labor Code, to read:

26
27 Article 1.5. Paid Sick Days
28

29 245. (a) This article shall be known and may be cited as the
30 Healthy Workplaces, Healthy Families Act of 2014.

31 (b) The provisions of this article are in addition to and
32 independent of any other rights, remedies, or procedures available
33 under any other law and do not diminish, alter, or negate any other
34 legal rights, remedies, or procedures available to an aggrieved
35 person.

36 245.5. As used in this article:

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

38 (1) An employee covered by a valid collective bargaining
39 agreement if the agreement expressly provides for the wages, hours
40 of work, and working conditions of employees, and expressly

1 provides for paid sick days or a paid leave or paid time off policy
2 that permits the use of sick days for those employees, final and
3 binding arbitration of disputes concerning the application of its
4 paid sick days provisions, premium wage rates for all overtime
5 hours worked, and regular hourly rate of pay of not less than 30
6 percent more than the state minimum wage rate.

7 (2) An employee in the construction industry covered by a valid
8 collective bargaining agreement if the agreement expressly provides
9 for the wages, hours of work, and working conditions of
10 employees, premium wage rates for all overtime hours worked,
11 and regular hourly pay of not less than 30 percent more than the
12 state minimum wage rate, and the agreement either (A) was entered
13 into before January 1, 2015, or (B) expressly waives the
14 requirements of this article in clear and unambiguous terms. For
15 purposes of this subparagraph, “employee in the construction
16 industry” means an employee performing onsite work associated
17 with construction, including work involving alteration, demolition,
18 building, excavation, renovation, remodeling, maintenance,
19 improvement, repair work, and any other work as described by
20 Chapter 9 (commencing with Section 7000) of Division 3 of the
21 Business and Professions Code, and other similar or related
22 occupations or trades.

23 ~~(3) An employee covered by a valid collective bargaining~~
24 ~~agreement who performs domestic services comprising A provider~~
25 ~~of in-home supportive services under Section 14132.95, 14132.952,~~
26 ~~or 14132.956 of, or Article 7 (commencing with Section 12300)~~
27 ~~of Chapter 3 of Part 3 of Division 9 of of, the Welfare and~~
28 ~~Institutions Code, if the agreement expressly waives the~~
29 ~~requirements of this article in clear and unambiguous terms. Code.~~

30 (4) An individual employed by an air carrier as a flight deck or
31 cabin crew member that is subject to the provisions of Title II of
32 the federal Railway Labor Act (45 U.S.C. 181 et seq.), provided
33 that the individual is provided with compensated time off equal to
34 or exceeding the amount established in paragraph (1) of subdivision
35 (b) of Section 246.

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

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

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

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

9 (3) A spouse.

10 (4) A registered domestic partner.

11 (5) A grandparent.

12 (6) A grandchild.

13 (7) A sibling.

14 (d) "Health care provider" has the same meaning as defined in
15 paragraph (6) of subdivision (c) of Section 12945.2 of the
16 Government Code.

17 (e) "Paid sick days" means time that is compensated at the same
18 wage as the employee normally earns during regular work hours
19 and is provided by an employer to an employee for the purposes
20 described in Section 246.5.

21 246. (a) An employee who, on or after July 1, 2015, works in
22 California for 30 or more days within a year from the
23 commencement of employment is entitled to paid sick days as
24 specified in this section.

25 (b) (1) An employee shall accrue paid sick days at the rate of
26 not less than one hour per every 30 hours worked, beginning at
27 the commencement of employment or the operative date of this
28 article, whichever is later.

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

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

39 (d) Accrued paid sick days shall carry over to the following
40 year of employment. However, an employer may limit an

1 employee's use of paid sick days to 24 hours or three days in each
2 year of employment. This section shall be satisfied and no accrual
3 or carry over is required if the full amount of leave is received at
4 the beginning of each year, in accordance with subdivision (e).

5 (e) An employer is not required to provide additional paid sick
6 days pursuant to this section if the employer has a paid leave policy
7 or paid time off policy, the employer makes available an amount
8 of leave that may be used for the same purposes and under the
9 same conditions as specified in this section, and the policy does
10 either of the following:

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

13 (2) Provides no less than 24 hours or three days of paid sick
14 leave, or equivalent paid leave or paid time off, for employee use
15 for each year of employment or calendar year or 12-month basis.

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

20 (2) If an employee separates from an employer and is rehired
21 by the employer within one year from the date of separation,
22 previously accrued and unused paid sick days shall be reinstated.
23 The employee shall be entitled to use those previously accrued
24 and unused paid sick days and to accrue additional paid sick days
25 upon rehiring.

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. The penalties described
35 in this article for a violation of this subdivision shall be in lieu of
36 the penalties for a violation of Section 226.

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
40 paid sick leave under this section are not otherwise limited.

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

5 (k) The rate of pay shall be the employee's hourly wage. If the
6 employee in the 90 days of employment before taking accrued
7 sick leave had different hourly pay rates, was paid by commission
8 or piece rate, or was a nonexempt salaried employee, then the rate
9 of pay shall be calculated by dividing the employee's total wages,
10 not including overtime premium pay, by the employee's total hours
11 worked in the full pay periods of the prior 90 days of employment.

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

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

19 246.5. (a) Upon the oral or written request of an employee,
20 an employer shall provide paid sick days for the following
21 purposes:

22 (1) Diagnosis, care, or treatment of an existing health condition
23 of, or preventive care for, an employee or an employee's family
24 member.

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

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

31 (c) (1) An employer shall not deny an employee the right to
32 use accrued sick days, discharge, threaten to discharge, demote,
33 suspend, or in any manner discriminate against an employee for
34 using accrued sick days, attempting to exercise the right to use
35 accrued sick days, filing a complaint with the department or
36 alleging a violation of this article, cooperating in an investigation
37 or prosecution of an alleged violation of this article, or opposing
38 any policy or practice or act that is prohibited by this article.

39 (2) There shall be a rebuttable presumption of unlawful
40 retaliation if an employer denies an employee the right to use

1 accrued sick days, discharges, threatens to discharge, demotes,
2 suspends, or in any manner discriminates against an employee
3 within 30 days of any of the following:

4 (A) The filing of a complaint by the employee with the Labor
5 Commissioner or alleging a violation of this article.

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

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

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

15 (b) *The poster shall state all of the following:*

16 (1) *An employee is entitled to accrue, request, and use paid sick*
17 *days.*

18 (2) *The amount of sick days provided for by this article.*

19 (3) *The terms of use of paid sick days.*

20 (4) *That retaliation or discrimination against an employee who*
21 *requests paid sick days or uses paid sick days, or both, is prohibited*
22 *and that an employee has the right under this article to file a*
23 *complaint with the Labor Commissioner against an employer who*
24 *retaliates or discriminates against the employee.*

25 ~~(b)~~

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

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

1 ~~248. The Labor Commissioner shall coordinate implementation~~
2 ~~and enforcement of this article and promulgate guidelines and~~
3 ~~regulations for those purposes.~~

4 248.5. (a) The Labor Commissioner shall enforce this article,
5 including investigating an alleged violation, and ordering
6 appropriate temporary relief to mitigate the violation or to maintain
7 the status quo pending the completion of a full investigation or
8 hearing.

9 (b) (1) If the Labor Commissioner, after a hearing that contains
10 adequate safeguards to ensure that the parties are afforded due
11 process, determines that a violation of this article has occurred, he
12 or she may order any appropriate relief, including reinstatement,
13 backpay, the payment of sick days unlawfully withheld, and the
14 payment of an additional sum in the form of an administrative
15 penalty to an employee or other person whose rights under this
16 article were violated.

17 (2) If paid sick days were unlawfully withheld, the dollar amount
18 of paid sick days withheld from the employee multiplied by three,
19 or two hundred fifty dollars (\$250), whichever amount is greater,
20 but not to exceed *an aggregate penalty of* four thousand dollars
21 (\$4,000), shall be included in the administrative penalty.

22 (3) If a violation of this article results in other harm to the
23 employee or person, such as discharge from employment, or
24 otherwise results in a violation of the rights of the employee or
25 person, the administrative penalty shall include a sum of fifty
26 dollars (\$50) for each day or portion thereof that the violation
27 occurred or continued, not to exceed *an aggregate penalty of* four
28 thousand dollars (\$4,000).

29 (c) Where prompt compliance by an employer is not
30 forthcoming, the Labor Commissioner may take any appropriate
31 enforcement action to secure compliance, including the filing of
32 a civil action. In compensation to the state for the costs of
33 investigating and remedying the violation, the commissioner may
34 order the violating employer to pay to the state a sum of not more
35 than fifty dollars (\$50) for each day or portion of a day a violation
36 occurs or continues for each employee or other person whose rights
37 under this article were violated.

38 (d) An employee or other person may report to the Labor
39 Commissioner a suspected violation of this article. The
40 commissioner shall encourage reporting pursuant to this

1 subdivision by keeping confidential, to the maximum extent
2 permitted by applicable law, the name and other identifying
3 information of the employee or person reporting the violation.
4 However, the commissioner may disclose that person's name and
5 identifying information as necessary to enforce this article or for
6 other appropriate purposes, upon the authorization of that person.

7 (e) The Labor Commissioner or the Attorney General may bring
8 a civil action in a court of competent jurisdiction against the
9 employer or other person violating this article and, upon prevailing,
10 shall be entitled to collect legal or equitable relief on behalf of the
11 aggrieved as may be appropriate to remedy the violation, including
12 reinstatement, backpay, the payment of sick days unlawfully
13 withheld, the payment of an additional sum, not to exceed *an*
14 *aggregate penalty of* four thousand dollars (\$4,000), as liquidated
15 damages in the amount of fifty dollars (\$50) to each employee or
16 person whose rights under this article were violated for each day
17 or portion thereof that the violation occurred or continued, plus,
18 if the employer has unlawfully withheld paid sick days to an
19 employee, the dollar amount of paid sick days withheld from the
20 employee multiplied by three; or two hundred fifty dollars (\$250),
21 whichever amount is greater; and reinstatement in employment or
22 injunctive relief; and further shall be awarded reasonable attorney's
23 fees and costs, provided, however, that any person or entity
24 enforcing this article on behalf of the public as provided for under
25 applicable state law shall, upon prevailing, be entitled only to
26 equitable, injunctive, or restitutionary relief, and reasonable
27 attorney's fees and costs.

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

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

34 (h) *An employer shall not be assessed any penalty or liquidated*
35 *damages under this article due to an isolated and unintentional*
36 *payroll error or written notice error that is a clerical or an*
37 *inadvertent mistake regarding the accrual or available use of paid*
38 *sick leave. In reviewing for compliance with this section, the*
39 *factfinder may consider as a relevant factor whether the employer,*
40 *prior to an alleged violation, has adopted and is in compliance*

1 *with a set of policies, procedures, and practices that fully comply*
2 *with this section.*

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

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

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

16 (d) This article establishes minimum requirements pertaining
17 to paid sick days and does not preempt, limit, or otherwise affect
18 the applicability of any other law, regulation, requirement, policy,
19 or standard that provides for greater accrual or use by employees
20 of sick days, whether paid or unpaid, or that extends other
21 protections to an employee.

22 SEC. 4. Section 2810.5 of the Labor Code is amended to read:

23 2810.5. (a) (1) At the time of hiring, an employer shall provide
24 to each employee a written notice, in the language the employer
25 normally uses to communicate employment-related information
26 to the employee, containing the following information:

27 (A) The rate or rates of pay and basis thereof, whether paid by
28 the hour, shift, day, week, salary, piece, commission, or otherwise,
29 including any rates for overtime, as applicable.

30 (B) Allowances, if any, claimed as part of the minimum wage,
31 including meal or lodging allowances.

32 (C) The regular payday designated by the employer in
33 accordance with the requirements of this code.

34 (D) The name of the employer, including any "doing business
35 as" names used by the employer.

36 (E) The physical address of the employer's main office or
37 principal place of business, and a mailing address, if different.

38 (F) The telephone number of the employer.

39 (G) The name, address, and telephone number of the employer's
40 workers' compensation insurance carrier.

1 (H) That an employee: may accrue and use sick leave; has a
2 right to request and use accrued paid sick leave; may not be
3 terminated or retaliated against for using or requesting the use of
4 accrued paid sick leave; and has the right to file a complaint against
5 an employer who retaliates.

6 (I) Any other information the Labor Commissioner deems
7 material and necessary.

8 (2) The Labor Commissioner shall prepare a template that
9 complies with the requirements of paragraph (1). The template
10 shall be made available to employers in such manner as determined
11 by the Labor Commissioner.

12 (3) If the employer is a temporary services employer, as defined
13 in Section 201.3, the notice described in paragraph (1) must also
14 include the name, the physical address of the main office, the
15 mailing address if different from the physical address of the main
16 office, and the telephone number of the legal entity for whom the
17 employee will perform work, and any other information the Labor
18 Commissioner deems material and necessary. The requirements
19 of this paragraph do not apply to a security services company that
20 is licensed by the Department of Consumer Affairs and that solely
21 provides security services.

22 (b) An employer shall notify his or her employees in writing of
23 any changes to the information set forth in the notice within seven
24 calendar days after the time of the changes, unless one of the
25 following applies:

26 (1) All changes are reflected on a timely wage statement
27 furnished in accordance with Section 226.

28 (2) Notice of all changes is provided in another writing required
29 by law within seven days of the changes.

30 (c) For purposes of this section, “employee” does not include
31 any of the following:

32 (1) An employee directly employed by the state or any political
33 subdivision thereof, including any city, county, city and county,
34 or special district.

35 (2) An employee who is exempt from the payment of overtime
36 wages by statute or the wage orders of the Industrial Welfare
37 Commission.

38 (3) An employee who is covered by a valid collective bargaining
39 agreement if the agreement expressly provides for the wages, hours
40 of work, and working conditions of the employee, and if the

- 1 agreement provides premium wage rates for all overtime hours
- 2 worked and a regular hourly rate of pay for those employees of
- 3 not less than 30 percent more than the state minimum wage.

O