AB 304

CHANGES TO THE CALIFORNIA PAID SICK LEAVE LAW SIGNED INTO EFFECT JULY 13, 2015

Getting to AB 304

- In 2015 Governor Brown signed into law the California Paid Sick Leave as part of the Healthy Workplaces, Families Act of 2014
- January 1, 2015 the first part of the new law became effective
- July 1, 2015 the remaining elements of the law became effective
- July 13, 2015 Governor Brown signed into law AB 304 which revised elements of the Paid Sick Leave Law

The Material Changes

AB 304 introduced new verbiage, procedures and practices related to:

- The Accrual Method
- Calculating the rate of pay
- PTO plans existing prior to January 1, 2015
- Unlimited PTO and sick leave plans

Changes to the Accrual Method

PRE-JULY 13, 2015

Employees earn 1 hour of paid sick leave benefits per 30 hours worked to a minimum of 48 hours per year.

AB 304

Option to use alternative method for accruing hours.

Alternative Accruing

- Accrual must be on a regular basis AND the employee must have no less than 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year or in each 12 month-period, **OR**

- The employer must provide no less than 24 hours of paid sick leave that is available to be used by the 120th calendar day of employment.

Adding It Up

- Thus…to elect an alternate method, there must be no less than 24 hours accrued in first 120 days of employment or each year. This equates to approximately 6 hours per month.

- Using the existing 1 hour per 30 hours worked, an employee working an average 40 hours per week would only accrue 22.85 hours during this period.

Changes to Calculating the Rate of Pay

PRE-JULY 13, 2015

Employers must use the Regular Rate of Pay using the 90 days period preceding the sick leave.

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Option to use the workweek in which the employee used the sick leave.

Calculating the Rate of Pay

- The alternate calculation is the same as calculating overtime in California.
- The choice to elect the 90 days period or workweek will vary by employer.
- Considerations for selecting the method:
  - Administration
  - Other compensation that must be used to calculate the Regular Rate of Pay

The Impact on Exempt Employees

- Employers need only to apply the same calculation method used for other paid leave time.
- Thus, it is important to examine your entire workforce to determine the method that you will select.

Unlimited PTO and Paid Sick Leave Plans

PRE-JULY 13, 2015

Unlimited plans don’t satisfy the law on the surface. The plans have to mirror the law, including the reporting on the pay stub.

AB 304

Unlimited plans satisfy the pay stub reporting requirement by indicating “unlimited”.

Pre-2015 PTO and Paid Sick Leave Plans

PRE-JULY 13, 2015

Existing PTO and Sick Leave policies don’t satisfy the law on the surface. The plans have to mirror the law, including the reporting on the pay stub, payment, reasons for leave, etc.

AB 304

PTO and Sick Leave policies in effect prior to January 1, 2015 may satisfy the requirements of the law.

Pre-2015 PTO and Paid Sick Leave

To satisfy the new law:

- The accrual must have been on a regular basis AND
- Must have no less than 8 hours accrued within 3 months of employment or each calendar year or 12 month period AND
- Must be able to earn no less than 24 hours within 9 months.

If all elements aren’t met or the plan is modified to achieve this, the plan is subject to the new law in its entirety.

Reminders

- Under the current law, paid sick leave hours that are unused when an employee terminates are not payable.
- When an employee terminates and has unused hours remaining in their PTO bank, those hours are payable at termination.
- Thus, from a fiscal perspective, breaking out paid sick leave could be advantageous.
- PTO plans don’t exempt the employer from tracking the time and paying the regular rate of pay for the paid sick leave.

Summary

There are some potential upsides to AB 304

- Using a workweek vs. 90 days period. This can provide some financial breathing room for employers with commission, bonus and incentive programs.
- Not having to revise existing PTO plans that satisfied the minimum requirements. If the policies haven’t been revised, this can eliminate the time required to revise and implement.

QUESTIONS

THANKS FOR ATTENDING

If you have any questions about today's webinar or need HR, compliance or employment law assistance, please feel free to:

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