

AB 304 Amendment

Key Changes to the Healthy Workplaces, Healthy Families Act

After many iterations, weeping and gnashing of teeth, the CA paid sick leave (PSL) amendment bill (AB 304) has been signed by Governor Brown. AB 304 has a number of provisions that are intended to clarify the original law (AB 1522 - Healthy Workplaces, Healthy Families Act of 2014 or HW/HF). We suggested to many of our clients that the amendment would be more about the accrual method (1 hour of PSL for every 30 hours worked) rather than the frontload method (granting 24 hours or 3 days of PSL on July 1 or date of hire). Although not all of the changes are about the accrual, there is good news around the accrual options and determining how to pay PSL.

Below are the primary changes as noted by the State Senate analysis, and we encourage you to review the chart below to determine which of these apply to your company. Our comments are in *italics*:

Topic	AB 304 Key Changes	Comments
Definition of Employee	Provides that the definition of "employee" does not include specified retired annuitants.	<i>Doesn't apply to the private sector.</i>
	Specifies that an "employee in the construction industry" means an employee performing work – deleting the reference to "onsite work" in the current provisions of the law.	<i>Applies to construction industry only.</i>
Eligibility	Specifies that the law applies to an employee who works in California "for the same employer" for 30 or more days within a year.	<i>This is only for initial eligibility when someone is hired. Quite frankly, we suggest it's not worth tracking unless you have a very transient applicant pool.</i>
Accrual options	Provides that an employer may use a different accrual method, other than providing one hour per every 30 hours worked, provided that the accrual is on a regular basis so that an employee has 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.	<i>For many employers with part-timers, it will be better to stick with the original 1 for 30 accrual rate. This provision does allow for accrual by pay period or a regularly occurring period of time - much easier for some employers.</i>

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	<p><u>“New Hire Alternative Accrual Option”</u> Provides that an employer may satisfy the accrual requirements of this section by providing not less than 24 hours or three days of paid sick leave that is available to the employee to use by the completion of his or her 120th calendar day of employment.</p>	<p><i>Again, if you have part-timers, it will be better to stick with the original 1 for 30 accrual.</i></p>
<p>Other sick leave or PTO plans to meet the PSL obligation</p>	<p>Amends the law to specify 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 (beginning July 1, 2015) an amount of leave that may be used for the same purposes and under the same conditions, and the policy satisfies one of the following options:</p> <p>a) Satisfies the accrual, carry over, and use requirements of the law.</p> <p>b) Provided paid sick leave or paid time off to a class of employees before January 1, 2015, pursuant to a sick leave policy that used an accrual method different than providing one hour per every 30 hours worked, provided that the accrual is on a regular basis so that an employee, including an employee hired into that class after January 1, 2015, has no less than one day or eight hours of accrued leave within three months, and the employee was eligible to earn at least 24 hours or three days within nine months. If an employer modifies the accrual method used in the policy it had in place prior to January 1, 2015, the employer shall comply with any accrual method set forth in</p>	<p><i>Our recommendation to create a separate PSL plan and not to use PTO plans to satisfy PSL has not changed.</i></p> <p><i>Employers will still need to rewrite their PTO or sick leave policies to cover the provisions the law requires, such as coverage of domestic violence and retaliation protection.</i></p> <p><i>This grandfather option only applies if a PTO or sick leave plan was in place prior to the HW/HF Act on January 1, 2015. Again, the plan must cover all the HW/HF Act requirements. Our legal counsel still recommends that PSL hours be in a separate account and not merged with</i></p>

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	<p>existing law or provide the full amount of leave at the beginning of the year. This bill shall not prohibit the employer from increasing the accrual amount or rate.</p> <p>c) Provides that specified sick leave or annual leave benefits provided to specified state employees or officers by statute or the provisions of a memorandum of understanding meet the requirements of the paid sick day's law.</p>	<p><i>other time off plans.</i></p> <p><i>This only applies to public sector employers.</i></p>
Rehire	<p>Provides that an employer is not required to reinstate accrued paid time off to a rehired employee that was paid out at the time of termination, resignation, or separation of employment.</p>	
Unlimited Sick Leave or PTO plans	<p>Provides that if an employer provides unlimited paid sick leave or unlimited paid time off, the employer may satisfy a specified written notice requirement of existing law by indicating on the notice or the employee's itemized wage statement that such leave is "unlimited."</p>	
Recordkeeping – Broadcasting and motion picture industries paystubs	<p>Delays application of provisions related to the inclusion of the amount of paid sick leave available on itemized wage statements or separate writings until January 21, 2016, for employers in the broadcasting and motion picture industries.</p>	
PSL Pay Rate	<p>Provides that an employer shall calculate paid sick leave using any of the following calculations:</p>	

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	<p>a) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.</p> <p>b) Paid sick time for non-exempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.</p> <p>c) Paid sick time for exempt employees shall be calculated in the same manner as the employer calculates wages for other forms of paid leave time.</p>	<p><i>This is a helpful clarification and only requires regular rate of pay to be calculated for the week in which PSL is taken rather than 90 days in arrears. Payroll specialists are breathing a sigh of relief.</i></p> <p><i>This section removed the reference to non-exempt employees earning commission, piece rates or different rates of pay. If I have a choice, I'll take option (a) any day.</i></p> <p><i>This is helpful clarification for exempt employees taking PSL. It doesn't address what employers are going to pay to 100% commission outside sales employees who are not paid for other leave time. We'll keep asking.</i></p>
PSL Use	Provides that an employer is not obligated to inquire into or record the purpose for which an employee uses paid leave or paid time off.	

The jury's still out on how much clarity surrounds this latest creation by our CA legislature. We'll learn more along the way as the Labor Commissioner interprets the law and court cases begin.

Please contact us if you are interested in purchasing one of our PSL policy templates.