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California Expands Paid Sick Leave Law Effective January 1, 2024

On October 4, 2023, Governor Newsome signed into law Senate Bill 616 (the "Bill") which nearly doubles the amount of paid sick leave ("PSL") employers are required to provide employees. The law will take effect on January 1, 2024 and is yet another progressive policy passed by politicians for the sole purpose of gaining votes, while completely disregarding the severe strain it will have on employers of all sizes.

Currently, California Labor Code section 246 requires employers to provide employees who work 30 or more days within a year with PSL that accrues at a rate not less than one hour per 30 hours worked. Employers can use a different accrual method, so long as the employee has no less than 24 hours, or three days, of accrued PSL by the 120th calendar day of employment of each calendar year or in a 12-month period (the "PSL Period"). Under current law, employers are allowed to cap the amount of PSL carried over to the next PSL Period to 48 hours or 6 days. Many employers have opted to provide 24 hours, or 3 days, of PSL to employees up-front at the beginning of the PSL Period to avoid having to track employees' accruals each pay period. In those instances, PSL does not carry over because the full amount is re-issued at the start of the new PSL Period. Under both the accrual method and the up-front method, employers can cap an employee's usage of PSL at 24 hours, or 3 days, in each PSL Period.

Under the new law, in addition to the requirement that an employee accrue 24 hours by the 120th day, an employee must accrue no less than 40 hours, or 5 days, of PSL by the 200th calendar day of the PSL Period. If an employer chooses to satisfy their PSL obligation by providing PSL to employees up front, they must provide them with at least 40 hours, or 5 days, of PSL. The new cap on the total amount of PSL an employee can accrue will be 80 hours, or 10 days, and an employer can only cap an employee's use of PSL at 40 hours, or 5 days, in each PSL Period.

What This Means for Employers:

The Labor Code imposes strict requirements on employers regarding inhibiting an employees' use of PSL. Employers are prohibited from retaliating against employees for using PSL, prohibited from imposing certain conditions on employees' use of PSL and are prohibited from interfering with an employee's request to use PSL. By requiring employees to provide documentation, such as a doctor's note, or detailed information regarding the leave as a prerequisite to using PSL, employers leave themselves susceptible to lawsuits claiming they infringed on the employee's protected right. Employers generally should refrain from questioning an employee's reason for using PSL beyond what is necessary to protect other employees from illness or injury, such as COVID-19.

The glaring issue with this impending legislation is the increased financial burden on employers. Under the new PSL requirements, employees can and are incentivized to take more workdays off, especially right before their PSL hours are renewed in the following PSL period. Meanwhile, employers are left paying the same amount, if not more, in case additional workers are needed. Further, employers cannot pry into the need for PSL, even if they believe the employee is simply taking it because it is there.

You can expect that supervisors will become increasingly frustrated due to any resulting operational delays. However, anyone authorized to issue any type of discipline must be trained that they cannot require proof of or details about the reason for the PSL and most certainly cannot punish or treat employees differently for using PSL. Remind your supervisors that employees can use PSL for almost any reason related to their health or the health of a family member or for reasons related to being a victim of domestic violence or stalking. Employers should review and revise their company policies and handbooks to reflect the new minimum accrual and usage rates before January 1, 2024.