

RESOLUTION 11-05-08

DIGEST

Employment Law: Mandatory Paid Sick Leave

Amends California Labor Code section 233 to require employers to provide paid sick leave.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend California Labor Code section 233 to read as follows:

- 1 §233.
- 2 (a) Employers shall provide paid sick leave to all employees, after the employee
3 has completed 90 days of employment. Paid sick leave shall accrue at a rate of not less
4 than 1 hour for each 30 hours the employee is regularly scheduled to work. Sick leave
5 need not accrue for the employee’s first 90 days of employment, for any time worked in
6 excess of the employee’s regular schedule, or for any time the employee is in an unpaid
7 leave status. Sick leave for exempt employees shall be determined based upon a 40 hour
8 work week. Any employer who provides sick leave for employees shall permit an
9 employee to use in any calendar year the employee's accrued and available sick leave
10 entitlement, in an amount not less than the sick leave that would be accrued during six
11 months at the employee's then current rate of entitlement, to attend to an illness of a child,
12 parent, spouse, or domestic partner of the employee. All conditions and restrictions placed
13 by the employer upon the use by an employee of sick leave also shall apply to the use by
14 an employee of sick leave to attend to an illness of his or her child, parent, spouse, or
15 domestic partner. This section does not extend the maximum period of leave to which an
16 employee is entitled under Section 12945.2 of the Government Code or under the federal
17 Family and Medical Leave Act of 1993 (29 U.S.C. Sec. 2606 et seq.), regardless of
18 whether the employee receives sick leave compensation during that leave.
- 19 (b) Accrued, unused sick leave shall be carried over from year to year. Employers
20 may cap sick leave accrual of sick leave at 72 hours and employers meeting the definition
21 of “small business” may cap accrual of sick leave at 40 hours. An employer need not
22 compensate an employee for any accrued, unused sick leave upon the employee's
23 termination, resignation, retirement, or other separation from employment.
- 24 (c) If an employer has a paid leave policy, such as a paid time off policy, that
25 makes available to employees an amount of paid leave that may be used for the same
26 purposes as sick leave under this section and that is sufficient to meet the requirements for
27 accrued sick leave stated in subsections (a), the employer is not required to provide
28 additional paid sick leave.
- 29 (d) An employer may not require, as a condition of an employee's taking paid sick
30 leave, that the employee search for or find a replacement worker to cover the hours during
31 which the employee is on paid sick leave.
- 32 (e) An employer may require employees to give reasonable notification of an
33 absence from work for which paid sick leave is or will be used.
- 34 (f) An employer may take reasonable measures to verify or document that an
35 employee's use of paid sick leave is lawful.

36 (g) This section shall not apply to employees covered by a bona fide collective
37 bargaining agreement to the extent that such requirements are expressly waived in the
38 collective bargaining agreement in clear and unambiguous terms.

39 (h)(b) As used in this section:

40 (1) "Child" means a biological, foster, or adopted child, a stepchild, a legal ward,
41 a child of a domestic partner, or a child of a person standing in loco parentis.

42 (2) "Employer" means any person employing another under any appointment or
43 contract of hire and includes the state, political subdivisions of the state, and
44 municipalities.

45 (3) "Parent" means a biological, foster, or adoptive parent, a stepparent, or a legal
46 guardian.

47 (4) "Sick leave" means accrued increments of compensated leave provided by an
48 employer to an employee as a benefit of the employment for use by the employee during
49 an absence from the employment for any of the following reasons:

50 (A) The employee is physically or mentally unable to perform his or her duties
51 due to illness, injury, or a medical condition of the employee.

52 (B) The absence is for the purpose of obtaining professional diagnosis or
53 treatment for a medical condition of the employee.

54 (C) The absence is for other medical reasons of the employee, such as pregnancy
55 or obtaining a physical examination.

56 (D) The absence is for the purpose of the employee taking time off to provide
57 care or assistance to attend to an illness or injury of a child, parent, spouse, or domestic
58 partner of the employee.

59 "Sick leave" does not include any benefit provided under an employee welfare
60 benefit plan subject to the federal Employee Retirement Income Security Act of 1974
61 (Public Law 93-406, as amended) and does not include any insurance benefit, workers'
62 compensation benefit, unemployment compensation disability benefit, or benefit not
63 payable from the employer's general assets.

64 (E) "Small business" shall mean an employer for which fewer than ten persons
65 work for compensation during a given week. In determining the number of persons
66 performing work for an employer during a given week, all persons performing work for
67 compensation on a full-time, part-time, or temporary basis shall be counted, including
68 persons made available to work through the services of a temporary services or staffing
69 agency or similar entity.

70 (i)(e) No employer shall deny an employee the right to use sick leave or
71 discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an
72 employee for using, or attempting to exercise the right to use, sick leave to attend to an
73 illness of a child, parent, spouse, or domestic partner of the employee.

74 (j)(d) Any employee aggrieved by a violation of this section shall be entitled to
75 reinstatement and actual damages or one day's pay, whichever is greater, and to appropriate
76 equitable relief.

77 (k) This Chapter provides minimum requirements pertaining to paid sick leave and
78 shall not be construed to preempt, limit, or otherwise affect the applicability of any other
79 law, regulation, requirement, policy, or standard that provides for greater accrual or use by
80 employees of sick leave, whether paid or unpaid, or that extends other protections to
81 employees.

82 ~~(l)~~(e) Upon the filing of a complaint by an employee, the Labor Commissioner
83 shall enforce the provisions of this section in accordance with the provisions of Chapter 4
84 (commencing with Section 79) of Division 1, including, but not limited to, Sections 92,
85 96.7, 98, and 98.1 to 98.8, inclusive. Alternatively, an employee may bring a civil action
86 for the remedies provided by this section in a court of competent jurisdiction. If the
87 employee prevails, the court may award reasonable attorney's fees.
88 (m)~~(f)~~ This section is intended to create a uniform State-wide standard governing
89 sick leave and, as such, is intended to supersede any local ordinance regarding paid sick
90 leave. The rights and remedies specified in this section are cumulative and nonexclusive
91 and are in addition to any other rights or remedies afforded by contract or under other
92 provisions of law.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

Existing Law: Does not mandate that employers provide any amount of paid time off to employees who are sick or injured or who must take time off to care for sick or injured family members.

This Resolution: Would guarantee paid time off for employees who take time off due to their own illness or injury or to provide care to a sick or injured member of the employee's immediate family.

The Problem: The number of single parent households and households where both parents work has increased over time. When a wage earner is injured or too sick to work, or when that wage earner is needed to care for a sick family member, the family suffers. The loss of income often occurs when the family is experiencing increased expenses for medical care.

California provides limited replacement income through the State Disability Insurance program, but this compensation is only a portion of the income lost. The California Legislature has already recognized that it is in the public benefit to provide income to workers who are needed to care for their family members. This resolution shifts a small portion of the burden of meeting the employee's needs from the employee to the employer.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

AUTHOR AND/OR PERMANENT CONTACT: Margaret J. Grover, Haight, Brown & Bonesteel, LLP, 71 Stevenson Street, 20th Floor, San Francisco California 94105, telephone (415) 546-7500, facsimile (415) 546-7505, e-mail mgrover@hbblaw.com

RESPONSIBLE FLOOR DELEGATE: Margaret J. Grover