

**Severson & Werson's Labor
and Employment Practice**

Group works closely with employers to develop strategies that help prevent employment claims. The Group also represents employers in defending a wide range of civil litigation and administrative claims.

If you have any questions regarding this News Brief or other labor and employment law matters, please contact one of Severson & Werson's Labor and Employment Practice Group Co-Chairs:

Tracey Merwise
Advice & Counsel and
Compliance Matters
(415) 677-5633
tkm@severson.com

Rhonda Nelson
Litigation Matters
(415) 677-5502
rln@severson.com

PAID SICK DAYS ARE JUST THE BEGINNING

Now is the time to prepare for compliance with San Francisco's new Paid Sick Leave Law. Set to go into effect February 5, 2007, the law has a significant impact on all businesses with employees in San Francisco and will catch many employers unaware.

Even employers already providing sufficient paid time off for illness should review their policies and procedures, since the new law changes nearly everything about paid sick leave, including how it accrues and how it may be used. The new law also imposes new posting and recordkeeping requirements. Violation of the new law carries stiff penalties, and employees or anyone acting on behalf of the public can sue to enforce the law. Corporate officers and executives may be held personally liable.

THE NEW LAW CHANGES ALMOST EVERYTHING

- **Employees Covered:** All employees working on a full-time, part-time or temporary basis in San Francisco are eligible to accrue paid sick leave after working for the employer for 90 days. Employees moving to San Francisco are immediately eligible if they have worked for the employer for more than 90 days elsewhere. Covered employers include anyone (corporations, sole proprietorships, and household employers, to name a few) who employs or exercises control over wages, hours or working conditions of an employee either directly or through a temporary services or staffing agency.
- **Sick Leave Accrual:** Eligible employees accrue 1 hour of paid sick leave for each 30 hours worked. An employer of fewer than 10 employees must permit employees to accrue up to 40 hours of paid sick leave. Other employers must permit accrual of up to 72 hours of paid sick leave. Unused sick leave carries over year-to-year, subject to the 40- or 72-hour cap, but need only be paid out upon termination if it is part of a vested leave policy such as Paid Time Off ("PTO").
- **Permitted Uses Of Sick Leave:** An employee may use all of his or her paid sick leave for his or her own aid or care, or for the aid or care of a relative or a designated beneficiary when the employee, relative or beneficiary is ill or injured, has a medical condition, or is receiving medical care, treatment, or diagnosis. Relatives include biological, step- or adopted children, grandchildren, spouses, siblings, parents, and grandparents as well as registered domestic partners and their children.
- **Designated Beneficiary:** An employee without a spouse or registered domestic partner may designate one person for whose aid or care the employee may use his or her paid sick leave. The employer must allow the employee an annual 10 working-day period to designate or change this beneficiary. The first designation period must begin before the employee has worked 30 hours after initially becoming eligible to accrue paid sick leave.

- **Recordkeeping:** Employers must keep records of hours their employees worked and paid sick leave they used. Employers must retain those records for four years and allow the City's Office of Labor Standards Enforcement ("OLSE") to review them. Employers that do not keep records or provide the OLSE access are presumed to have violated the law, absent clear and convincing evidence otherwise.
- **Posting:** Employers must post notice of employees' rights under the new law in a conspicuous place. The notice must be posted in English, Spanish, Chinese, and any other language spoken by at least five percent of the employees at that workplace. The OLSE will provide compliant posters in January 2007 and updated versions each December thereafter.
- **Retaliation:** Employers may not take any adverse action against an employee for using paid sick leave, complaining of a violation of the law, cooperating with the OLSE in its investigation of a violation, or informing another person of his or her rights under the law. A rebuttable presumption of retaliation arises if an employer takes adverse action against an employee within 90 days after the employee takes leave or complains, cooperates or informs.
- **Penalties and Enforcement:** The OLSE, City Attorney, or any employee or other person harmed may sue an employer for violating the law. In addition to reinstatement, back pay, and any sick leave withheld, an aggrieved party may recover three times the amount of sick leave pay improperly withheld, liquidated damages of \$50 per day or portion thereof the harmed person's rights were violated, and attorneys' fees. Any other person or entity acting on behalf of the public may sue and recover equitable relief, restitution of unpaid sick leave, and attorneys' fees. Corporate officers and executives may be held personally liable for violations of the law.

WHAT SHOULD EMPLOYERS DO?

- Analyze and revise leave policies, kin-care, attendance and call-in policies to ensure compliance.
- Inform employees that current PTO policies offer sufficient paid sick leave under the new law or change existing policies to bring them into compliance and inform employees of the changes.
- Negotiate provisions ensuring temporary services or staffing agencies assume responsibility, liability and defense costs for claims arising from employees they supply.
- Analyze recordkeeping, payroll, and record-retention policies for both FLSA exempt and non-exempt employees to ensure compliance with the recordkeeping requirements.
- Update postings and create designation and re-designation notices and procedures.
- Keep up-to-date records of employees' performance and disciplinary issues to help rebut the retaliation presumption.
- Because compliance can be expressly waived by collective bargaining agreement, negotiate waivers into new collective bargaining agreements.



LEARN MORE! BE OUR GUEST AT SEVERSON'S "SURVIVING PAID SICK LEAVE" LUNCHEON

January 24, 2007 at noon. Space is limited. Please RSVP to Severson's Marketing Coordina-

This News Brief was designed to provide accurate general information with respect to the subject matter covered, current as of the date of publication. Severson & Werson is not rendering legal or other professional services. If you require legal advice or other expert assistance, please seek individualized assistance of counsel for your particular situation.

To unsubscribe, please reply to this email with the word "REMOVE" in the subject line.

San Francisco
 One Embarcadero Center ■ Suite 2600
 San Francisco, California 94111
 p: 415-398-3344 ■ f: 415-956-0439



Orange County
 19100 Von Karman Avenue ■ Suite 700
 Irvine, California 92612
 p: 949-442-7110 ■ f: 949-442-7118