

THE LAW OFFICES OF ALEX W. CRAIGIE

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Two New Laws Guaranteed to Impact California Employers

California lawmakers and Governor Brown have been busy enacting two new laws that are guaranteed to impact California businesses, particularly small employers. The first requires employers to provide accrued, paid sick leave beginning on July 1, 2015. The second law will expand the potential liability of businesses that contract with a staffing agency to obtain workers to perform the "regular and customary work" of their business. This discusses each in turn.

Mandatory Paid Sick Leave – The Healthy Workplaces, Healthy Families Act of 2014 ("Act") will apply to *all* employers. It will cover employees, including otherwise exempt employees, who work 30 or more days in California within a year from the commencement of their employment. Excluded from the Act are: (1) employees covered by a collective bargaining agreement ("CBA") that provides for paid sick leave; (2) certain construction employees covered by a CBA, even if it does not provide for paid sick leave; (3) airline flight crew employees who already accrue paid time off of at least one hour for every hour worked; and (4) in-home support service providers. There are additional requirements to trigger these exclusions.

Paid sick leave is accrued at a rate of "not less than" one hour for every 30 hours worked. Employers can limit accrued sick leave to 48 hours (6 days), and can limit carryover to 24 hours (3 days) each year. The hourly rate for sick pay is calculated by dividing the employer's total wages (no overtime premium) by the total hours worked in the full pay periods of the prior 90 days. Calculating this rate may be challenging for employees paid at varying rates depending on work.

Sick leave will be available for treatment of a health condition or preventative care for the employee or a family member, or if the employee was a victim of domestic violence, sexual assault or stalking. There is a 90-day "threshold" period of employment that the employee must cross before first taking sick leave under the Act.

There are posting requirements. Employers must display a poster explaining the new sick leave accrual requirements. New employees must be informed in writing of sick leave accrual rights. All employees must be given notice of sick time accrued after each pay period. Employers must maintain records reflecting hours worked and sick leave accrued and used for three (3) years, so they can make them available if requested by the employee or Labor Commissioner.

Enhanced Liability For Businesses That Use Workers Supplied by Labor Contractors – Assembly Bill 1897 requires businesses that rely on workers supplied by labor contractors (such as staffing agencies) to share legal responsibility and civil liability arising from the obligations to pay accurate wages and obtain workers' compensation coverage.

Traditionally, temporary or other employees of labor contractors had the burden of proving that the business to which they were assigned was properly considered a "joint employers" with the labor contractor if they wanted to hold the business liable. Labor Code Section 2810.3, the new law, expands such businesses' liability to be co-extensive with the labor contractors for workers who perform labor "within the client employer's usual course of business."

There are certain exceptions. For example, the law does not define labor contractor to include: (1) nonprofit, community-based organizations, (2) motion picture payroll service companies, or (3) labor organizations operated pursuant to a CBA.

This new law is expected to have greatest impact on small businesses that rely heavily on labor contractors to fill temporary, seasonal and fluctuating needs. Businesses who rely on labor contractors are urged to: (1) be extremely selective when doing business with labor contractors, (2) require labor contractors to agree, in writing, to defend and indemnify the client business in the event of a lawsuit by the labor contractor's employee.

What Employers Should Do – Employers should act proactively to protect themselves from liability under either new law. Over the next few months, employers should revise policies, including handbooks, to reflect compliance with the new paid sick leave law. Posted information is also mandatory. They should likewise be careful in selecting and contracting with labor contractors, and seek, if possible, a written indemnification agreement. Overall, employers are encouraged to consult with their regular employment attorneys to ensure they are in full compliance.

The Law Offices of Alex W. Craigie helps California employers prevent, address and resolve employment disputes in a logical and cost-effective manner. Reach us at (323) 652-9451 or at Alex@CraigieLawfirm.com.

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