AMENDED IN ASSEMBLY JUNE 19, 2023

AMENDED IN SENATE APRIL 24, 2023

SENATE BILL No. 616

Introduced by Senator Gonzalez
(Principal coauthor: Assembly Member Wendy Carrillo)
(Coauthors: Senators Durazo, Laird, *Wahab,* and Wiener)
(Coauthors: Assembly Members Bryan and Haney)

February 15, 2023

An act to amend Sections 245.5, 246, and 246.5 of, and to add Article 1.6 (commencing with Section 249.5) to Chapter 1 of Part 1 of Division 2 of, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 616, as amended, Gonzalez. Sick days: paid sick days accrual and use: unpaid sick leave for railroad employees.

Existing law, the Healthy Workplaces, Healthy Families Act of ~~2014,~~ *2014 (act),* establishes requirements relating to paid sick days and paid sick leave, as described. The act excludes specified employees from its provisions, including an employee covered by a valid collective bargaining agreement, as described (CBA employees).

This bill would exclude railroad carrier employers and their employees from the act's provisions, and would instead require these railroad employers to allow their railroad employees to take at least 7 days of unpaid sick leave annually. *The bill would apply specified provisions from the act relating to, among other things, eligibility for, accrual and use of, and prevention of retaliation for use of sick leave, but would make those provisions applicable to railroad employees for purposes of the unpaid sick leave requirement. The bill would provide that the unpaid sick leave provisions are severable.*

Existing law, with certain exceptions, entitles an employee to paid sick days for certain purposes if the employee works in California for the same employer for 30 or more days within a year from the commencement of employment. Existing law imposes procedural requirements on employers regarding the use of paid sick days, including by prohibiting retaliation for using paid sick days, by prohibiting the imposition of certain conditions on the use of paid sick days, and by requiring the use of paid sick days for specified health care and situations. Existing law requires the leave to be accrued at a rate of no less than one hour for every 30 hours worked, and to be available for use beginning on the 90th day of employment.

This bill would extend the above-described procedural requirements on the use of paid sick days to CBA employees.

Existing law authorizes an employer to use a different accrual method as long as 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. Existing law also provides that an employer may satisfy the accrual requirements by providing not less than 24 hours or 3 days of paid sick leave that is available to the employee to use by the completion of the employee's 120th calendar day of employment.

This bill would modify the employer's alternate sick leave accrual method to instead require that an employee have no less than 56 hours of accrued sick leave or paid time off by the 280th calendar day of employment or each calendar year, or in each 12-month period. The bill would modify that satisfaction provision to authorize an employer to satisfy accrual requirements by providing not less than 56 hours or 7 days of paid sick leave that is available to the employee to use by the completion of the employee's 280th calendar day of employment.

Existing law requires accrued paid sick days to carry over to the following year of employment. Existing law, however, authorizes an employer to limit an employee's use of accrued paid sick days to 24 hours or 3 days in each year of employment, calendar year, or 12-month period. Under existing law, this provision is satisfied and no accrual or carryover is required if the full amount of leave is received at the beginning of each year of employment, calendar year, or 12-month period. Existing law defines "full amount of leave" for these purposes to mean 3 days or 24 hours.

This bill would raise the employer's authorized limitation on the use of carryover sick leave to 56 hours or 7 days in each year of employment. The bill would redefine “full amount of leave” to mean 7 days or 56 hours.

Existing law also entitles individual providers of in-home supportive services and waiver personal care services, as defined, to paid sick days in specified amounts in accordance with minimum wage increases, up to a maximum of 24 hours or 3 days each year of employment when the minimum wage has reached $15 per hour. Existing law authorizes the State Department of Social Services to implement and interpret these provisions.

This bill would increase the sick leave accrual rate for these providers to 56 hours or 7 days in each year of employment, beginning January 1, 2024.

Under existing law, an employer is not required to provide additional paid sick days pursuant to these provisions if the employer has a paid leave or paid time off policy, makes an amount of leave available to employees that may be used for the same purposes and under the same conditions as these provisions, and the policy, among other conditions, results in an employee’s eligibility to earn at least 3 days or 24 hours of sick leave or paid time off within 9 months of employment.

This bill would raise that amount to 7 days or 56 hours of sick leave or paid time off.

Under existing law, an employer has no obligation under these provisions to allow an employee’s total accrual of paid sick leave to exceed 48 hours or 6 days, provided that an employee’s rights to accrue and use paid sick leave are not otherwise limited, as specified.

This bill would increase those accrual thresholds for paid sick leave to 112 hours or 14 days.

Existing paid sick days law sets forth provisions on, among other things, the definition of “full amount of leave” for a provider of in-home supportive services, as described, compensation for accrued, unused paid sick days upon specified employment events, the lending of paid sick days to employees, written notice requirements, the calculation of paid sick leave, reasonable advance notification requirements, and payment of sick leave taken.

This bill would provide that these provisions shall preempt any local ordinance to the contrary.

The bill would include findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 245.5 of the Labor Code is amended to read:

245.5. As used in this article:

(a) "Employee" does not include the following:

(1) Except as provided in subdivision (d) of Section 246.5, an employee covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of employees, and expressly provides for paid sick days or a paid leave or paid time off policy that permits the use of sick days for those employees, final and binding arbitration of disputes concerning the application of its paid sick days provisions, premium wage rates for all overtime hours worked, and regular hourly rate of pay of not less than 30 percent more than the state minimum wage rate.

(2) An employee in the construction industry covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of employees, premium wage rates for all overtime hours worked, and regular hourly pay of not less than 30 percent more than the state minimum wage rate, and the agreement either (A) was entered into before January 1, 2015, or (B) expressly waives the requirements of this article in clear and unambiguous terms. For purposes of this subparagraph, "employee in the construction industry" means an employee performing work associated with construction, including work involving alteration, demolition, building, excavation, renovation, remodeling, maintenance, improvement, repair work, and any other work as described by Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and other similar or related occupations or trades.

(3) An individual employed by an air carrier as a flight deck or cabin crew member that is subject to Title II of the federal Railway Labor Act (45 U.S.C. Sec. 151 et seq.), provided that the individual is provided with compensated time off equal to or exceeding the

amount established in paragraph (1) of subdivision (b) of Section 246.

(4) An employee of the state, city, county, city and county, district, or any other public entity who is a recipient of a retirement allowance and employed without reinstatement into the employee's respective retirement system pursuant to either Article 8 (commencing with Section 21220) of Chapter 12 of Part 3 of Division 5 of Title 2 of the Government Code, or Article 8 (commencing with Section 31670) of Chapter 3 of Part 3 of Division 4 of Title 3 of the Government Code.

(5) An employee as defined in Section 351(d) of Title 45 of the United States Code.

(b) (1) "Employer" means any person employing another under any appointment or contract of hire and includes the state, political subdivisions of the state, and municipalities.

(2) "Employer" does not include any employer described in Section 351(a) of Title 45 of the United States Code.

(c) "Family member" means any of the following:

(1) A child, which for purposes of this article means a biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis. This definition of a child is applicable regardless of age or dependency status.

(2) A biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child.

(3) A spouse.

(4) A registered domestic partner.

(5) A grandparent.

(6) A grandchild.

(7) A sibling.

(8) A designated person, which, for purposes of this article, means a person identified by the employee at the time the employee requests paid sick days. An employer may limit an employee to one designated person per 12-month period for paid sick days.

(d) "Health care provider" has the same meaning as defined in Section 12945.2 of the Government Code.

(e) "Paid sick days" means time that is compensated at the same wage as the employee normally earns during regular work hours and is provided by an employer to an employee for the purposes described in Section 246.5.

SEC. 2. Section 246 of the Labor Code is amended to read:

246. (a) (1) An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section. For an individual provider of waiver personal care services under Section 14132.97 of the Welfare and Institutions Code who also provides in-home supportive services in an applicable month, eligibility shall be determined based on the aggregate number of monthly hours worked between in-home supportive services and waiver personal care services pursuant to subdivision (d) of Section 14132.971.

(2) On and after July 1, 2018, a provider of in-home supportive services under Section 14132.95, 14132.952, or 14132.956 of, or Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of, the Welfare and Institutions Code, who works in California for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in subdivision (e) and subject to the rate of accrual in paragraph (1) of subdivision (b). For an individual provider of waiver personal care services under Section 14132.97 of the Welfare and Institutions Code, entitlement to paid sick days begins on July 1, 2019.

(b) (1) An employee shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment or the operative date of this article, whichever is later, subject to the use and accrual limitations set forth in this section.

(2) An employee who is exempt from overtime requirements as an administrative, executive, or professional employee under a wage order of the Industrial Welfare Commission is deemed to work 40 hours per workweek for the purposes of this section, unless the employee's normal workweek is less than 40 hours, in which case the employee shall accrue paid sick days based upon that normal workweek.

(3) 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 56 hours of accrued sick leave or paid time off by the 280th

calendar day of employment or each calendar year, or in each 12-month period.

(4) An employer may satisfy the accrual requirements of this section by providing not less than 56 hours or seven days of paid sick leave that is available to the employee to use by the completion of the employee's 280th calendar day of employment.

(c) An employee shall be entitled to use accrued paid sick days beginning on the 90th day of employment, after which day the employee may use paid sick days as they are accrued.

(d) Accrued paid sick days shall carry over to the following year of employment. However, an employer may limit an employee's use of accrued paid sick days to 56 hours or seven days in each year of employment, calendar year, or 12-month period. This section shall be satisfied and no accrual or carryover is required if the full amount of leave is received at the beginning of each year of employment, calendar year, or 12-month period. The term "full amount of leave" means seven days or 56 hours.

(e) For a provider of in-home supportive services under Section 14132.95, 14132.952, or 14132.956 of, or Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of, and an individual provider of waiver personal care services under Section 14132.97 of, the Welfare and Institutions Code, the term "full amount of leave" is defined as follows:

(1) Eight hours or one day in each year of employment, calendar year, or 12-month period beginning July 1, 2018.

(2) Sixteen hours or two days in each year of employment, calendar year, or 12-month period beginning when the minimum wage, as set forth in paragraph (1) of subdivision (b) of Section 1182.12 and accounting for any years postponed under subparagraph (D) of paragraph (3) of subdivision (d) of Section 1182.12, has reached thirteen dollars ($13) per hour.

(3) Twenty-four hours or three days in each year of employment, calendar year, or 12-month period beginning when the minimum wage, as set forth in paragraph (1) of subdivision (b) of Section 1182.12 and accounting for any years postponed under subparagraph (D) of paragraph (3) of subdivision (d) of Section 1182.12, has reached fifteen dollars ($15) per hour.

(4) Fifty-six hours or seven days in each year of employment, calendar year, or 12-month period beginning January 1, 2024.

(f) An employer is not required to provide additional paid sick days pursuant to this section if the employer has a paid leave policy or paid time off policy, the employer makes available an amount of leave applicable to employees that may be used for the same purposes and under the same conditions as specified in this section, and the policy satisfies one of the following:

(1) Satisfies the accrual, carryover, and use requirements of this section.

(2) Provided paid sick leave or paid time off to a class of employees before January 1, 2015, pursuant to a sick leave policy or paid time off policy that used an accrual method different than providing one hour per 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 sick leave or paid time off within three months of employment of each calendar year, or each 12-month period, and the employee was eligible to earn at least seven days or 56 hours of sick leave or paid time off within nine months of employment. 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 subdivision (b) or provide the full amount of leave at the beginning of each year of employment, calendar year, or 12-month period. This section does not prohibit the employer from increasing the accrual amount or rate for a class of employees covered by this subdivision.

(3) Notwithstanding any other law, sick leave benefits provided pursuant to the provisions of Sections 19859 to 19868.3, inclusive, of the Government Code, or annual leave benefits provided pursuant to the provisions of Sections 19858.3 to 19858.7, inclusive, of the Government Code, or by provisions of a memorandum of understanding reached pursuant to Section 3517.5 that incorporate or supersede provisions of Section 19859 to 19868.3, inclusive, or Sections 19858.3 to 19858.7, ~~inclusive~~ *inclusive,* of the Government Code, meet the requirements of this section.

(g) (1) Except as specified in paragraph (2), an employer is not required to provide compensation to an employee for accrued, unused paid sick days upon termination, resignation, retirement, or other separation from employment.

(2) If an employee separates from an employer and is rehired by the employer within one year from the date of separation, previously accrued and unused paid sick days shall be reinstated. The employee shall be entitled to use those previously accrued and unused paid sick days and to accrue additional paid sick days upon rehiring, subject to the use and accrual limitations set forth in this section. An employer is not required to reinstate accrued paid time off to an employee that was paid out at the time of termination, resignation, or separation of employment.

(h) An employer may lend paid sick days to an employee in advance of accrual, at the employer's discretion and with proper documentation.

(i) An employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages. If an employer provides unlimited paid sick leave or unlimited paid time off to an employee, the employer may satisfy this section by indicating on the notice or the employee's itemized wage statement "unlimited." The penalties described in this article for a violation of this subdivision shall be in lieu of the penalties for a violation of Section 226. This subdivision shall apply to employers covered by Wage Order 11 or 12 of the Industrial Welfare Commission only on and after January 21, 2016.

(j) An employer has no obligation under this section to allow an employee's total accrual of paid sick leave to exceed 112 hours or 14 days, provided that an employee's rights to accrue and use paid sick leave are not limited other than as allowed under this section.

(k) An employee may determine how much paid sick leave they need to use, provided that an employer may set a reasonable minimum increment, not to exceed two hours, for the use of paid sick leave.

(*l*) For the purposes of this section, an employer shall calculate paid sick leave using any of the following calculations:

(1) 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.

(2) Paid sick time for nonexempt 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.

(3) 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.

(m) If the need for paid sick leave is foreseeable, the employee shall provide reasonable advance notification. If the need for paid sick leave is unforeseeable, the employee shall provide notice of the need for the leave as soon as practicable.

(n) An employer shall provide payment for sick leave taken by an employee no later than the payday for the next regular payroll period after the sick leave was taken.

(o) The State Department of Social Services, in consultation with stakeholders, shall convene a workgroup to implement paid sick leave for in-home supportive services providers as specified in this section. This workgroup shall finish its implementation work by November 1, 2017, and the State Department of Social Services shall issue guidance such as an all-county letter or similar instructions by December 1, 2017.

(p) No later than February 1, 2019, the State Department of Social Services, in consultation with the Department of Finance and stakeholders, shall reconvene the paid sick leave workgroup for in-home supportive services providers. The workgroup shall discuss how paid sick leave affects the provision of in-home supportive services. The workgroup shall consider the potential need for a process to cover an in-home supportive services recipient's authorized hours when a provider needs to utilize their sick time. This workgroup shall finish its work by November 1, 2019.

(q) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the State Department of Social Services may implement, interpret, or make specific this section by means of an all-county letter, or similar instructions, without taking any regulatory action.

(r) Subdivisions (e), (g), (h), (i), (l), (m), and (n) shall preempt any local ordinance to the contrary.

SEC. 3. Section 246.5 of the Labor Code is amended to read:

246.5. (a) Upon the oral or written request of an employee, an employer shall provide paid sick days for the following purposes:

(1) Diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member.

(2) For an employee who is a victim of domestic violence, sexual assault, or stalking, the purposes described in subdivision (c) of Section 230 and subdivision (a) of Section 230.1.

(b) An employer shall not require as a condition of using paid sick days that the employee search for or find a replacement worker to cover the days during which the employee uses paid sick days.

(c) (1) An employer shall not deny an employee the right to use accrued sick days, discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using accrued sick days, attempting to exercise the right to use accrued sick days, filing a complaint with the department or alleging a violation of this article, cooperating in an investigation or prosecution of an alleged violation of this article, or opposing any policy or practice or act that is prohibited by this article.

(2) There shall be a rebuttable presumption of unlawful retaliation if an employer denies an employee the right to use accrued sick days, discharges, threatens to discharge, demotes, suspends, or in any manner discriminates against an employee within 30 days of any of the following:

(A) The filing of a complaint by the employee with the Labor Commissioner or alleging a violation of this article.

(B) The cooperation of an employee with an investigation or prosecution of an alleged violation of this article.

(C) Opposition by the employee to a policy, practice, or act that is prohibited by this article.

(d) Notwithstanding subdivision (a) of Section 245.5, for purposes of this section, "employee" shall include an employee described in paragraph (1) of subdivision (a) of Section 245.5.

SEC. 4. Article 1.6 (commencing with Section 249.5) is added to Chapter 1 of Part 1 of Division 2 of the Labor Code, to read:

Article 1.6. Unpaid Sick Leave for Railroad Employees

249.5. For purposes of this article, the following definitions apply:

(a) "Railroad employee" has the same meaning as defined in Section 351(d) of Title 45 of the United States Code.

(b) "Railroad employer" has the same meaning as defined in Section 351(a) of Title 45 of the United States Code.

249.5.01. (a) Railroad employers shall allow their railroad employees to take at least seven days of unpaid sick leave annually.

(b) The following provisions, as they read on January 1, 2024, shall apply to railroad employees, except that references to "paid sick leave," "employee," and "employer," shall, for purposes of this article, be instead to "unpaid sick leave," "railroad employee," and "railroad employer," respectively:

(1) Subdivision (c) of Section 245.5.

(2) Paragraph (1) of subdivision (a) and subdivisions (b), (c), (d), (f), (g), (i), (j), (k), and (m) of Section 246.

(3) Subdivisions (a) to (c), inclusive, of Section 246.5.

~~(b)~~

(c) This section shall not be construed to supersede any labor agreement between the railroad employer and employee that exists as of January 1, 2024, if the agreement provides for any number of days of paid sick days annually, for the use of at least seven days of unpaid sick leave annually, and that the use of the paid sick days or unpaid sick leave shall not result in any points, demerits, or other disciplinary citations under any applicable attendance policy. For purposes of this subdivision, "labor agreement" includes any related side letter or local carrier agreement.

249.5.02. The provisions of this article are severable. If any provision of this article or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 5. The Legislature finds and declares that establishing uniform statewide regulation of certain aspects of paid sick leave is a matter of statewide concern and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, Sections 1, 2, and 3 of this act amending

Sections 245.5, 246, and 246.5 of the Labor Code apply to all cities, including charter cities.

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