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## Employment Law Bulletin

July 2016

### California's Paid Sick Leave Check-Up

Since July 2015, California law has required all employers to provide paid sick leave to employees who work for them at least 30 days during the year. Now that we've reached the law's one year anniversary, it's time for a check-up to make sure you're in compliance:

- Have you distributed a written sick leave policy to all employees?
- Does your policy identify the accrual method you adopted (24 hours/3 days up front, 1 hour for every 30 hours worked, or something more generous)?
- Are all of your employees accruing sick leave from their date of hire?
- Does your policy identify the increment in which employees may use sick leave? Increments must be 2 hours or less.
- Does your policy identify how long employees must wait to use accrued sick leave?
- Does your policy identify the reasons for which they can use sick leave?
- If you're using a paid time off or pre-July 2015 sick leave policy, does it comply with every aspect of the sick leave law? In our experience, we have yet to find a PTO or previous sick leave policy that didn't require at least some revision to comply with the new law.
- If you adopted the 1 for 30 accrual method, is your carryover policy in compliance?
- If you adopted the 24 hours/3 days up front accrual method, have you defined when the "year" starts for purposes of making the deposit into the sick leave bank?

- Do you have a time off request form so that your employees can identify the particular reason for their use of sick leave?
- Do you have employees who work in cities with their own sick leave ordinances? If so, does your policy comply with both the California sick leave law and the city ordinances?
- Are you calculating sick pay correctly?
- Do your pay stubs reflect the employees' available sick leave?
- If you had employees depart and then return to work within one year, did you reinstate their accrued sick leave upon their return?
- Are you keeping records of sick leave hours earned and used for each employee?
- Did you issue the Notice to Employee informing employees how they earn sick leave? If not, you can find one at [https://www.dir.ca.gov/dlse/LC\\_2810.5\\_Notice.pdf](https://www.dir.ca.gov/dlse/LC_2810.5_Notice.pdf)

If you have questions or would like one of our attorneys to review your paid sick leave policy for compliance, please feel free to contact us.

*Jan Gabrielson Tansil/Lisa Ann Hilario*

### **Important Piece Rate Update**

As a result of a lawsuit filed by the Nisei Farmers League, a California court restrained the Department of Industrial Relations (DIR) from enforcing the current deadline of July 1, 2016 for employers to FILE a notice of intent with the DIR to utilize the safe harbor procedures. The filing deadline has been pushed to July 18, 2016, pending a hearing that will decide whether a preliminary injunction will be issued against the DIR. If the preliminary injunction is issued, the deadline for filing the notice of intent to comply with the safe harbor provisions as well as the date to comply with the back pay requirements will be extended, giving employers more time to come into compliance with THE SAFE HARBOR ASPECTS OF the new law. For now, employers who may have missed the initial filing deadline should be aware that there is still time to file a notice with the DIR if they want to take advantage of the safe harbor provisions. The new deadline is July 18, but that may also be extended.

Given the uncertainty this lawsuit raises about the safe harbor in general, we recommend that any employers opting into the safe harbor consider delaying safe harbor payments until the impacts of this newly filed lawsuit have been determined.

Note that this time delay applies to the safe harbor filing and payment process, but does not delay the implementation of the new piece rate rules that took effect January 1, 2016. Any employers currently paying piece rate must continue to comply with the new rules regarding payment for rest and recovery period breaks

and other non-productive time going forward.

*Kari Brown/Jan Gabrielson Tansil*

## **Summer Work Permits For Minors**

During the summer months, many employers look for seasonal help from high school students. However, there are extra requirements imposed on employers who employ minors, one of which is the work permit. Here are a few helpful tips:

- Except in very limited circumstances, minors under 18 years of age employed in California must have a valid permit to work before any work is performed.
- A permit to employ and work (other than in the entertainment industry) is issued by an authorized person at the minor's school. When school is not in session, the work permit can be obtained from the superintendent of the school district in which the minor resides.
- After the employer agrees to hire a minor, the minor should obtain a Department of Education form entitled "Statement of Intent to Employ Minor and Request for Work Permit" from his/her school. The form must be completed by the minor and the employer, and signed by the minor's parent or guardian and the employer. After returning the completed and signed form to the school, school officials may issue the work permit.
- Permits to Employ and Work may be denied or canceled at any time by school officials or the Labor Commissioner, whenever the conditions for the issuance of the permit do not exist, no longer exist, or have never existed. School officials who determine that school work or the health of the minor is impaired by the employment may revoke the permit.
- Minors work with the permission of the local school district. No law requires schools to issue permits for the maximum hours allowed by law or for every occupation for which a minor might be eligible. Depending on the minor's particular circumstances or local district policy, school officials may impose additional restrictions at their discretion. Any violation of such special restrictions subjects the permit to revocation.
- For each minor employed, employers must have a Permit to Employ and Work on file and available for inspection by school and labor officials at all times.
- Work permit requirements apply year-round, and can expire each school semester. Employers should monitor permit expiration dates and require their minor employees to obtain updated permits when permits expire.

More information on work hours, work conditions, and work permits for minors can be found at <http://www.dir.ca.gov/dlse/dlse-cl.htm> or by calling one of our attorneys.

*Kari Brown*

## For a "Real Deal," Get a Release of Claims

In May, the US Supreme Court issued a decision in a public employment case, *Green v. Brennan*, that may also have ramifications for private employers. The issue before the Court was whether a postal employee who was "forced" to resign was untimely in contacting the EEOC and barred by the statute of limitations from pursuing his claim against the Postal Service. The case arose out of the Postal Service's "deal" with the employee—the employee agreed to resign in exchange for the Postal Service's agreement not to press criminal charges against the employee for delaying the mail in order to get a better assignment. Imagine the Postal Service's surprise when the employee made the deal, resigned and then filed an EEOC complaint alleging he was constructively discharged as a result of racial discrimination. Imagine their further surprise when the majority of the Supreme Court rejected the Postal Service's argument that the employee was barred from suing because the employee didn't contact the EEOC until after he made the deal and after the filing period expired. Instead, the Court held that the employee's claim was not whole and complete until after he resigned, so his filing within the allowable time frame after his resignation was timely.

The bottom line: A deal with an employee is not a "real deal" unless it includes language constituting a full and knowing release of all claims during employment.

Contact one of our attorneys to document your "deal" with an employee in an enforceable release agreement.

*Valorie Bader*

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