

BENSON, PIOMBO & COMPANY
CERTIFIED PUBLIC ACCOUNTANTS

Over 50 Years of Service
300 TAMAL PLAZA, SUITE 180
CORTE MADERA, CALIFORNIA 94925-1131
TELEPHONE: (415) 924-2292
FACSIMILE: (415) 924-8202

WWW.BBENSONCPA.COM

BERNARD E. BENSON, C.P.A.
DANIEL F. PIOMBO, C.P.A.

MEMBERS AICPA
MEMBERS CalCPA

June 23, 2015

To: Our Clients and Friends

From Benson, Piombo & Company, CPAs

RE: Paid Sick Leave as Required by the Healthy Workplaces, Healthy Families Act of 2014

Dear Clients and Friends:

On September 10, 2014, Governor Brown signed into law the “Healthy Workplaces, Healthy Families Act of 2014” (“HWHFA”) (AB 1522) to provide protection to California employees to ensure, among other things, that they are able to address their own health needs and those of their families. This new law is effective July 1, 2015, and requires California employers to provide paid sick leave benefits to their employees.

Action Required

Employers in California will need to carefully review their sick leave or paid time off policies and practices, as well as revise payroll and wage statement practices regarding such time off. The law also requires the following: 1) changes to the employer’s new-hire employee notice, 2) a different workplace-posting requirement, and 3) recordkeeping mandates.

Specific requirements under the HWHFA include:

- Displaying a poster addressing employees’ rights for mandatory sick time pay; poster should be in a prominent location where employees can easily access and read the notice.
- Providing a written notice to newly hired employees of paid sick leave rights at the time of hire.
- Providing an accrual of sick time or paid time off for employees, including part-time and temporary employees, to earn at least one hour of paid leave for every 30 hours worked. Alternatively, employers may provide at least 24 hours or three (3) days at the beginning of a 12-month period of paid sick leave for each eligible employee to use per year (calendar year or other designated 12-month basis). Accrual begins on the first day of employment or July 1, 2015, whichever is later.
- Allowing eligible employees to use accrued paid sick leave upon reasonable request beginning on or after the 90th day of employment. An employer may limit an employee’s use of paid sick days to 24 hours or three (3) days in each year of employment.

Note: However, employers are prohibited from discriminating or retaliating against an employee who requests paid sick days.

- Providing written notice to employees every payday of the amount of sick time the employee has accrued and has available for use; this may be on a pay stub or a document issued the same day as a paycheck.
- Maintaining employment records going back three years showing hours worked, paid sick time accrued and paid sick time used.

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HWHFA also defines certain key terms including “employer,” “employee,” and “family member,” and provides specific guidance regarding the allowable uses of accrued sick time. It is extremely important that you take the time now to understand HWHFA’s impact on your company, and to take the necessary steps to ensure appropriate compliance with this law.

How is the law enforced?

The law assigns enforcement authority to the California Labor Commissioner, the agency that already has enforcement power over California employee wage claims, and the California Attorney General.

What happens if I am found to have violated the law?

The HWHFA does not expressly permit employees to bring private civil lawsuits against employers for violations under this statute. However, employees may be able to bring wrongful termination tort claims for alleged violations that result in terminations. In addition, California employees may be able to bring claims under the Private Attorney General’s Act, and can seek equitable, injunctive, and restitutionary relief (presumably an order from the court to perform or refrain from some act, and lost sick pay due to the employee), and an award of reasonable attorneys’ fees and costs.

What are the fines and penalties?

Employers that violate the law can face up to three times the unpaid sick pay due and administrative fines that vary from \$50 to \$4,000 per violation, depending on the nature of the violation. The law also authorizes the Labor Commissioner or the Attorney General to recover civil penalties, attorneys’ fees, costs, and interest against violating employers, as well as to reinstate employees.

Where should I go for assistance and additional information if I have questions regarding my obligations?

Additional information and resources are available on California’s website under the Division of Labor Standards Enforcement at <http://www.dir.ca.gov/dlse/ab1522.html>. It is our understanding that after these types of laws go into effect, the state often issues clarifications and additional information. We suggest that you check the website listed above regularly for further information.

We also strongly encourage you to consult with legal counsel experienced in employment practice matters to review your company’s compliance with the requirements of the HWHFA and to assist you if revisions need to be made to your policies and procedures to ensure compliance with the new law and to mitigate potential legal exposures to your business.

Please call if you have any questions or would like to discuss this matter further.

Sincerely,

Benson, Piombo & Company