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KRAEMER LLP



Employment Law
Update

3rd Annual Community Association
Owners Conference

Employment Law Update for 2015

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Berkeley, CA

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LIST OF TOPICS

- 2015 New Laws
 - Paid Sick Leave
 - Workplace Bullying
 - Interns



CALIFORNIA PAID SICK LEAVE

AB 1522

- Employers Covered: All, regardless of size
- Effective Date: January 1, 2015
 - Exception: accrual requirement begins July 1, 2015
 - Notice and recordkeeping requirements begin Jan. 1, 2015
- Eligible Employees:
 - Works 30 days in CA w/in year of hire
 - *Use* of sick leave beginning 90th day of employment
 - Not eligible: Employees w/CBA providing sick leave



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How *Much* Sick Leave Is Required

Accrual: 1 hour per 30 hours work = 69.33 hrs/8.7 days/yr

- Exempt employees: 40 hours/week unless normal workweek less than 40 hours
- Carry over required
- Cap on accrual permissible: 48 hours/6 days

Alternative to accrual: 24 hours/3 days @ beginning of year (no cap, no carryover required)

Use: Employer may limit to 24 hours/3 days per year

Year: 7/1/15 or if hired thereafter, anniversary date



CALIFORNIA PAID SICK LEAVE AB 1522

How *Much* Sick Leave Is Required: Existing Time Off Policies

Employers need not offer additional sick leave *if*:

- Employer makes available *paid leave* that may be used for same purposes *and*
- It satisfies the law's *accrual, carryover and use* requirements *or*
- It provides no less than 24 hours/3 days paid sick leave *or equivalent paid leave* for use in each year of employment, calendar year or 12-month basis.



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Purposes of California Sick Leave

- Diagnosis, care or treatment of health condition (or preventive care) of employee or family member.
 - Child (including *in loco parentis* situations)
 - Spouse or registered domestic partner
 - Parent of employee, spouse or reg. domestic partner
 - Grandparent, grandchild, or sibling
- For leave for victims of sexual assault, domestic violence or stalking



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Employee Rights To Take California Sick Leave

- After 90 days of employment
- Employer may not deny right to use accrued sick days
- Employer may set reasonable increment of not more than 2 hours for use
- Employer need not advance unaccrued sick days
- Employee Notice: if need foreseeable, reasonable advance notice, otherwise as soon as practicable
- Doctor's note? Not addressed. We say yes in accordance with policy applying to any medical absence.



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Payment of Sick Leave

- Not required on termination of employment
- *But:* sick leave balance must be reinstated if employee re-hired within one year.
- Paid out at regular hourly rate
- *But:* If employee had different hourly rates, was paid piece rate or commission, or was salaried non-exempt, the rate is calculated by dividing total wages (not OT premiums) by total hours worked in previous 90 days



CALIFORNIA PAID SICK LEAVE AB 1522

Interaction with Other Laws

- SF Sick Leave: More generous, except with respect to pay rate and payday notice
- Living Wage Ordinances: Albany, Berkeley, Emeryville, Oakland, Richmond, San Leandro, Santa Cruz, San Jose, Watsonville
- PFL benefits: 7-day waiting period, sick leave is usable during waiting period
- Workers' Compensation and SDI: Employee right to use sick leave during absence up to 3 days (coordinate with benefits)



WORKPLACE BULLYING



Who Are The Targets?

- Women (58%)
- Men (42%)



EEOC's Continued Focus on Criminal Background Checks

- EEOC identifies two circumstances when an employer will meet the defense:
 - The employer validates the criminal conduct screen for the position in question per the Uniform Employee Selection Procedures.
 - The employer develops a targeted screen considering at least:
 - The nature of the crime,
 - The time elapsed,
 - The nature of the job,
 - AND then provides an opportunity for an individualized assessment for people excluded by the screen to determine whether the policy as applied is job-related and consistent with business necessity.
- **Clear emphasis on individualized determinations.**



EEOC and Wellness Programs

- *Equal Employment Opportunity Commission v. Flambeau Inc.*, case number 3:14-cv-00638 (Oct. 1, 2014)
 - EEOC claims employer canceled employee's medical insurance and shifted the entire premium cost to him, after employee failed to complete a “voluntary” health assessment and testing required under a company wellness plan.
 - Employee couldn't complete the tests as scheduled by employer because he was on leave and being treated for cardiomyopathy and congestive heart failure, according to the suit, filed in Wisconsin federal court.

Take away – Make Sure Your Wellness Programs Are Voluntary in Policy AND Practice!!!



EEOC – Religious Discrimination

DON'Ts When Dealing with Garb and Grooming

- DON'T take an adverse action against an employee based on discriminatory religious preferences of customers;
- DON'T automatically refuse to accommodate an employee's religious garb or grooming because it would violate employer policy or preference regarding how employees should look;
- DON'T assign an employee to a non-customer contact person or their garb or grooming;
- DON'T deny accommodation requests because of an “image” that you seek to convey to customers.



EEOC – Religious Discrimination

Dos When Dealing with Garb and Grooming

- DO ask an employee or applicant for information reasonably needed to evaluate their request related to garb and grooming;
- DO make applicants and employees aware of workplace dress and grooming requirements so that they can request an accommodation if needed;
- DO offer accommodations to employees related to dress and grooming i.e. offer to have religious garb covered while at work;
- DO bar religious dress or grooming if it would present an undue burden but remember the burden to meet this standard is high!!!



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CONCLUSION AND WRAP-UP



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