An act to amend Sections 245.5, 246, 246.5, 247.5, and 249 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL’S DIGEST

AB 555, as amended, Gonzalez. Paid sick leave.

(1) Under existing law, except as specified, an employee who works in California for 30 or more days within a year from the commencement of employment is entitled to paid sick days for certain purposes, 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. 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. 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. Under existing law, sick leave carries over to the following year of
employment, but an employer may limit the use of the carryover amount, in each year of employment, calendar year, or 12-month period, to 24 hours or 3 days.

This bill would modify the employer’s alternate sick leave accrual method to require that an employee have no less than 40 hours of accrued sick leave or paid time off by the 200th 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 40 hours or 5 days of paid sick leave that is available to the employee to use by the completion of the employee’s 200th calendar day of employment. The bill would also provide that an employer is under no obligation to allow an employee’s total accrual of paid sick leave to exceed 80 hours or 10 days, as specified. The bill would raise the employer’s authorized limitation on the employee’s use of carryover sick leave to 40 hours or 5 days.

The bill would expand the purposes for which paid sick days are required to be provided to include purposes related to the employee’s donation of bone marrow or an organ and the closure, due to a public health emergency, of the employee’s place of business or of the employee’s child’s school or childcare.

(2) Existing law provides that providers of in-home supportive services accrue sick leave in accordance with a schedule that is based on the timeline for state minimum wage increases, up to a maximum of 24 hours or 3 days when the minimum wage reaches $15 per hour.

This bill would amend the schedule for in-home supportive services providers to increase the sick leave accrual maximum to 40 hours or 5 days in each year of employment, beginning January 1, 2026.

(3) Existing law establishes exemptions from the above paid sick days provisions by defining “employee” to exclude, among others, 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% more than the state minimum wage rate.

This bill would delete the requirement, for purposes of the exemption, that the collective bargaining agreement expressly provide for paid sick
days or a paid leave or paid time off policy and would require instead that the agreement, with regard to sick leave, expressly permit the use of at least 5 sick days for covered employees, each of which are paid at the regular hourly rate of pay.

(4) Existing law requires an employer to keep records for three years documenting the hours worked and paid sick days accrued and used by an employee and to make those records available to the Labor Commissioner upon request. Existing law provides that the employer has no obligation to inquire into or record the purposes for which an employee uses sick leave or paid time off.

This bill would prohibit an employer from compelling an employee to provide documentation verifying use of their first 40 hours, or 5 days, of paid leave or paid time off.

(5) Existing law provides that it establishes minimum requirements pertaining to paid sick days and does not preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for greater accrual or use by employees of sick days, whether paid or unpaid, or that extends other protections to an employee.

This bill would provide that certain provisions of existing law relating to the provision and use of paid sick days, including certain provisions amended by the bill, preempt any local ordinance to the contrary, including provisions relating to the basic accrual rate of paid sick days, when an employee may begin to use accrued days, the employer limit on accrual, the calculation of paid sick leave, advance notification, payment, the purposes for which paid sick leave must be provided, employer recordkeeping, and employee documentation.


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

1 SECTION 1. Section 245.5 of the Labor Code is amended to read:
2 245.5. As used in this article:
3 (a) “Employee” does not include the following:
4 (1) An employee covered by a valid collective bargaining
5 agreement if the agreement expressly provides for the wages, hours
6 of work, and working conditions of employees, and expressly
7 permits the use of at least five sick days for those employees, each
of which sick days shall be paid at the regular hourly rate of pay, and expressly provides for 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.

(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 the provisions of 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 31680) of Chapter 3 of Part 3 of Division 4 of Title 3 of the Government Code.

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

(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.

(d) “Health care provider” has the same meaning as defined in paragraph (6) of subdivision (c) of 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.

(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).

(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 40 hours of accrued sick leave or paid time off by the 200th 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 40 hours or five days of paid sick leave that is available to the employee to use by the completion of the employee’s 200th 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 40 hours or five 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 five days or 40 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, 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) Forty hours or five days in each year of employment, calendar year, or 12-month period, beginning January 1, 2026.

(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 six days or 48 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 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 80 hours
or 10 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 (b), (c), (e), (f), (g), (h), (i), (j), (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.

(3) If the employee’s place of business is closed by order of a public official due to a public health emergency, or if the employee is providing care or assistance to their child, whose school or childcare provider is closed by order of a public official due to a public health emergency.

(4) Purposes related to donating the employee’s bone marrow or an organ of the employee to another person.

(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) Subdivisions (a) and (b) shall preempt any local ordinance to the contrary.

SEC. 4. Section 247.5 of the Labor Code is amended to read:

247.5. (a) An employer shall keep for at least three years records documenting the hours worked and paid sick days accrued and used by an employee, and shall allow the Labor Commissioner to access these records pursuant to the requirements set forth in Section 1174. An employer shall make these records available to an employee in the same manner as described in Section 226. If an employer does not maintain adequate records pursuant to this section, it shall be presumed that the employee is entitled to the maximum number of hours accruable under this article, unless the employer can show otherwise by clear and convincing evidence.
(b) Notwithstanding any other provision of this article, an employer is not obligated to inquire into or record the purposes for which an employee uses paid leave or paid time off. An employer shall not compel an employee to provide documentation verifying use of their first 40 hours, or 5 days, of paid leave or paid time off.
(c) This section shall preempt any local ordinance to the contrary.

SEC. 5. Section 249 of the Labor Code is amended to read:

249. (a) This article does not limit or affect any laws guaranteeing the privacy of health information, or information related to domestic violence or sexual assault, regarding an employee or employee’s family member. That information shall be treated as confidential and shall not be disclosed to any person except to the affected employee, or as required by law.
(b) This article shall not be construed to discourage or prohibit an employer from the adoption or retention of a paid sick days policy more generous than the one required herein.
(c) This article does not lessen the obligation of an employer to comply with a contract, collective bargaining agreement, employment benefit plan, or other agreement providing more generous sick days to an employee than required herein.

(d) This article establishes minimum requirements pertaining to paid sick days and does not preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for greater accrual or use by employees of sick days, whether paid or unpaid, or that extends other protections to an employee, except as specified in Sections 246, 246.5, and 247.5.

(e) The Legislature finds and declares that establishing uniform statewide regulation of certain aspects of paid sick leave is a matter of statewide concern and not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, certain aspects of this article apply to all cities, including charter cities.