

Pending Bills in California Legislature Propose New Pay, Schedule and Sick Leave Mandates in 2015

by Christopher Olmsted

The 2015 legislative session is well underway in Sacramento, and a number of labor and employment laws are currently winding through Senate and Assembly committees. Below is a summary of three of the more significant bills.

Double Pay on Holidays:

AB 67 proposed to mandate that California employers pay employees twice their regular rate of pay for any hours worked on Thanksgiving or Christmas.

The bill's author, Irma Gonzales, notes that "Blue Laws" in other states prohibit certain types of work from being performed on specified holidays, usually Sundays. Additionally, she notes that three states: Massachusetts, Rhode Island, and Maine, prohibit most retail stores from opening on Thanksgiving and Christmas. Some states prohibit the sale of alcohol during certain hours or days. AB 67, by contrast, would permit stores to remain open, so long as employees are paid double.

According to Assembly committee's bill analysis, opponents to the bill cite the unavoidable cost increases for certain businesses who must remain open on holidays, such as hospitals, medical facilities, and lodging accommodations. It is also noted that the law would give internet businesses an unfair competitive advantage over "brick and mortar" stores.

Others have noted that singling out Christmas may be unfair to employers who have non-Christian-based beliefs.

The Assembly Labor and Employment Committee voted in favor of the bill on March 18th. The bill will now head to another Assembly committee for further consideration.

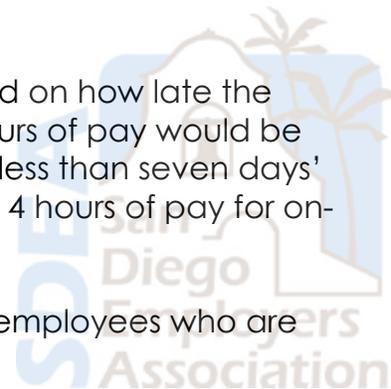
Predictable Scheduling Mandate:

Mimicking a San Francisco ordinance, AB 357 proposes to require that retail employers provide two weeks advance notice of employee shift schedules. Changes to the schedule with less than two weeks notice would require retailers to pay additional compensation to affected employees.

The proposed bill takes aim at larger retailers. It defines "food and general retail establishments" to include a food retail store, a grocery store, a general merchandise store, a department store, and a health and personal care store that has 500 more employees in the state and has 10 or more retail establishments in the country.

The amount of additional wages owed for a schedule change would depend on how late the change is made. For changes made less than 24 hours in advance, 2 to 4 hours of pay would be owed for each shift. One hour extra would be owed for changes made with less than seven days' notice. The proposed law would also mandate that retail employers pay 2 to 4 hours of pay for on-call shifts.

The bill also proposes to prohibit retail employers from discriminating against employees who are



participants in the state welfare program, CalWORKS. The bill would also give such employees the right to take unpaid time off from work in order to attend appointments at the county human services agency.

The bill is currently before the Assembly Committee on Labor and Employment.

Sick Pay Amendments:

AB 304 proposes to make certain amendments to the Healthy Workplaces, Healthy Families Act of 2014, which mandates sick pay to California employees beginning on July 1, 2015.

One proposed amendment would address the sick pay accrual method. The law as currently written states that sick pay is accrued at the rate of 1 hour for every 30 worked. This accrual method is at odds with the way many employers accrue PTO, which is often accrued on a per-pay-period basis. A proposed amendment would allow an employer to use other accrual methods, so long as employees accrue no less than 24 hours by the 120th day of employment or each year.

Another proposed amendment would clarify the rule with respect to unused accrued sick pay at the time of termination. Currently the law provides that the sick pay need not be cashed out, but it must be reinstated if the employee is rehired within one year. The proposed amendment clarifies that if the employer cashes out accrued sick pay at the time of termination, it need not be reinstated upon rehire.

The law as written requires employers to state the amount of accrued sick pay on the employee's pay stub or other document distributed on pay day. A proposed amendment states that employers who provide "unlimited" sick pay may satisfy this pay stub requirement by indicating "unlimited" on the document.

The bill also proposes to change the way that the rate of pay for sick pay is calculated where an employee receives variable pay, as with an employee earning commissions or bonus pay. The law as written requires employers to average out the pay rate over the prior 90 days. The proposed amendment states that instead, the rate calculation is the same as is used to figure overtime pay. That typically involves averaging out the employee's rate of pay for the workweek in question (Note: this redefinition creates new problems for employers).

The proposed amendments would exclude government employees from the sick pay mandate.

