The new law provides that sick leave must be provided upon oral or written request to the employer if made for a covered purpose. An employer is also expressly prohibited from denying an employee the right to use accrued sick days, and from discharging, threatening to discharge, demote, suspend, or in any manner discriminate against an employee, or for attempting to exercise the right to use accrued sick days. (See, LC 246.5(c)).  In view of these express protections for use of paid sick leave, so long as the employee has made a request under the notification requirements for leave which falls within a covered purpose, an employer’s requirements for documentation of the absence when made a condition for payment as paid sick leave can arguably interfere with the employees use of paid sick leave (or denial of right to use as a consequence of failure to provide a doctor’s note). Given the express protections aimed at ensuring employee use of paid sick leave, an employer must be cautious when utilizing conditions upon use of such leave which are not provided in the new law.

The Healthy Workplaces, Healthy Families Act of 2014 does not specify whether employees must show documentation.  Should an employer deny sick leave or payment for leave resulting in an employee filing a wage and/or retaliation claim the Labor Commissioner’s decision would be analyzed according to the unique facts of the case.  There is no mechanism in the law that specifies if employers can "verify" that the employees used the time for the stated purpose.  Should an employer require such documentation, deny compensation or take other disciplinary action because an employee fails to provide it, an employer may be liable for retaliation.

Labor Code 246 (l) provides:

(l) 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.

An unjust denial of time off and/or compensation for time taken could result in penalties – please see Labor Code section 246.5:

AB 304 added the following Labor Code Section:

An employer is not obliged to inquire into or record the purposes for which an employee uses paid leave or paid time off. (New LC §247.5(b))

The employer runs the risk of the employee filing a retaliation complaint.  In such case our office will conduct an investigation to determine whether or not it is retaliation.

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