

EMPLOYMENT LAW UPDATE

Relationship-Driven Results

January 4, 2024

LEGISLATIVE

California

New Paid Sick Leave Guidance Available

In late December, the Department of Industrial Relations (“DIR”) updated its Frequently Asked Questions to answer questions regarding California’s new paid sick leave law. The FAQs can be found here: https://www.dir.ca.gov/dlse/paid_sick_leave.htm

Employers have questions regarding how to ensure their paid sick leave policy is compliant for the increase from three days/24 hours to five days/40 hours, effective January 1, 2024. The DIR’s FAQ numbers 15 and 16 provide clarification for the accrual method and when the lump sum method is based on an employee’s anniversary date:

“15. If an employer uses an accrual method and capped an employee’s yearly use of leave at three days or 24 hours, what must an employer do to comply with the law on January 1, 2024?”

If an employer uses an annual start date other than January 1 and implements a 12 month use cap, that cap must change to 40 hours or 5 days on January 1, 2024. For example, if an employer uses the 12-month period of May 1 - April 30 and implements a cap and an employee used 24 hours or three days before January 1, 2024, the employer must allow the employee to use an additional 2 days or 16 hours before April 30 if the employee has accrued that additional leave.”

“16. If an employer utilized the ‘up-front’ method prior to January 1, 2024 and provided an employee with 3 days or 24 hours of leave on the employee’s anniversary date during the year, what must an employer do to comply with the law on January 1, 2024?”

The employer has the choice to frontload the two additional days on January 1, 2024 or move the measurement of the yearly period to January 1, 2024 and frontload five days. For example, if an employee started on May 1, 2021 and the employer used that anniversary date to frontload 3 days or 24 hours on May 1, 2023,

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the employer may either provide 2 days or 16 hours on January 1, 2024 and keep the May 1 date to frontload or can ‘reset’ the frontload date to January 1, 2024 and provide the employee 5 days or 40 hours then.”

The DIR also updated the mandatory Paid Sick Leave poster: ([https://www.dir.ca.gov/dlse/publications/paid_sick_days_poster_template_\(11_2014\).pdf](https://www.dir.ca.gov/dlse/publications/paid_sick_days_poster_template_(11_2014).pdf)) and Wage Theft Notice: (https://www.dir.ca.gov/dlse/lc_2810.5_notice.pdf).

JUDICIAL

California

Employers May Be Limited from Presenting Certain Evidence of Employee Misconduct as Character Evidence in Harassment Cases

In *Argueta v. Worldwide Flight Services, Inc.*, a California Court of Appeal reversed a denial of plaintiff Eunices Argueta’s (“Plaintiff”) new trial motion, finding that the trial court erred in failing to exclude the contents of complaints co-workers lodged against Plaintiff.

In late 2016 and early 2017, five of Plaintiff’s co-workers filed written complaints against her, making claims that she was threatening, harassing, bullying, discriminatory, and emotionally abusive. In early May 2017, Plaintiff’s supervisor Dzung Nguyen (“Nguyen”) placed Plaintiff on paid leave during an investigation into a dispute between Argueta and one of her co-workers. On the last day of Plaintiff’s leave, she lodged a complaint against Nguyen for sexual harassment, which included claims that he inappropriately touched her face, hair, and body multiple times; called her “my baby,” “my sweetheart,” and “my girl;” and messaged her using inappropriate emojis for the workplace. Over one year later, Plaintiff resigned, and one year after that, Worldwide fired Nguyen as a result of an investigation into additional sexual harassment claims filed against him by other employees.

Plaintiff sued Worldwide for sexual harassment and retaliation, and the jury returned a verdict in Worldwide’s favor. Before trial, Plaintiff moved to preclude from evidence the substance of the complaints filed against her by her co-workers. When the court allowed the complaints to be admitted at trial and the jury found for Worldwide, Plaintiff filed a motion for a new trial. The trial court denied Plaintiff’s motion.

Plaintiff appealed. The appellate court reversed and remanded, ordering a new trial of Plaintiff’s claims finding that the admission of the evidence against Plaintiff was a prejudicial error. Specifically, the court held that the “jury should be given the opportunity to evaluate Plaintiff’s credibility, untainted by improper evidence.” *Argueta* may prevent employers seeking to introduce evidence that a plaintiff/employee engaged in harassment or otherwise has a record of negative behavior that is intertwined with the litigation.