



AB 1522 (GONZALEZ) EMPLOYMENT: PAID SICK DAYS
OPPOSE – **JOB KILLER**



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April 25, 2014

TO: Members, Assembly Committee on Appropriations

FROM: California Chamber of Commerce
 Acclamation Insurance Management Services
 Air Conditioning Trade Association
 Alhambra Chamber of Commerce
 Allied Managed Care
 Associated Builders and Contractors of California
 Associated Builders and Contractors - San Diego Chapter
 Associated General Contractors
 Brawley Chamber of Commerce
 Brea Chamber of Commerce
 California Asian Chamber of Commerce
 California Association of Licensed Security Agencies, Guards and Associates
 California Association of Winegrape Growers
 California Attractions and Parks Association
 California Automatic Vendors Council
 California Bankers Association
 California Beer & Beverage Distributors
 California Business Properties Association
 California Business Roundtable
 California Chapter of American Fence Association
 California Employment Law Council
 California Farm Bureau Federation
 California Fence Contractors' Association
 California Grocers Association
 California Hotel & Lodging Association
 California Independent Grocers Association

California League of Food Processors
California Manufacturers and Technology Association
California New Car Dealers Association
California Newspaper Publishers Association
California Pool and Spa Association
California Professional Association of Specialty Contractors
California Restaurant Association
California Retailers Association
California Travel Association
California Trucking Association
Carlsbad Chamber of Commerce
CAWA – Representing the Automotive Parts Industry
Cerritos Regional Chamber of Commerce
Chambers of Commerce Alliance of Ventura & Santa Barbara Counties
Dana Point Chamber of Commerce
Desert Hot Springs Chamber of Commerce and Visitors Center
El Centro Chamber of Commerce
Flasher Barricade Association
Fountain Valley Chamber of Commerce
Fullerton Chamber of Commerce
Gateway Chambers Alliance
Greater Bakersfield Chamber of Commerce
Greater Conejo Valley Chamber of Commerce
Greater Fresno Area Chamber of Commerce
Greater Riverside Chambers of Commerce
Greater San Fernando Valley Chamber of Commerce
Huntington Beach Chamber of Commerce
Lodi Chamber of Commerce
Long Beach Area Chamber of Commerce
Marin Builders Association
National Federation of Independent Business
Orange County Business Council
Oxnard Chamber of Commerce
Palm Desert Area Chamber of Commerce
Plumbing-Heating-Cooling Contractors Association of California
Porterville Chamber of Commerce
Redondo Beach Chamber of Commerce
San Diego East County Chamber of Commerce
San Gabriel Valley Coalition
San Jose Silicon Valley Chamber of Commerce
Santa Clara Chamber of Commerce and Convention-Visitors Bureau
Southwest California Legislative Council
Simi Valley Chamber of Commerce
Tahoe Chamber of Commerce
Torrance Area Chamber of Commerce
Turlock Chamber of Commerce
Visalia Chamber of Commerce
Western Electrical Contractors Association
Western Growers Association
Wine Institute

**SUBJECT: AB 1522 (GONZALEZ) EMPLOYMENT: PAID SICK DAYS
SCHEDULED FOR HEARING – APRIL 30, 2014
OPPOSE – JOB KILLER**

The California Chamber of Commerce and the organizations listed above must **OPPOSE, UNLESS AMENDED AB 1522**, as amended March 28, 2014, which we have labeled as a **JOB KILLER**, as it would add to the already growing number of costs for California businesses by requiring both small and large employers to provide their employees with mandatory, protected, paid sick leave.

AB 1522 Mandated Paid Sick Leave on all Employers Will Reduce Jobs:

AB 1522 mandates that **all** employers, except those with collective bargaining agreements, provide any employee who has worked in California for seven days with paid sick leave, at an accrual rate of one hour for every thirty hours worked. After the 90th day of employment, employees would be allowed to utilize their paid sick leave to care for themselves or a family member. Pursuant to **AB 1522**, any unused sick leave accrued in the preceding year could be carried over to the next year, which is a *significant* change in existing law. While many employers voluntarily offer sick leave for full-time employees, expanding this to a mandate on all employees to temporary, seasonal, and part-time employees will create a huge burden on employers.

The Employment Policies Institute recently published a limited study on the effects of Connecticut's Paid Sick Leave law that went into place in 2012 and only applies to larger employers and non-exempt service workers. Although the survey was admittedly limited in the number of businesses evaluated, the results indicate the new law has had a negative impact on growth and jobs. Of the 156 businesses that responded to the survey, 31 of the businesses had reduced other employee benefits to balance the cost of the paid sick leave; 12 had reduced employee hours; 6 had reduced employee wages; 19 companies had raised their prices; 6 companies had laid off employees; and, 16 companies stated that they would limit their expansion in the state. Thirty-eight of the businesses surveyed also indicated that they would hire fewer employees as a direct result of the new law, while others stated they planned to offer fewer raises.

Similar results were reported in the February 2011 Institute for Women's Policy Research on the effect of the paid sick leave program in San Francisco. Specifically, out of the employees surveyed, 15.2% of the employees surveyed were laid off or had their hours reduced after the program was implemented; 14.1% of the employees surveyed received fewer bonuses or had their benefits reduced; and, 21.7% of the employees had increased work demands. Out of the industries surveyed, businesses with 24 employees or fewer were the most negatively impacted by the paid sick leave program. Moreover, the report provides that "low-wage workers were more likely than higher-wage workers to report that their employers took action to reduce costs in implementing" paid sick leave in San Francisco.

In July 2014, employers in California will already be facing a significant cost increase due to the \$1.00 increase in minimum wage that will take effect. This \$1.00 increase is in addition to the other cumulative costs employers are already facing including increased taxes under Proposition 30, increased worker's compensation rates, loss of federal unemployment insurance credit, increased energy costs, and increased costs associated with the implementation of the Affordable Healthcare Act. California employers cannot absorb all of these costs and be forced to provide paid sick leave as well, without cutting other costs such as labor. Accordingly, **AB 1522** will impact jobs as well as future growth.

AB 1522 Creates a Private Right of Action for Employees and Unions:

In addition to the increased business expenses and potential loss of jobs/growth **AB 1522** will create, **AB 1522** will also dramatically increase an employer's risk for legal fees and costs. **AB 1522** allows an employee, the Labor Commissioner, the Attorney General, or "*an entity a member of which is aggrieved*" to file a private right of action against the employer and obtain back wages, liquidated damages, withheld sick days, treble damages for withheld sick days, attorney's fees, reinstatement, and injunctive relief. Under this provision, a union may file a lawsuit against an employer on behalf of an employee, thereby significantly expanding the scope and threat of civil litigation against small and large employers.

The author has indicated the bill will be amended to remove the private right of action. While certainly we appreciate this anticipated amendment, it unfortunately will not resolve our additional concerns with the bill as set forth in this letter.

AB 1522 Jeopardizes an Employee's Exempt Status:

AB 1522 mandates that an employer provide one hour of paid sick leave for every thirty hours worked. With regard to exempt, salaried employees, employers do not track the hours they work. In fact, doing so jeopardizes their exempt status. Accordingly, to the extent **AB 1522** requires an employer to document an exempt employee's hours worked, it will force an employer into deciding whether to comply with the paid sick leave requirement and face potential litigation for exempt vs. non-exempt classification, or ignore the paid sick leave requirement and face potential litigation for failing to satisfy this mandate.

The author has indicated a willingness to amend the bill to address this issue, which we certainly appreciate.

AB 1522 Creates an Unfair Rebuttable Presumption Against the Employer:

Under **AB 1522**, it will be presumed that an employer retaliated against an employee if the employer takes any corrective action within 90 days of an employee's complaint or opposition to an employer's practice or policy regarding mandated paid sick leave. Pursuant to this provision, an employee who takes paid sick leave, returns to work the following day, is caught stealing and then immediately terminated, will be protected under this automatic rebuttable presumption. The burden will fall on the employer to prove its actions were valid, instead of the burden falling on the employee.

AB 1522 Imposes Unfair Penalties Through the Labor Commissioner Process:

AB 1522 provides that, after a Labor Commissioner hearing, an employee may obtain payment of any sick days unlawfully withheld as well as backpay, reinstatement, \$250 or three times the amount of paid sick leave withheld (whichever is greater), and a \$50 daily penalty for each day that a violation occurred. While an employee should be made whole for any withheld sick leave due, the layering of additional penalties, such as treble damages, is simply an unjustified windfall. This is especially the case for employers who make an unintentional accounting error and are not seeking to harm or withhold sick leave from the employee.

AB 1522 Gives Local Counties and Cities the Authority to Adopt More Stringent Requirements:

AB 1522 specifically states that the mandated sick leave does not preempt any local regulation or law that provides for a greater accrual of sick leave, thereby authorizing the adoption of such local laws and regulations. This provision will create inconsistency and confusion for California employers who operate in different jurisdictions. Employers are already suffering from such confusion with the state minimum wage versus local living wage requirements and do not need to add additional requirements that conflict.

AB 1522 Will Impose a Huge Cost on All Employers That Currently Offer Paid Sick Leave:

AB 1522 requires that all employers must offer paid sick leave at the same accrual rate as proposed, (i.e. one hour for every thirty hours worked) and allows employees to take leave for the same purposes and under the same conditions as set forth in the bill. This mandate will create a huge cost for employers that currently offer paid sick leave to their employees. Specifically, many employers allow employees to accrue sick leave per pay period or per month, not according to the number of hours worked. Accordingly, such employers will have to completely change their existing policies in order to mirror the accrual rate proposed under **AB 1522**. This will create a significant cost to all employers.

Additionally, **AB 1522** mandates that accrued sick leave carry over from year to year. Currently, employers do not have to carry over accrued sick leave year to year, imposing a new burden on all employers, including those that already offer paid sick leave.

AB 1522 Mandates Unlimited Paid Sick Leave for Certain Conditions:

AB 1522 specifies that an employer shall provide paid sick days to an employee for the diagnosis, care, or treatment of an existing health condition or health condition of a family member; preventative care; or to an employee who is a victim of domestic abuse. Given that this proposed mandate is in a separate section of the Labor Code, and without reference to the provision that an employer may limit the use of paid sick days to only three days per year, it appears it is an additional requirement that employers must provide paid sick leave for these specified conditions, even if the employee does not have any unused accrued sick leave available. This unlimited mandate to offer paid sick leave for these conditions will simply overwhelm employers.

New Posting Requirement on Employers with Additional Penalties:

Under **AB 1522**, employers would also be required to post information regarding employees' right to paid sick leave, thereby adding onto the already numerous and burdensome posting requirements in California. Current law already requires employers to post over 15 different notices. At some point, the posting of such information becomes just another added expense to employers with the risk of litigation for failing to do so, without any corresponding benefit to employees who are overwhelmed with all of the required postings. Notably, **AB 1522** imposes a \$100 daily penalty for failing to post information regarding this bill and its requirements.

New Notice Requirement with Additional Penalties:

In addition to the posting requirement, **AB 1522** requires an employer to provide a notice regarding paid sick leave to each employee in English, Spanish, and Chinese, and any other language that at least 5 percent of the employees speak. An employer is required to provide a notice in these various languages, despite the fact that they may only have English speaking employees or Spanish speaking employees. Moreover, failure to comply with this notice requirement subjects the employer to a \$100 daily penalty.

California Already Has a Myriad of Protective Leaves that May be Compensated:

The number and length of protected leaves of absences that California already requires employers to provide its employees is extensive, including California Family Rights Act (12 workweeks), pregnancy disability leave (4 months); domestic violence, stalking, harassment leave, and bone marrow/organ donor leave. This is in addition to federal leave laws, such as the Family Medical Leave Act (12 workweeks). California also has the Paid Family Leave program, which allows an employee to obtain a partial wage replacement for up to six weeks to care for an immediate family member, which was just expanded last year to also include a grandparent, grandchild, sibling, or parent-in-law. These existing leaves already create a burden on employers. Adding to this list with such a broad expansion as **AB 1522** proposes will be overwhelming.

California Should Incentivize Paid Sick Leave, Not Mandate:

Given the cumulative costs and existing protected leaves of absences California employers are already struggling with, California should refrain from implementing new mandates such as **AB 1522**. Rather, California should incentivize employers to offer these additional benefits by reducing costs in other areas.

One area in which California can reduce costs on employers so that they have the capacity to offer paid sick leave is daily overtime. California is only one of three states that mandate both daily and weekly overtime, creating a huge cost to employers. If this cost were reduced by conforming to federal law and only mandating weekly overtime, employers would more likely have the ability to offer paid sick leave as well as provide a more flexible schedule for working families.

Another option to partially offset the burden on employers to provide paid sick leave is to provide small employers with 50 or fewer employees, with a tax credit for the amount expended each year on paid sick leave up to a maximum of 125% of minimum wage, thereby targeting lower wage employees. Just recently, the State Controller released a statement indicating that California's revenue for February 2014 was approximately \$1 billion higher than the Governor projected. A portion of this unexpected revenue

could be utilized for a tax credit for those small employers who provide and pay an employee for sick leave, as proposed under **AB 1522**.

For these and other reasons, we respectfully **OPPOSE AB 1522, UNLESS** it is **AMENDED, as a JOB KILLER** to offset the cost and burden this new mandate will create, with either an exemption from daily overtime or a tax credit.

cc: The Honorable Lorena Gonzalez
Camille Wagner, Office of the Governor
Anthony Archie, Assembly Republican Caucus
District Offices, Members, Assembly Committee on Appropriations