

## RESOLUTION 12-02-2015

### DIGEST

Allow Employee to Use Full Amount of Available Sick Leave Under Paid Sick Leave Law  
Amends Labor Code section 246.5 to clarify that, under the Paid Sick Leave Law, employees may use the full amount of their accrued and available sick days for any of the covered purposes.

### TEXT OF RESOLUTION

**RESOLVED** that the Conference of California Bar Association recommends that legislation be sponsored to amend Labor Code section 246.5, to read as follows:

§246.5

- 1           (a) Upon the oral or written request of an employee, an employer shall allow an employee  
2 to use the full amount of an employee's accrued and available sick days beginning on the 90th  
3 day of employment ~~provide paid sick days~~ for the following purposes:  
4           (1) Diagnosis, care, or treatment of an existing health condition of, or preventive care for,  
5 an employee or an employee's family member.  
6           (2) For an employee who is a victim of domestic violence, sexual assault, or stalking, the  
7 purposes described in subdivision (c) of Section 230 and subdivision (a) of Section 230.1.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** The Bar Association of San Francisco

### STATEMENT OF REASONS

The Problem: There is an ambiguity in the Healthy Workplaces, Healthy Families Act of 2014 ("Paid Sick Leave law") because it fails to address the pre-existing kin care law. Under the existing "kin care" law set forth in Labor Code section 233, "[a]ny employer who provides sick leave for employees shall permit an employee to use in any calendar year the employee's accrued and available sick leave entitlement, in an amount not less than the sick leave that would be accrued during six months at the employee's then current rate of entitlement, to attend to an illness of a child, parent, spouse, or domestic partner of the employee." On the other hand, under Labor Code section 246.5 of the Paid Sick Leave law, employers must provide sick days for certain specified purposes, including "the diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member." There is no provision in the Paid Sick Leave law limiting use of paid sick leave for an employee's ill family member to only half the annual entitlement (as required by the kin care law) or any other amount, and the Paid Sick Leave law does not reference the pre-existing kin care law. Accordingly, it appears that the full amount of paid sick leave may be used for any of the designated purposes in the Paid Sick Leave law, including caring for an employee's family member, but it is not expressly stated.

The Solution: This resolution addresses the problem by clarifying that the full amount of an employee's accrued and available sick days may be used for any of the specified purposes,

including caring for an ill family member. The new language also maintains the requirement set forth in Labor Code 246(c) that an employee is entitled to use accrued paid sick days beginning on the 90th day of employment.

This bill is related to the 2015 BASF Resolutions on Kin Care and Paid Sick Leave Accrual.

### **IMPACT STATEMENT**

This proposed resolution does not affect any other law, statute or rule.

### **CURRENT OR PRIOR RELATED LEGISLATION**

Not known.

**AUTHOR AND/OR PERMANENT CONTACT:** Cathleen S. Yonahara, Freeland Cooper & Foreman LLP, 150 Spear St., Ste. 1800, San Francisco, California 94105, telephone (415) 541-0200, facsimile (415) 495-4332, e-mail yonahara@freelandlaw.com

**RESPONSIBLE FLOOR DELEGATE:** Cathleen S. Yonahara

### **RESOLUTIONS COMMITTEE RECOMMENDATION**

APPROVE IN PRINCIPLE

#### History:

No similar resolutions found.

#### Reasons:

This resolution amends Labor Code section 246.5 to clarify that, under the Paid Sick Leave Law, employees may use the full amount of their accrued and available sick days for any of the covered purposes. This resolution should be approved in principle because it clarifies a possible conflict with the existing kin-care law, and is consistent with the statutory language.

California's "kin-care" law, set forth in Labor Code section 233, states that "[a]ny employer who provides sick leave for employees shall permit an employee to use in any calendar year the employee's accrued and available sick leave entitlement, in an amount not less than the sick leave that would be accrued during six months at the employee's then current rate of entitlement, to attend to an illness of a child, parent, spouse, or domestic partner of the employee." On the other hand, the newly passed Paid Sick Leave law (formally known as the Healthy Workplaces, Healthy Families Act of 2014 and codified at Labor Code section 246, et seq.), while identifying the situations when employers must provide sick days to employees, makes no mention of how much sick leave can be used by an employee, nor does it mention or incorporate by reference the sick leave provision in the kin-care law.

This resolution would fix this potential conflict between the two laws by explicitly permitting employees, after their 90th day of employment, to use their accrued and available sick days for any of the purposes identified in the Labor Code section 246.5. In addition, unlike the kin-care law which allows an employee to use only half of their annual entitlement, the Paid Sick Leave

Law does not contain any such limitation. Thus, the resolution also makes clear that the employee can use all of his or her available or accrued sick leave.

This resolution is related to Resolution 12-09-2015

---

## COUNTERARGUMENTS TO RESOLUTION 12-02-2015

---

### ORANGE COUNTY BAR ASSOCIATION

Arguably, the Healthy Workplaces, Healthy Families Act of 2014 (“the Act”) has generated confusion in its application. However, this resolution does nothing to confront or alleviate such confusion, nor does it resolve the proponent’s purported ambiguity. Styled as an attempt at clarification of an obscurely stated problem, the resolution offers far more than clarification; it offers a way around the Act’s mandatory requirement that an employer provide the requisite sick days. Striking the words, “provide paid sick days” completely changes the law making what is currently a mandatory provision into a voluntary obligation.

The Act clearly states that, “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.” *Labor Code section 246(c)* Labor Code Section 246.5 then sets forth the purposes for which the sick days are being provided. What is unclear is how removing mandatory language from the statute and inserting the language from one clearly stated section into another clarifies interaction with the existing provisions of Labor Code section 233.

The proponent makes no showing of how this specific change addresses the problem outlined. In the end, amending the statute as proposed serves only to dismantle a strongly worded statute and take away hard won protections.