

Sonoma County Office of Education
Business Services

EXTERNAL PAYROLL AND FINANCE UPDATES
DBUG MEETING: October 19, 2023

Reminders:

IRS Notices - IRS B Notices – CP2100/2100A Notice

- ❖ If your district/charter has received an IRS B Notice, please follow the instructions from the 1099 workshop
- ❖ https://www.scoe.org/files/2022_1099_Reportng_Documentation.pdf

IRS B Notices – CP2100/2100A Notice

When the IRS sends a notice indicating a missing or incorrect payee TIN, the payer is required to send the payee a form W-9 packet within 15 business days from the date of the notice, or date of receipt of the notice, whichever is later.

This packet should include a copy of the notice and a blank form W-9. The mailing envelope should be clearly marked with **“Important Tax Information Enclosed”**. Send the vendor packet by certified mail for proof of mailing. Vendor must hand sign (no electronic signatures) the newly submitted Form W-9.

The payee must correct the TIN information and respond within 15 days. If the TIN information is not received within 30 days, payers must begin backup withholding at the 24% rate until a Form W-9 is received.

The payer should cease backup withholding no later than 30 days after the payer furnishes a completed form W-9 or TIN validation from the IRS/SSA.

If this is the second time a vendor has been on a B-Notice within three years:

- Send the vendor a “Second B-Notice letter”
- Do not send a Form W-9
 - Vendor must provide a letter from IRS for an EIN or Social Security Card if using a SSN
 - If the TIN is an EIN, the payee must validate their TIN by providing an IRS Letter 147c (This needs to be requested from the IRS by the payee)
 - If no 147c letter is provided, begin backup withholding no later than 30 business days after the date on the second notice

CalPERS Retirees cannot be hired into permanent positions

- ❖ Appointment to any permanent or regular staff position requires reinstatement from retirement. This applies to all CalPERS member classifications.
- ❖ CalPERS retirees cannot earn vacation, sick leave, or any additional benefits
- ❖ <https://www.calpers.ca.gov/docs/forms-publications/employment-after-retirement.pdf>
 - See **page 6** at the above link

Prior Year Warrant Cancellations

- ❖ If your district/charter had warrant cancellations that were submitted after June 17th, please note that these cancellations will not post until the books are totally closed
 - Sarah Graves has a stack of cancellations she is waiting to complete until the prior year is closed
 - Once posted, these cancels will hit the ZERR management code
 - These cancels will need to be cleared to the proper revenue account code once posted
- ❖ https://www.scoe.org/files/0_2022-23_Year-End_Close_Manual.pdf
 - Step9A

W-2 Reminder

- ❖ Run Pay31 after each payroll
 - If you have a question about how to clear an error – reach out to helpdesk and Christy/Jing (Carend@scoe.org, Jliu@scoe.org)
 - It is best to clear these errors if possible before W-2s are generated

Updates:

New Sick Leave Law – Fiscal Report – October 10, 2023

- ❖ **Senate Bill 616** modifies the Healthy Families Act of 2014
- ❖ See **attached** notice from School Services of California
- ❖ No less than 40 hours, or 5 days of paid sick leave available for use by the completion of the employee's 200th calendar day of employment
 - https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB616
- ❖ This does not pertain to employees covered by collective bargaining agreements
- ❖ More information to come – **this change does not go into effect until January 2024**



Department of the Treasury
Internal Revenue Service
Philadelphia, PA 19255-0833

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For your reference

Notice name	CP2100A
Notice date	October 3, 2023
Tax year	2022
Taxpayer ID number	XX-XXX8060

For more information

Visit irs.gov/cp2100a to learn more about this notice and what to do next and avoid waiting on the phone.

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018423

EXAMPLE OF NOTICE

⚠ Payee Information Error Notification

You're receiving this notice because:

The payee information you reported on Form 1099 for tax year 2022 may be incorrect.

- Some payees didn't provide a taxpayer identification number (TIN), or
- Some payees may have given you an incorrect name or TIN.

As a result, you may want to do the following:

- Obtain correct information from the payee,
- Update your records, and
- Depending on the situation, begin backup withholding.

Don't respond to the IRS or amend any prior information return filing based on this notice. Use the new information for future Form 1099 reporting. It is your responsibility to deposit the amounts withheld and to report the withheld amounts on the payees Form 1099 for the year in which the payments are withheld.

What does this mean

Banks, financial institutions, sole proprietors, and others must withhold 24% of certain reportable payments if payees fail to provide a correct TIN. This is required by Internal Revenue Code (IRC) Section 3406(a).

A TIN may be:

- A Social Security number (SSN) issued by the Social Security Administration
- An employer identification number (EIN)
- An individual taxpayer identification number (ITIN)
- An IRS adoption taxpayer identification number (ATIN)



What's next**You don't need to do anything if:**

- You made a clerical error in reporting, and the payee name or TIN on this list is not what is in your records, or
- You already have the payee's TIN but mistakenly failed to include it on the information return, or
- The payee provided updated information to you prior to receiving this notice and you already corrected your records, or
- The IRS made a processing error and the payee name or TIN combination on this list is different than what you reported.

If the missing TIN or incorrect name and TIN combination isn't a clerical error:

- See "Missing TIN" and "Incorrect name and TIN combination" section below.
- You're required to deduct and withhold 24% from payments where the payee doesn't provide a TIN or provides an incorrect TIN.
- **What will happen if you don't act:**
 - You're liable for payment of the tax required to be deducted and withheld.

Missing TIN

Backup withholding is required whenever the reporting threshold is met for the information returns involved and the payee has not furnished a TIN or has provided a TIN that is obviously incorrect. Obviously incorrect TINs include numbers that have:

- more or less than nine digits (nnn-nn-nnn, nnn-nn-nnnnn)
- a mixture of digits and letters (nn-nn-nnnP)

If you haven't started backup withholding for the identified payees as required, you must:

1. **Begin backup withholding immediately.**
2. Contact the payee to request the TIN. (For certain payments you can't ask for a TIN over the phone.)
3. Send the payee a Form W-9, Request for Taxpayer Identification Number and Certification, or equivalent.
4. Stop backup withholding no later than 30 calendar days after you receive the payee's TIN.



Incorrect name and TIN combination

Compare your payee records to the enclosed list.

If our list matches your records, you must:

1. Send a "B" notice to all payees on the attached list **within 15 business days** from the date of this notice. Use the individual's name and not sole proprietor's doing business as (DBA) business name.
2. Send a W-9, Request for Taxpayer Identification Number and Certification, or equivalent, with the "B" notice.
3. Start backup withholding **within 30 business days** from the date of this notice.

You must stop backup withholding within 30 calendar days after receiving the required certification or validation. TIN validation must be:

- A copy of their Social Security card for SSN
- IRS Letter 147C for EIN
- IRS Letter 685C for ITIN
- IRS Letter 096C for ATIN

"B" notices inform the payees that you will start backup withholding at 24% if they don't provide the requested information to you. There are two types of "B" notices, First and Second "B" notices. Whether the payee is sent a First or Second "B" notice depends on whether they have appeared on the lists included with your prior CP2100A Notices. For more detailed information on "B" notices see irs.gov/cp2100a.

How to report and pay backup withholding

You must deposit the amounts you withhold and file Form 945, Annual return of Withheld Federal Income Tax.

- Report the withheld amounts on the line titled "Backup withholding" of Form 945.
- Report the withheld amounts in the box titled "Federal income tax withheld" of the payees Form 1099 for the year in which the payments are withheld.
- Don't refund the money already withheld unless the withholding was your error.
- See Publication 1281, Backup Withholding for Missing and Incorrect Name/TIN(S), and Publication 15, (Circular E) Employer's Tax Guide, for more information.

Additional information

- **Keep this notice with your records for three years.**

- Visit irs.gov/eservices for information on validating TIN and name combinations.
- Find tax forms and publications by visiting irs.gov/forms or calling 800-TAX-FORM (800-829-3676).
- Call us at 866-455-7438 or +1-304-263-8700 (for international callers) if you can't find what you need online.



Notice: CP2100A

Notice date: October 3, 2023

TIN: XX-XXX8060

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Post-Retirement Employment Scenarios

Private Sector Employment

If you are a service retiree, you can work for a private industry employer not associated with any CalPERS employer without restrictions and continue to receive your CalPERS retirement allowance.

If you are a disability retiree, there are restrictions on the work you can do for a private industry employer. If you retired on a disability or industrial disability, be sure to review the "Disability Retirees – Additional Requirements and Restrictions" section beginning on page 14.

If you are either a service retiree or a disability retiree, and you want to work for a private sector employer who provides a service to a CalPERS employer, please see the section on "Independent Contractor Employment" beginning on page 12.

Employment in Other Public Retirement Systems

If you are a service retiree, you can work without restrictions in a position that qualifies for membership in any other public retirement system without terminating your CalPERS retirement and continue to receive your CalPERS allowance. This includes certificated (teaching) positions covered by the California State Teachers' Retirement System (CalSTRS).

If you are a disability retiree, there are restrictions on working for an employer in a different public retirement system. See the section on "Disability Retirees – Additional Requirements and Restrictions" beginning on page 14.

CalPERS/CalSTRS Election

The retirement system election to elect coverage under CalSTRS for a CalPERS-covered position or CalPERS for a CalSTRS-covered position under Government Code section 20309 only applies to active members. Retirees are ineligible for this election.

Employment in JRS II

For information about employment in positions that qualify for membership in the Judges' Retirement System II, please call (916) 795-3688.

Working for a CalPERS Employer

If your post-retirement plans include working for a CalPERS employer, you have these options: reinstating from retirement, working as an independent contractor, or retired annuitant employment. Disability retirees have another option, which is to work in a permanent position under Government Code section 21232. If you retired on a disability or industrial disability, there are additional restrictions on the work you can do while retired. Please review the "Disability Retirees – Additional Requirements and Restrictions" section beginning on page 14 for information on that option.

Voluntary Reinstatement From Retirement

You should only apply for and accept a regular staff position with a CalPERS employer if you are voluntarily reinstating from retirement, and you and the employer have completed the **Reinstatement From Service Retirement Application** form or the **Reinstatement From Disability/Industrial Disability Retirement Application** form. For more information about voluntary reinstatement from retirement into active employment, review **A Guide to CalPERS Reinstatement From Retirement** (PUB 37).

Post-Retirement Employment Scenarios (continued)

Independent Contractor Employment

You can be lawfully employed by a CalPERS employer as an “independent contractor” or as an “employee of a third-party employer,” including your own business entity, if there is no common law employer-employee relationship between you and the CalPERS employer. Please see the section on “Independent Contractor Employment” beginning on page 12.

Retired Annuitant Employment

A retired annuitant is a CalPERS retiree who works as an at-will employee of a CalPERS employer with certain restrictions to avoid jeopardizing his or her retirement allowance (pension payments).

As a retired annuitant, you do not accrue service credit or otherwise acquire any additional retirement benefits from the employment. If you intend to remain retired and work for a CalPERS employer, you should only apply for and accept a retired annuitant position. Appointment to any permanent or regular staff position (part or full time, intermittent, hourly, seasonal, on call, exempt from civil service, exempt from membership, etc.) requires reinstatement from retirement. This applies to all CalPERS member classifications (miscellaneous, safety, police, fire, etc.).

Retired Annuitant Rules

There are two types of retired annuitant employment: "extra help" and interim (or acting) "vacant position" employment.

Extra Help Positions

The retired annuitant employment restrictions for extra help positions are authorized by Government Code sections 7522.56, 21224, 21227, and 21229. All CalPERS-covered employers are able to use retirees to fill in for extra help positions. However, your employment must meet the following restrictions:

- **Limited-Duration Work**

You have skills needed to perform work of limited duration or your employment is needed during an emergency (such as floods, earthquakes, etc.) to prevent stoppage of public business. While these workloads may last more than one fiscal year, the employment should terminate when the limited-duration work you were hired to perform is completed. Examples of work of limited duration are work to eliminate a backlog, work on a special project, and work that is in excess of what regular staff can do. You cannot be employed in any regular staff position such as "seasonal," "permanent intermittent," "exempt from civil service," "exempt from membership," "TAU," or any other "temporary" position other than a retired annuitant position.

- **Compensation**

The hourly pay rate you receive cannot be less than the minimum or exceed the maximum paid to other employees performing comparable duties as listed in the employer's publicly available pay schedule. Also, you cannot receive any benefit, incentive, compensation in lieu of benefits, or other form of compensation in addition to the hourly pay rate. For example, longevity compensation, sick leave, or vacation benefits cannot be provided to a

retired annuitant. **The only exception** would be if the employee is being reimbursed dollar for dollar for job-related expenses.

- **960-Hour Limit**

The hours you work cannot exceed 960 hours in a fiscal year (July 1 through June 30) for employment with all CalPERS employers combined. **There are no exceptions to this limit.** Your hours will reset each July 1, and you can work another 960 hours for the new fiscal year. Your employer must enroll and report your hours to CalPERS, per Government Code section 21220. Your employer-reported retired annuitant hours can be viewed in your myCalPERS account. You are able to view your total employer-reported hours from all employers for the current fiscal year.

California State University (CSU) academic staff retirees can work as retired annuitant academic staff for CSU employers as authorized by Government Code sections 7522.56 and 21227. However, the hours worked for all CSU employers cannot exceed 960 hours in a fiscal year or 50% of the hours employed during the last fiscal year prior to retirement, whichever is less.

- **Unemployment Insurance Payments**

You cannot be appointed as a retired annuitant if you received unemployment insurance payments for prior retired annuitant work for any CalPERS employer within 12 months prior to your appointment date. Upon accepting employment, you must certify in writing to the employer that you comply with this requirement. See additional information in the section "Unemployment Insurance Payments" on page 9.

Retired Annuitant Rules (continued)

Vacant Positions

A CalPERS-contracted public agency may appoint you to an interim position by the governing body of an employer, as authorized by Government Code sections 7522.56 and 21221(h). The employment must meet all the requirements on page 7 for extra help positions and the following additional requirements below. Examples of these positions include city manager, police chief, fire chief, individual department head, director, CEO, etc.

- **Active Recruitment**

Before you are hired, the employer must have in place an active recruitment for a permanent replacement for the vacant position.

- **Limited-Duration Work**

You can be hired only as an interim or acting appointment during the period of recruitment; you cannot work in a permanent capacity or for an indefinite period of time.

- **Single Appointment**

You can be appointed only once to the vacant position. If your contracted term ends and a replacement has not been found, then you must vacate the position. If you continue after your contracted term expires, this is considered a second appointment.

- **Compensation**

Your hourly pay rate cannot be less than the minimum or exceed the maximum for the vacant position as listed on the employer's publicly available pay schedule. You cannot receive any benefit, incentive, compensation in lieu of benefits, or other form of compensation in addition to the hourly pay rate.

Eligibility Requirements for Retired Annuitants

In addition to the requirements on the previous pages, all retirees must meet both of the following two requirements to be eligible to work for a CalPERS employer:

- **1. Bona Fide Separation in Service Requirement**

You cannot be employed as a retired annuitant if you are younger than the "normal retirement age" on your retirement date, unless both of the following conditions are met:

- There was no verbal or written agreement to return to work as a retired annuitant between you and any CalPERS employer before you retired.
- There is a termination of employment (separation in service) for 60 days between your retirement date and the date your limited-duration employment as a retired annuitant will begin.

Normal retirement age is the oldest age listed in your retirement benefit formulas. To find this age, log in to your myCalPERS account at my.calpers.ca.gov.

All retirees who are under normal retirement age at retirement must meet the bona fide separation in service requirement even if an exception to the 180-day wait period applies. These two requirements may be served concurrently. The only exception to this restriction is for employment due to the specific emergency conditions as defined in Government Code section 8558. This bona fide separation requirement is in California retirement law and regulations to comply with Internal Revenue Code tax regulations.

Retired Annuitant Rules (continued)

2. 180-Day Wait Period Requirement

You cannot be employed as a retired annuitant for a period of 180 days after your retirement date, unless you qualify for one of the following exceptions. The 180-day wait period begins on your retirement date.

Exceptions

- Before you begin work, your employer must certify the nature of the employment and that the appointment is necessary to fill a critically needed position sooner than 180 days. The appointment must be approved by the employer's governing body, in a public meeting, and must be approved as an action item, rather than on a consent calendar.
- You will participate in the California State University's (CSU) Faculty Early Retirement Program (FERP) pursuant to a collective bargaining agreement with CSU that existed prior to January 1, 2013, or has been included in subsequent agreements.
- You are a retired firefighter or retired public safety officer as defined in Government Code section 3301 (peace officer) who will perform firefighter or peace officer retired annuitant work.
- You are a CalSTRS retiree who is subject to sections 24212, 24214.5, or 26812 of the Education Code. Call CalSTRS at (800) 228-5453 for more information.

If you receive a golden handshake or any other retirement or separation incentive, you must wait 180 days before returning to work and you are not eligible for any of the 180-day wait period exceptions.

State Employer Civil Service Eligibility Requirement

Retired annuitant employment with a state agency is limited to retirees who have civil service eligibility from previous state agency employment or who qualify for appointment under an applicable civil service employment list. Visit the California Department of Human Resources website at www.calhr.ca.gov for more information. Retired State of California employees can apply for retired annuitant positions via the Boomerang website at boomerang.ca.gov.

Unemployment Insurance Payments

California law prohibits appointment of a retired annuitant by a CalPERS employer if, during the 12-month period before an appointment, you received unemployment insurance compensation for prior retired annuitant employment with any CalPERS employer. Upon accepting employment, you must certify in writing to the employer that you comply with this requirement.

If you are working as a retired annuitant and it is discovered that during the previous 12 months you were paid unemployment insurance compensation based on prior retired annuitant employment with any CalPERS employer, your employment must be terminated on the last day of the current pay period. You will not be eligible for appointment as a retired annuitant with any CalPERS employer for 12 months following the termination date of the current employment. Violation of this unemployment insurance compensation restriction does not result in mandatory reinstatement from retirement.

Retired Annuitant Rules (continued)

Exceptions to Retired Annuitant Requirements

Elected or Appointed Offices

You can serve in an elected or appointed office after retirement without reinstatement from retirement. However, if you serve without reinstatement and part or all of your retirement allowance is based on service in that elected or appointed office, the portion of your allowance based on service in that office must be suspended for your time in office. When you leave office, your allowance will be unsuspended going forward.

If you wish to elect membership to earn additional CalPERS service credit for your time in the elected or appointed office and that office is subject to CalPERS membership, you must reinstate from retirement.

If you are serving in an elected or appointed office for which you have CalPERS membership and wish to retire before your term expires, you must resign from that office.

If you are serving in an elected or appointed office for which you have not elected CalPERS membership and wish to retire before your term expires, you do not have to resign from that office.

Special State Appointments

Part-Time Member of State Board or Commission – CalPERS Retirees and Non-CalPERS Retirees

You can serve without reinstatement from retirement as a salaried part-time member of a state board or commission, where part time is defined as an appointment with a salary of no more than \$60,000 annually, which will be increased in any fiscal year in which a general salary increase is provided for state employees. The amount of the increase cannot exceed the percentage

of the general salary increases provided for state employees during that fiscal year. You acquire no benefits, service credit, or retirement rights from this employment.

Full-Time Member of State Board or Commission – CalPERS Retirees

You can serve without reinstatement from retirement as a non-salaried full-time member of a state board or commission. You may receive only per diem authorized to all members of the board or commission. You do not earn any service credit or benefits in CalPERS, or make any CalPERS contributions. If you accept the salary, you must reinstate from retirement.

Full-Time Member of State Board or Commission – Non-CalPERS Retirees

If you receive retirement from a public retirement system other than CalPERS, you can serve as a non-salaried full-time member of a state board or commission and continue to receive your retirement allowance in addition to any per diem authorized to all members of the board or commission. If you accept the salary, you must suspend your retirement benefit from the other system and enroll as a new member of CalPERS.

Upon retirement (1) the pensionable compensation earned from the service on this board or commission will not be eligible for reciprocity with any other retirement system or plan, and (2) you will be entitled to future reinstatement of any suspended benefits, including employer-provided retiree health benefits, for which you were entitled at the time of appointment to the board or commission.



SB-616 Sick days: paid sick days accrual and use. (2023-2024)

SHARE THIS:

Date Published: 10/04/2023 09:00 PM

Senate Bill No. 616

CHAPTER 309

An act to amend Sections 245.5, 246, and 246.5 of the Labor Code, relating to employment.

[Approved by Governor October 04, 2023. Filed with Secretary of State October 04, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

SB 616, Gonzalez. Sick days: paid sick days accrual and use.

Existing law, the Healthy Workplaces, Healthy Families Act of 2014 (act), establishes requirements relating to paid sick days and paid sick leave, as described. The act excludes specified employees from its provisions, including an employee covered by a valid collective bargaining agreement, as described (CBA employees).

This bill would exclude railroad carrier employers and their employees from the act's provisions.

Existing law, with certain exceptions, entitles an employee to paid sick days for certain purposes if the employee works in California for the same employer for 30 or more days within a year from the commencement of employment. Existing law imposes procedural requirements on employers regarding the use of paid sick days, including by prohibiting retaliation for using paid sick days, by prohibiting the imposition of certain conditions on the use of paid sick days, and by requiring the use of paid sick days for specified health care and situations. Existing law requires the leave to be accrued at a rate of no less than one hour for every 30 hours worked, and to be available for use beginning on the 90th day of employment.

This bill would extend the above-described procedural requirements on the use of paid sick days to CBA employees.

Existing law authorizes an employer to use a different accrual method as long as an employee has no less than 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period. Existing law also provides that an employer may satisfy the accrual requirements by providing not less than 24 hours or 3 days of paid sick leave that is available to the employee to use by the completion of the employee's 120th calendar day of employment.

This bill would modify the employer's alternate sick leave accrual method to additionally require that an employee have no less than 40 hours of accrued sick leave or paid time off by the 200th calendar day of employment or each calendar year, or in each 12-month period. The bill would modify that satisfaction provision to authorize an employer to satisfy accrual requirements by providing, in addition to the existing criteria for satisfaction above, not less than 40 hours or 5 days of paid sick leave that is available to the employee to use by the completion of the employee's 200th calendar day of employment.

Existing law requires accrued paid sick days to carry over to the following year of employment. Existing law, however, authorizes an employer to limit an employee's use of accrued paid sick days to 24 hours or 3 days in each year of employment, calendar year, or 12-month period. Under existing law, this provision is satisfied and no accrual or carryover is required if the full amount of leave is received at the beginning of each year of employment, calendar year, or 12-month period. Existing law defines "full amount of leave" for these purposes to mean 3 days or 24 hours.

This bill would raise the employer's authorized limitation on the use of carryover sick leave to 40 hours or 5 days in each year of employment. The bill would redefine "full amount of leave" to mean 5 days or 40 hours.

Existing law also entitles individual providers of in-home supportive services and waiver personal care services, as defined, to paid sick days in specified amounts in accordance with minimum wage increases, up to a maximum of 24 hours or 3 days each year of employment when the minimum wage has reached \$15 per hour. Existing law authorizes the State Department of Social Services to implement and interpret these provisions.

This bill would increase the sick leave accrual rate for these providers to 40 hours or 5 days in each year of employment, beginning January 1, 2024.

Under existing law, an employer is not required to provide additional paid sick days pursuant to these provisions if the employer has a paid leave or paid time off policy, makes an amount of leave available to employees that may be used for the same purposes and under the same conditions as these provisions, and the policy satisfies one of specified conditions. Under that law, one of those conditions requires the employer to have provided paid sick leave or paid time off in a manner that results in an employee's eligibility to earn at least 3 days or 24 hours of sick leave or paid time off within 9 months of employment.

This bill would change that condition so that the employee must be eligible to earn at least 5 days or 40 hours of sick leave or paid time off within 6 months of employment.

Under existing law, an employer has no obligation under these provisions to allow an employee's total accrual of paid sick leave to exceed 48 hours or 6 days, provided that an employee's rights to accrue and use paid sick leave are not otherwise limited, as specified.

This bill would increase those accrual thresholds for paid sick leave to 80 hours or 10 days.

Existing paid sick days law sets forth provisions on, among other things, compensation for accrued, unused paid sick days upon specified employment events, the lending of paid sick days to employees, written notice requirements, the calculation of paid sick leave, reasonable advance notification requirements, and payment of sick leave taken.

This bill would provide that these provisions shall preempt any local ordinance to the contrary.

The bill would include findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 245.5 of the Labor Code is amended to read:

245.5. As used in this article:

(a) "Employee" does not include the following:

(1) Except as provided in subdivision (d) of Section 246.5, an employee covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of employees, and expressly provides for paid sick days or a paid leave or paid time off policy that permits the use of sick days for those employees, final and binding arbitration of disputes concerning the application of its paid sick days provisions, premium wage rates for all overtime hours worked, and regular hourly rate of pay of not less than 30 percent more than the state minimum wage rate.

(2) An employee in the construction industry covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of employees, premium wage rates for all overtime hours worked, and regular hourly pay of not less than 30 percent more than the

state minimum wage rate, and the agreement either (A) was entered into before January 1, 2015, or (B) expressly waives the requirements of this article in clear and unambiguous terms. For purposes of this subparagraph, "employee in the construction industry" means an employee performing work associated with construction, including work involving alteration, demolition, building, excavation, renovation, remodeling, maintenance, improvement, repair work, and any other work as described by Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and other similar or related occupations or trades.

(3) An individual employed by an air carrier as a flight deck or cabin crew member that is subject to Title II of the federal Railway Labor Act (45 U.S.C. Sec. 151 et seq.), provided that the individual is provided with compensated time off equal to or exceeding the amount established in paragraph (1) of subdivision (b) of Section 246.

(4) An employee of the state, city, county, city and county, district, or any other public entity who is a recipient of a retirement allowance and employed without reinstatement into the employee's respective retirement system pursuant to either Article 8 (commencing with Section 21220) of Chapter 12 of Part 3 of Division 5 of Title 2 of the Government Code, or Article 8 (commencing with Section 31670) of Chapter 3 of Part 3 of Division 4 of Title 3 of the Government Code.

(5) An employee as defined in Section 351(d) of Title 45 of the United States Code.

(b) (1) "Employer" means any person employing another under any appointment or contract of hire and includes the state, political subdivisions of the state, and municipalities.

(2) "Employer" does not include any employer described in Section 351(a) of Title 45 of the United States Code.

(c) "Family member" means any of the following:

(1) A child, which for purposes of this article means a biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis. This definition of a child is applicable regardless of age or dependency status.

(2) A biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child.

(3) A spouse.

(4) A registered domestic partner.

(5) A grandparent.

(6) A grandchild.

(7) A sibling.

(8) A designated person, which, for purposes of this article, means a person identified by the employee at the time the employee requests paid sick days. An employer may limit an employee to one designated person per 12-month period for paid sick days.

(d) "Health care provider" has the same meaning as defined in Section 12945.2 of the Government Code.

(e) "Paid sick days" means time that is compensated at the same wage as the employee normally earns during regular work hours and is provided by an employer to an employee for the purposes described in Section 246.5.

SEC. 2. Section 246 of the Labor Code is amended to read:

246. (a) (1) An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section. For an individual provider of waiver personal care services under Section 14132.97 of the Welfare and Institutions Code who also provides in-home supportive services in an applicable month, eligibility shall be determined based on the aggregate number of monthly hours worked between in-home supportive services and waiver personal care services pursuant to subdivision (d) of Section 14132.971.

(2) On and after July 1, 2018, a provider of in-home supportive services under Section 14132.95, 14132.952, or 14132.956 of, or Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of, the Welfare and Institutions Code, who works in California for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in subdivision (e) and subject to the rate of accrual in paragraph (1) of subdivision (b). For an individual provider of waiver personal care services under Section 14132.97 of the Welfare and Institutions Code, entitlement to paid sick days begins on July 1, 2019.

(b) (1) An employee shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment or the operative date of this article, whichever is later, subject to the use and accrual limitations set forth in this section.

(2) An employee who is exempt from overtime requirements as an administrative, executive, or professional employee under a wage order of the Industrial Welfare Commission is deemed to work 40 hours per workweek for the purposes of this section, unless the employee's normal workweek is less than 40 hours, in which case the employee shall accrue paid sick days based upon that normal workweek.

(3) An employer may use a different accrual method, other than providing one hour per every 30 hours worked, provided that the accrual is on a regular basis so that an employee has no less than 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period, and no less than 40 hours of accrued sick leave or paid time off by the 200th calendar day of employment or each calendar year, or in each 12-month period.

(4) An employer may satisfy the accrual requirements of this section by providing not less than 24 hours or 3 days of paid sick leave that is available to the employee to use by the completion of the employee's 120th calendar day of employment, and no less than 40 hours or 5 days of paid sick leave that is available to the employee to use by the completion of the employee's 200th calendar day of employment.

(c) 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.

(d) Accrued paid sick days shall carry over to the following year of employment. However, an employer may limit an employee's use of accrued paid sick days to 40 hours or five days in each year of employment, calendar year, or 12-month period. This section shall be satisfied and no accrual or carryover is required if the full amount of leave is received at the beginning of each year of employment, calendar year, or 12-month period. The term "full amount of leave" means five days or 40 hours.

(e) For a provider of in-home supportive services under Section 14132.95, 14132.952, or 14132.956 of, or Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of, and an individual provider of waiver personal care services under Section 14132.97 of, the Welfare and Institutions Code, the term "full amount of leave" is defined as follows:

(1) Eight hours or one day in each year of employment, calendar year, or 12-month period beginning July 1, 2018.

(2) Sixteen hours or two days in each year of employment, calendar year, or 12-month period beginning when the minimum wage, as set forth in paragraph (1) of subdivision (b) of Section 1182.12 and accounting for any years postponed under subparagraph (D) of paragraph (3) of subdivision (d) of Section 1182.12, has reached thirteen dollars (\$13) per hour.

(3) Twenty-four hours or three days in each year of employment, calendar year, or 12-month period beginning when the minimum wage, as set forth in paragraph (1) of subdivision (b) of Section 1182.12 and accounting for any years postponed under subparagraph (D) of paragraph (3) of subdivision (d) of Section 1182.12, has reached fifteen dollars (\$15) per hour.

(4) Forty hours or five days in each year of employment, calendar year, or 12-month period beginning January 1, 2024.

(f) An employer is not required to provide additional paid sick days pursuant to this section if the employer has a paid leave policy or paid time off policy, the employer makes available an amount of leave applicable to employees that may be used for the same purposes and under the same conditions as specified in this section, and the policy satisfies one of the following:

(1) Satisfies the accrual, carryover, and use requirements of this section.

(2) Provided paid sick leave or paid time off to a class of employees before January 1, 2015, pursuant to a sick leave policy or paid time off policy that used an accrual method different than providing one hour per 30 hours worked, provided that the accrual is on a regular basis so that an employee, including an employee hired into that class after January 1, 2015, has no less than one day or eight hours of accrued sick leave or paid time off within three months of employment of each calendar year, or each 12-month period, and the employee was eligible to earn at least five days or 40 hours of sick leave or paid time off within six months of employment. If an employer modifies the accrual method used in the policy it had in place prior to January 1, 2015, the employer shall comply with any accrual method set forth in subdivision (b) or provide the full amount of leave at the beginning of each year of employment, calendar year, or 12-month period. This section does not prohibit the employer from increasing the accrual amount or rate for a class of employees covered by this subdivision.

(3) Notwithstanding any other law, sick leave benefits provided pursuant to the provisions of Sections 19859 to 19868.3, inclusive, of the Government Code, or annual leave benefits provided pursuant to the provisions of Sections 19858.3 to 19858.7, inclusive, of the Government Code, or by provisions of a memorandum of understanding reached pursuant to Section 3517.5 that incorporate or supersede provisions of Section 19859 to 19868.3, inclusive, or Sections 19858.3 to 19858.7, inclusive, of the Government Code, meet the requirements of this section.

(g) (1) Except as specified in paragraph (2), an employer is not required to provide compensation to an employee for accrued, unused paid sick days upon termination, resignation, retirement, or other separation from employment.

(2) If an employee separates from an employer and is rehired by the employer within one year from the date of separation, previously accrued and unused paid sick days shall be reinstated. The employee shall be entitled to use those previously accrued and unused paid sick days and to accrue additional paid sick days upon rehiring, subject to the use and accrual limitations set forth in this section. An employer is not required to reinstate accrued paid time off to an employee that was paid out at the time of termination, resignation, or separation of employment.

(h) An employer may lend paid sick days to an employee in advance of accrual, at the employer's discretion and with proper documentation.

(i) An employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages. If an employer provides unlimited paid sick leave or unlimited paid time off to an employee, the employer may satisfy this section by indicating on the notice or the employee's itemized wage statement "unlimited." The penalties described in this article for a violation of this subdivision shall be in lieu of the penalties for a violation of Section 226. This subdivision shall apply to employers covered by Wage Order 11 or 12 of the Industrial Welfare Commission only on and after January 21, 2016.

(j) An employer has no obligation under this section to allow an employee's total accrual of paid sick leave to exceed 80 hours or 10 days, provided that an employee's rights to accrue and use paid sick leave are not limited other than as allowed under this section.

(k) An employee may determine how much paid sick leave they need to use, provided that an employer may set a reasonable minimum increment, not to exceed two hours, for the use of paid sick leave.

(l) For the purposes of this section, an employer shall calculate paid sick leave using any of the following calculations:

(1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.

(2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

(3) Paid sick time for exempt employees shall be calculated in the same manner as the employer calculates wages for other forms of paid leave time.

(m) 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.

(n) An employer shall provide payment for sick leave taken by an employee no later than the payday for the next regular payroll period after the sick leave was taken.

(o) The State Department of Social Services, in consultation with stakeholders, shall convene a workgroup to implement paid sick leave for in-home supportive services providers as specified in this section. This workgroup shall finish its implementation work by November 1, 2017, and the State Department of Social Services shall issue guidance such as an all-county letter or similar instructions by December 1, 2017.

(p) No later than February 1, 2019, the State Department of Social Services, in consultation with the Department of Finance and stakeholders, shall reconvene the paid sick leave workgroup for in-home supportive services providers. The workgroup shall discuss how paid sick leave affects the provision of in-home supportive services. The workgroup shall consider the potential need for a process to cover an in-home supportive services recipient's authorized hours when a provider needs to utilize their sick time. This workgroup shall finish its work by November 1, 2019.

(q) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the State Department of Social Services may implement, interpret, or make specific this section by means of an all-county letter, or similar instructions, without taking any regulatory action.

(r) Subdivisions (g), (h), (i), (l), (m), and (n) shall preempt any local ordinance to the contrary.

SEC. 3. Section 246.5 of the Labor Code is amended to read:

246.5. (a) Upon the oral or written request of an employee, an employer shall provide paid sick days for the following purposes:

(1) Diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member.

(2) For an employee who is a victim of domestic violence, sexual assault, or stalking, the purposes described in subdivision (c) of Section 230 and subdivision (a) of Section 230.1.

(b) An employer shall not require as a condition of using paid sick days that the employee search for or find a replacement worker to cover the days during which the employee uses paid sick days.

(c) (1) An employer shall not deny an employee the right to use accrued sick days, discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using accrued sick days, attempting to exercise the right to use accrued sick days, filing a complaint with the department or alleging a violation of this article, cooperating in an investigation or prosecution of an alleged violation of this article, or opposing any policy or practice or act that is prohibited by this article.

(2) There shall be a rebuttable presumption of unlawful retaliation if an employer denies an employee the right to use accrued sick days, discharges, threatens to discharge, demotes, suspends, or in any manner discriminates against an employee within 30 days of any of the following:

(A) The filing of a complaint by the employee with the Labor Commissioner or alleging a violation of this article.

(B) The cooperation of an employee with an investigation or prosecution of an alleged violation of this article.

(C) Opposition by the employee to a policy, practice, or act that is prohibited by this article.

(d) Notwithstanding subdivision (a) of Section 245.5, for purposes of this section, "employee" shall include an employee described in paragraph (1) of subdivision (a) of Section 245.5.

SEC. 4. The Legislature finds and declares that establishing uniform statewide regulation of certain aspects of paid sick leave is a matter of statewide concern and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, Sections 1, 2, and 3 of this act amending Sections 245.5, 246, and 246.5 of the Labor Code apply to all cities, including charter cities.



FISCAL REPORT

PUBLIC EDUCATION'S POINT OF REFERENCE FOR MAKING EDUCATED DECISIONS

New Sick Leave Law

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Ask SSC . . . Does the new law which provides five days of paid sick leave apply to local educational agencies (LEAs)?

On October 4, 2023, Governor Gavin Newsom signed [Senate Bill \(SB\) 616](#) (Gonzalez, D-Long Beach), which guarantees five paid sick days per year, expanding workers' paid sick leave entitlements. When it comes to employee leave laws there is rarely a short answer, but in this case the answer is "yes," it does apply to LEAs.

SB 616 amends the Healthy Workplaces, Healthy Families Act established by Assembly Bill 1522 (Gonzalez, Statutes of 2014), or "substitute sick leave" entitlement, which for LEAs applies to part-time and temporary substitute employees. Current law provides up to 24 hours or three days of paid sick leave, and substitutes can earn one hour of paid leave for every 30 hours worked. Remember, employees covered by collective bargaining agreements are exempt from this law, and SB 616 does not change this provision.

We highlight the significant revisions to Labor Code [246](#) below for your reference:

- Employee is entitled to no less than 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period, *and no less than 40 hours of accrued sick leave or paid time off by the 200th calendar day of employment or each calendar year, or in each 12-month period.*
- An employer may satisfy the accrual requirements by providing not less than 24 hours or three days of paid sick leave that is available to the employee to use by the completion of the employee's 120th calendar day of employment, *and no less than 40 hours or five days of paid sick leave that is available to the employee to use by the completion of the employee's 200th calendar day of employment.*
- Employers may limit an employee's use of accrued paid sick days to *40 hours or five days in each year of employment, calendar year, or 12-month period.*

Aligned with the current law, the leave accrual requirements can be satisfied, and no accrual or carryover is required if the full amount of leave (five days or 40 hours of leave) is received at the beginning of each year of employment, calendar year, or 12-month period. SB 616 takes effect January 1, 2024. We recommend that human resources and the business office communicate about this important change and work to plan for the fiscal, instructional, and operational implications of this additional leave entitlement.