

SAN FRANCISCO MANDATES PAID SICK LEAVE BENEFITS FOR ALL EMPLOYEES

San Francisco employers beware; the historically employee-friendly city has placed yet another burden on its employers – mandated paid sick leave for all employees. Specifically, on February 5, 2007, a San Francisco ordinance goes into effect that mandates that employers in San Francisco provide paid sick leave to their San Francisco-based employees. The ordinance provides that San Francisco employees (who have been employed longer than 90 days) earn one hour of paid sick leave for each 30 hours that they work – up to a maximum of 72 hours (9 days) for larger employers.

Although many employers already have paid sick leave policies, those policies must now meet the minimum benefits proscribed by the ordinance. For example, the ordinance applies to all employees, including both part-time and temporary employees. Thus, if an employer's current policy only applies to full-time employees, then the employer would be in violation of the ordinance. Similarly, because the ordinance allows employees to use the leave not only when they are sick, but also to care for sick family members or registered domestic partners (and for employees without a husband, wife or registered domestic partner, they can use sick leave to take care of a friend, so long as they identify the friend within a specified period of time) – any current policy that limits the use of sick leave to circumstances surrounding an employee's own illness only would violate the ordinance.

With respect to administrative issues associated with the new ordinance, besides the obvious burden of tracking sick time accrual and usage, there is a requirement that employers hang a posting notifying employees of the ordinance's requirements. Also, there is a requirement that employers keep records relating to employee accrual and usage of sick days for four years.

One of the more troubling aspects of the new ordinance is the language prohibiting retaliation. Specifically, the ordinance provides that if an employer takes a negative job action against an employee (termination, demotion, etc.) within 90 days of the employee exercising his/her rights under the ordinance (i.e., taking sick leave), there is a rebuttable presumption that the employer took the negative job action in retaliation for the employee taking sick leave. This language makes it imperative that if an employer is intending to take a negative job action against a San Francisco employee, the employer must have the documentation and other evidence necessary to show that the negative job action was taken without regard to the employee's paid sick leave usage.

Jon Klinghoffer, Michael Karpeles and the other attorneys in Goldberg Kohn's Labor and Employment Group are available to answer any questions regarding this new ordinance as well as to offer advice necessary to ensure that your current sick leave policy is in compliance with the new ordinance.

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