

CLIENT ALERTS

EPSTEIN BECKER & GREEN, P.C.

SAN FRANCISCO BECOMES FIRST TO REQUIRE PRIVATE EMPLOYERS TO PROVIDE PAID SICK LEAVE

On November 7, 2006, voters in San Francisco overwhelmingly approved Proposition F which requires that employers within the geographic limits of the County and City of San Francisco provide paid sick leave to employees. Proposition F was supported by a coalition of labor organizations and was promoted as a public health measure that will reduce the spread of communicable diseases by employees who come to work when they are sick.

The new requirements will go into effect on February 5, 2007. The following is a summary of the main provisions of Proposition F:

- The new measure covers **all** employers within the County and City of San Francisco, including temporary agencies and staffing companies.
- The law covers **all** employees (**exempt and nonexempt**) who work in the County and City of San Francisco, including **part-time and temporary employees**.
- Employers must provide one hour of paid sick leave for every 30 hours worked by an employee.
- Paid sick leave for employees who become employed on or before February 5, 2007, begins to accrue on February 5, 2007.
- Paid sick leave for employees who become employed after February 5, 2007, begins to accrue 90 days after their date of hire.
- The maximum amount of sick leave accrual for employees who work for employers with 10 or more employees in the County and City of San Francisco is 72 hours.
- For small employers who employ fewer than 10 persons (including individuals obtained through temporary agencies and staffing companies), the maximum sick leave accrual for employees is 40 hours.
- Accrued unused sick leave must carry over from year to year, but the total amount of accrued unused sick leave cannot exceed the 72-hour and 40-hour caps described above.
- **Accrued unused sick leave does not have to be paid at termination.**

In addition, Proposition F expands the “kin care” benefits provided by Labor Code Section 233. Pursuant to Labor Code Section 233, employees covered by an employer sick leave policy must be allowed to use half of their

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annual sick leave to care for a sick family member (parent, child, spouse, registered domestic partner or child of a registered domestic partner).

Under Proposition F, employees may use **all** their annual sick leave to take time off to care for themselves and/or an expanded list of covered family members, including a sick child, parent, legal guardian or ward, sibling, grandparent, grandchild, spouse or registered domestic partner, or designated person if there is no spouse or registered domestic partner. A designated person can be any individual chosen by the employee. There is no requirement that the designated person be related to the employee by blood or marriage. Employees must notify the employer of the person chosen as the designated person within certain time limits.

Proposition F requires that employers post a notice regarding the provisions of the new law (the notice will be available from the San Francisco Office of Labor Standards Enforcement by February 5, 2007). The law also requires that employers keep records of the hours worked by all employees (exempt and nonexempt) and of the amount of sick leave accrued and taken for a period of up to **four years** (this is longer than the three-year record-retention requirement provided by the California Wage Orders).

Proposition F provides for a range of penalties to employers who violate the new law, including reinstatement, back pay, payment for unpaid sick leave, treble damages (up to a maximum of \$250 per employee), liquidated damages, injunctive relief and attorneys' fees. Employees who exercise their rights and/or raise complaints under Proposition F are protected from retaliation. Proposition F creates a rebuttable presumption of unlawful retaliation when an employer takes an adverse employment action against an employee within 90 days after the employee files a complaint for violation of the law and/or engages in other protected activity defined in Proposition F.

Significantly, Proposition F provides that a civil action may be brought on behalf of the general public ("private attorney general" action) by anyone, even if the individual was not aggrieved by a violation of the law. This provision will encourage plaintiffs' attorneys to bring "bounty hunter" class actions because they can recover attorneys' fees even if they do not have a client who is entitled to recovery. The requirements of Proposition F can be expressly waived by the parties to a collective bargaining agreement. Proposition F leaves open questions regarding its interaction with state and federal Family Rights Act laws and the California Paid Family Leave law.

Impact: Despite the rhetoric presented by the proponents of Proposition F, this new law will increase the costs of doing business for employers in San Francisco. This will be particularly true for those employers who rely heavily on part-time employees, who are traditionally not entitled to paid sick leave under employer policies. Further, in addition to increased costs related to Proposition F, the San Francisco mandatory minimum wage will increase from \$8.82 to \$9.14 per hour on January 1, 2007.

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