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Developments

## CALIFORNIA LEGISLATURE PASSES LAW REQUIRING PAID LEAVE FOR EMPLOYEES TO ATTEND TO A SICK FAMILY MEMBER (July 16, 1999)

### Summary

On Thursday, July 15, both houses of the California legislature passed [AB 109](#). This new bill will require California employers to permit employees to use accrued sick leave to attend to a sick child, parent or spouse.

### Details

If signed by Governor Davis as expected, AB 109 will change the manner in which employers must handle sick leave. Under this new law:

Employers must allow employees to use sick time accrued over at least a six month period to attend to a sick child, parent or spouse;

Employers who discharge, threaten to discharge, demote, suspend or in any manner discriminate against an employee for using or attempting to use sick leave to attend to a child, parent or spouse's illness may be sued by the aggrieved employee. In such an action, the employee (but not the employer) may receive his or her attorney's fees as damages; or

In the alternative, the aggrieved employee may pursue a claim through the California Labor Commissioner.

### What this means

Under both federal and state (the Family and Medical Leave Act and the California Family Rights Act), an employer with or more eligible employees is required to provide employees with up to twelve weeks of leave to attend to the illness of a child, parent or spouse. However, under those laws, that leave need not be paid and any decision by the employer to allow the employee to use sick leave or vacation is voluntary.

Under this new law, if an employer of any size has a sick leave program under which the employee has accrued sick leave, that employee is now entitled to use that sick leave to attend to their child, parent or spouse so that the leave is now paid. The bill does not require employers to provide sick leave to employees or to allow employees to take an advance on sick leave not yet accrued. The bill also permits employers to require substantiation of the need for the leave (for example, by a doctor's note).

The real impact of this legislation may be upon those employers who offer a generous sick leave program with the intention that it will only be exhausted in unusual circumstances. This new law may well make it more likely that employees will use all available sick leave in any given year, thus decreasing employers' willingness to provide sick leave and, ultimately, defeating the purpose of the bill.

If employers wish to express an opinion about this bill to Governor Davis, he may be reached at:

Governor Gray Davis  
State Capitol Building  
Sacramento, CA 95814  
Phone (916) 445-2841  
Fax (916) 445-4633

If you would like any further information about this development, please feel free to call or e-mail Joe Connaughton ([jconnaughton@paulplevin.com](mailto:jconnaughton@paulplevin.com)), (619) 744-3645) or any of our other attorneys at (619) 237-5200. Additional information about our firm and attorneys can be found on the world wide web at <http://www.paulplevin.com/>.

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