

# HK School Law Monthly Newsletter



Dear Jennie

Thank you for your interest in the HK School Law Monthly Newsletter. Our firm is growing, and we are now Hansberger & Klein, LLP. We look forward to hearing from you soon!

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## VISIT US AT CSDC!



Come visit Hansberger & Klein, LLP at the upcoming Charter Schools Development Center's 2014 Charter Schools Leadership Update Conference!

**WHERE:** Hotel Irvine Jamboree Center

**WHEN:** November 3-4, 2014

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## IN THE NEWS



### [Illegal Interview Questions](#)

We are often asked by our schools, Can I ask a prospective employee this question? Here's a quick resource to find out!

### [Separating Fact from Fiction: What You Need To Know About Charter Schools](#)

The National Alliance for Public Charter Schools has produced a paper that identifies some common misconceptions about public charter schools and

provides responses based on facts and independent research findings.

## **NEW CALIFORNIA LAW MANDATES ACCRUED SICK DAY PAY**

On September 10, 2014, Governor Jerry Brown signed the Healthy Workplaces, Healthy Families Act (the "Healthy Families Act"), Cal. Labor Code 245 *et seq.*, which requires almost every employer in California to provide one hour of paid leave for every 30 hours an employee works. Employees can earn up to 24 hours per year of paid sick leave as a result of this new law. California is the second state to pass such a law.

Prior to the Healthy Families Act, paid sick leave was an option for employers, but not a requirement. No longer is this the case.

The Act's is set to take effect July 1, 2015; however, schools should note that some provisions may take effect as early as January 1, 2015, as discussed below.

### **ARE CHARTER SCHOOLS SUBJECT TO THE HEALTHY FAMILIES ACT?**

All employers are potentially impacted, and the new law applies to public employers as well as private employers. Beginning July 1, 2015, any employee who works for an employer in California for 30 or more days within a year of the commencement of employment is entitled to accrue paid sick leave under the Health Families Act. Exempt employees will accrue sick leave at a rate of 40 hours per week, unless the exempt employee's actual workweek is less than 40 hours, in which case the exempt employee will accrue sick leave according to actual hours worked.

Given that most charter schools operate as non-profit corporations (or are operated by non-profit corporations), charter schools must comply with the Health Families Act.

### **WHAT ARE EMPLOYEES ENTITLED TO?**

As noted above, employees are entitled to accrue one hour of paid sick leave for every 30 hours worked. The employee may take a sick leave not only for personal health reasons but also to seek the diagnosis, care or treatment of an employee's family member, including spouses, children, siblings, parents, grandparents and domestic partners. The Healthy Families Act also entitles employees to take sick leave for reasons related to domestic violence, sexual assault or stalking.

Employees with accrued sick leave may begin to take paid sick days after 90 days of employment. Employees may also "loan" accrued sick leave to another employee in advance of accrual, and employers may not require an employee to find a replacement when the employee elects to take a sick day. Employees must be compensated at their regular pay rate when taking a sick day.

Unused sick leave carries over to a subsequent year of employment; however, employers may limit an employee's total use of paid sick leave annually to 24 hours. Additionally, no accrual of sick leave is required if an employer grants the full 24 hours of sick leave to an

employee at the beginning of each work year. Furthermore, employers may cap the total number of accrued hours annually at 48 (or six days).

Employers who already provide paid sick leave that meets or exceeds the requirements of the Healthy Families Act do not need to provide additional sick leave.

When an employee is terminated, employers are not required to pay out unused but accrued sick leave, unless the employer's paid time off policy states otherwise. However, if an employee is rehired within one year of the date of separation, all previously accrued leave must be reinstated and neither the 30-day employment period nor the 90-day waiting period must be satisfied.

While an employee determines how much sick leave they will use, employers may set a minimum number of 2 hours. Also, employees must provide "reasonable" advance notification for taking sick leave if the need for paid sick leave is foreseeable. If the need for sick leave is not foreseeable, the employee only needs to provide notice as soon as practicable.

## **WHAT ARE THE NOTICE AND RECORDKEEPING REQUIREMENTS?**

There are several important new notice and recordkeeping requirements under the Healthy Families Act, as explained below.

### New Hires

When an employee is hired, employers must provide information about the Healthy Families Act to the new hire, including but not necessarily limited to a statement that the employee (i) may accrue and use paid sick leave, (ii) may not be retaliated against for requesting or using such leave and (iii) has the right to file a complaint against an employer that does retaliate.

### Ongoing Notices

Each time wages are paid, employers must include a written notice that states the amount of paid leave the employee has accrued. The notice may be included on the employee's paycheck stub or on a separate written notice included with the employee's paycheck.

As with many other labor laws, employers must post a notice of the Healthy Families Act in an area accessible to employees. The California Labor Commissioner will likely provide poster for employers.

### Recordkeeping

The Healthy Families Act also requires employers to keep at least three years of records documenting an employee's hours worked, paid sick leave accrued and hours used. If the employer fails to keep these records, then the employee is presumed to be entitled to the maximum number of paid sick leave accrual.

## **ARE THERE PENALTIES FOR NONCOMPLIANCE?**

Among other possible penalties, including penalties levied by the Labor Commissioner, employers may be fined under certain circumstances. Employers should be aware that the Labor Commissioner has the authority to investigate noncompliance and retaliation

complaints and award reinstatement, back pay and payment of sick days unlawfully withheld. Additionally, the Labor Commissioner may also issue an administrative "penalty" payment under certain circumstances.

The following penalties are not exhaustive, and employers should take care to learn of all the penalties possible.

If an employer fails to display a poster, the employer can be fined \$100 per offense.

If an employer withholds accrued paid sick leave from an employee, the employee is entitled to the dollar value of the hours withheld multiplied by three, or \$250, whichever is greater. This penalty is capped at \$4,000.

Employers may also be required to pay the state for the cost of investigating the violations, at a rate of \$50 per day for each day a violation occurs. The \$50 penalty can be assessed for each employee whose rights were violated and there is no cap on this assessment.

## **WHY IS THE JANUARY 1, 2015 DATE IMPORTANT?**

Those portions of the Healthy Families Act requiring accrued sick pay do not take effect until July 1, 2015.

However, the remainder of the Healthy Families Act is currently set to take effect January 1, 2015. It is possible that some action may be taken to set the effective date of all the Healthy Families Act's provisions for July 1, 2015, but employers should take action now to meet the January 1, 2015 effective date with respect to the Healthy Families Act's accrual, notice, posting and recordkeeping provisions.

## **WHAT YOU SHOULD DO**

Employers can begin to prepare for the Healthy Families Act in the following ways:

1. Review and update employee handbooks
2. Review collective bargaining agreements (if your school is subject to one) to understand which employees are covered by the Healthy Families Act
3. Ensure payroll can properly calculate and track individual employees' accrued and used sick leave, as well as provide employees with this information each pay date
4. For employers with employees working in a California municipality that already has a paid sick leave ordinance (Long Beach, San Francisco and San Diego), check to ensure that these employees receive the benefit of both the applicable city ordinance and the Healthy Families Act, applying whichever law is more generous in the case of a conflict
5. Train managers and benefits staff on how to comply with the Healthy Families Act

## **QUESTIONS?**

As always, if you have questions about this newsletter or any other matter, please call us at any time for guidance.

*Hansberger & Klein, LLP is a law firm representing public charter schools. This newsletter is not intended to be legal advice. If you are seeking legal advice, please contact us or your attorney for guidance. We look forward to working with you!*

★ **This is a Test Email only.**

This message was sent for the sole purpose of testing a draft message.