

AMENDED IN SENATE JUNE 19, 2008

AMENDED IN ASSEMBLY MARCH 24, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 2716

Introduced by Assembly Member Ma
(Coauthors: Assembly Members Laird, Swanson, and Torrico)

February 22, 2008

An act to amend Sections 226, 233, and 234 of, and to add Article 1.5 (commencing with Section 245) to Chapter 1 of Part 1 of Division 2 of, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2716, as amended, Ma. Employment: paid sick ~~leave~~ *days*.

Existing law authorizes employers to provide their employees paid sick leave.

This bill would provide that an employee who works in California for 7 or more days in a calendar year is entitled to paid sick days, *as defined*, which shall be accrued at a rate of no less than one hour for every 30 hours worked. An employee would be entitled to use accrued sick days beginning on the 90th calendar day of employment. The bill would require employers to provide paid sick days, upon the request of the employee, for diagnosis, care, or treatment of health conditions of the employee or an employee's family member, or for leave related to domestic violence or sexual assault. An employer would be prohibited from discriminating or retaliating against an employee who requests paid sick days. The bill would require employers to satisfy specified posting and notice, and recordkeeping requirements. The bill would also make conforming changes.

This bill would require the ~~Department of Industrial Relations~~ *Labor Commissioner* to administer and enforce these requirements, including the promulgation of regulations, investigation, mitigation, and relief of violations of these requirements. This bill would authorize the department to impose specified administrative fines for violations and would authorize an aggrieved person, the ~~department commissioner~~, the Attorney General, or an entity a member of which is aggrieved to bring an action to recover specified civil penalties against an offender, as well as attorney’s fees, costs, and interest.

The bill would specify that it does not apply to employees covered by a collective bargaining agreement that provides for paid sick days, nor does it lessen any other obligations of the employer to employees. This bill would further specify that it does not apply to employees in the construction industry covered by a collective bargaining agreement if the agreement expressly waives the requirements of this article in clear and unambiguous terms.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares the following:
- 2 (a) Nearly every worker in the State of California will at some
- 3 time during the year need some time off from work to take care
- 4 of his or her own health or the health of family members.
- 5 (b) Many workers in California do not have any paid sick days,
- 6 or have an inadequate number of paid sick days, to care for their
- 7 own health or the health of family members.
- 8 (c) Low-income workers are significantly less likely to have
- 9 paid sick time than other workers.
- 10 (d) Providing workers time off to attend to their own health care
- 11 and the health care of family members will ensure a healthier and
- 12 more productive workforce in California.
- 13 (e) Paid sick days will have an enormously positive impact on
- 14 the public health of Californians by allowing sick workers paid
- 15 time off to care for themselves when ill, thus lessening their
- 16 recovery time and reducing the likelihood of spreading illness to
- 17 other members of the workforce.
- 18 (f) Paid sick days will allow parents to provide personal care
- 19 for their sick children. Parental care ensures children’s speedy

1 recovery, prevents more serious illnesses, and improves children’s
2 overall mental and physical health.

3 (g) Providing paid sick days is affordable for employers and
4 good for business.

5 (h) Employers who provide paid sick days enjoy greater
6 employee retention and reduce the likelihood of employees coming
7 to work sick. Studies have shown that costs of decreased
8 productivity caused by sick workers exceed the costs of employee
9 absenteeism.

10 (i) Many adults have significant elder care responsibilities
11 requiring them to take time off from work or to work reduced
12 hours.

13 (j) Employees frequently lose their jobs or are disciplined for
14 taking sick days to care for sick family members or to recover
15 from their own illnesses.

16 (k) Workers whose jobs involve significant contact with the
17 public, such as service workers and restaurant workers, are very
18 unlikely to have paid sick days. Often, these workers have no
19 choice but to come to work when they are ill, thereby spreading
20 illness to coworkers and customers.

21 (l) Domestic violence and sexual assault affect many persons
22 without regard to age, race, national origin, sexual orientation, or
23 socioeconomic status.

24 (m) Domestic violence is a crime that has a devastating effect
25 on families, communities, and the workplace. It impacts
26 productivity, effectiveness, absenteeism, and employee turnover
27 in the workplace. The National Crime Survey estimates that
28 175,000 days of work each year are missed due to domestic
29 violence.

30 (n) Survivors of domestic violence and sexual assault may be
31 vulnerable at work when trying to end an abusive relationship
32 because the workplace may be the only place where the perpetrator
33 knows to contact the victim. Studies show that up to one-half of
34 domestic violence victims experience job loss. Forty percent
35 reported on-the-job harassment. Nearly 50 percent of sexual assault
36 survivors lose their jobs or are forced to quit in the aftermath of
37 the assaults.

38 (o) Affording survivors of domestic violence and sexual assault
39 paid sick days is vital to their independence and recovery.

1 SEC. 2. In enacting this act, it is the intent of the Legislature
2 to do the following:

3 (a) Ensure that workers in California can address their own
4 health needs and the health needs of their families by requiring
5 employers to provide a minimum level of paid sick days including
6 time for family care.

7 (b) Decrease public and private health care costs in California
8 by enabling workers to seek early and routine medical care for
9 themselves and their family members and to address domestic
10 violence or sexual assault.

11 (c) Protect employees in California from losing their jobs while
12 they use sick days to care for themselves or their families.

13 (d) Provide economic security to employees in California who
14 take time off work for reasons related to domestic violence or
15 sexual assault.

16 (e) Safeguard the welfare, health, safety, and prosperity of the
17 people of and visitors to California.

18 SEC. 3. Section 226 of the Labor Code is amended to read:

19 226. (a) An employer shall, semimonthly or at the time of each
20 payment of wages, furnish to each employee, either as a detachable
21 part of the check, draft, or voucher paying the employee's wages,
22 or separately if wages are paid by personal check or cash, an
23 accurate itemized statement in writing showing (1) gross wages
24 earned, (2) total hours worked by the employee, unless the
25 employee's compensation is solely based on a salary and the
26 employee is exempt from payment of overtime under subdivision
27 (a) of Section 515 or any applicable order of the Industrial Welfare
28 Commission, (3) the number of piece-rate units earned and any
29 applicable piece rate if the employee is paid on a piece-rate basis,
30 (4) all deductions, provided that all deductions made on written
31 orders of the employee may be aggregated and shown as one item,
32 (5) net wages earned, (6) the inclusive dates of the period for which
33 the employee is paid, (7) the name of the employee and his or her
34 social security number, except that by January 1, 2008, only the
35 last four digits of his or her social security number or an employee
36 identification number other than a social security number may be
37 shown on the itemized statement, (8) the name and address of the
38 legal entity that is the employer, (9) paid sick leave accrued and
39 used pursuant to Article 1.5 (commencing with Section 245), and
40 (10) all applicable hourly rates in effect during the pay period and

1 the corresponding number of hours worked at each hourly rate by
2 the employee. The deductions made from payments of wages shall
3 be recorded in ink or other indelible form, properly dated, showing
4 the month, day, and year, and a copy of the statement or a record
5 of the deductions shall be kept on file by the employer for at least
6 three years at the place of employment or at a central location
7 within the State of California.

8 (b) An employer that is required by this code or any regulation
9 adopted pursuant to this code to keep the information required by
10 subdivision (a) shall afford current and former employees the right
11 to inspect or copy the records pertaining to that current or former
12 employee, upon reasonable request to the employer. The employer
13 may take reasonable steps to assure the identity of a current or
14 former employee. If the employer provides copies of the records,
15 the actual cost of reproduction may be charged to the current or
16 former employee.

17 (c) An employer who receives a written or oral request to inspect
18 or copy records pursuant to subdivision (b) pertaining to a current
19 or former employee shall comply with the request as soon as
20 practicable, but no later than 21 calendar days from the date of the
21 request. A violation of this subdivision is an infraction.
22 Impossibility of performance, not caused by or a result of a
23 violation of law, shall be an affirmative defense for an employer
24 in any action alleging a violation of this subdivision. An employer
25 may designate the person to whom a request under this subdivision
26 should be made.

27 (d) This section does not apply to any employer of any person
28 employed by the owner or occupant of a residential dwelling whose
29 duties are incidental to the ownership, maintenance, or use of the
30 dwelling, including the care and supervision of children, or whose
31 duties are personal and not in the course of the trade, business,
32 profession, or occupation of the owner or occupant.

33 (e) An employee suffering injury as a result of a knowing and
34 intentional failure by an employer to comply with subdivision (a)
35 is entitled to recover the greater of all actual damages or fifty
36 dollars (\$50) for the initial pay period in which a violation occurs
37 and one hundred dollars (\$100) per employee for each violation
38 in a subsequent pay period, not exceeding an aggregate penalty of
39 four thousand dollars (\$4,000), and is entitled to an award of costs
40 and reasonable attorney's fees.

1 (f) A failure by an employer to permit a current or former
 2 employee to inspect or copy records within the time set forth in
 3 subdivision (c) entitles the current or former employee or the Labor
 4 Commissioner to recover a seven-hundred-fifty-dollar (\$750)
 5 penalty from the employer.

6 (g) An employee may also bring an action for injunctive relief
 7 to ensure compliance with this section, and is entitled to an award
 8 of costs and reasonable attorney’s fees.

9 (h) This section does not apply to the state, to any city, county,
 10 city and county, district, or to any other governmental entity, except
 11 that if the state or a city, county, city and county, district, or other
 12 governmental entity furnishes its employees with a check, draft,
 13 or voucher paying the employee’s wages, the state or a city, county,
 14 city and county, district, or other governmental entity shall, by
 15 January 1, 2008, use no more than the last four digits of the
 16 employee’s social security number or shall use an employee
 17 identification number other than the social security number on the
 18 itemized statement provided with the check, draft, or voucher.

19 SEC. 4. Section 233 of the Labor Code is amended to read:

20 233. (a) Any employer who provides sick leave for employees
 21 shall permit an employee to use in any calendar year the
 22 employee’s accrued and available sick leave entitlement, in an
 23 amount not less than the sick leave that would be accrued during
 24 six months at the employee’s then-current rate of entitlement, to
 25 attend to an illness of a child, parent, spouse, or domestic partner
 26 of the employee. All conditions and restrictions placed by the
 27 employer upon the use by an employee of sick leave also shall
 28 apply to the use by an employee of sick leave to attend to an illness
 29 of his or her child, parent, spouse, or domestic partner. This section
 30 does not extend the maximum period of leave to which an
 31 employee is entitled under Article 1.5 (commencing with Section
 32 245) of this chapter, Section 12945.2 of the Government Code, or
 33 the federal Family and Medical Leave Act of 1993 (29 U.S.C. Sec.
 34 2606 et seq.), regardless of whether the employee receives sick
 35 leave compensation during that leave.

36 (b) As used in this section:

37 (1) “Child” means a biological, foster, or adopted child, a
 38 stepchild, a legal ward, a child of a domestic partner, or a child of
 39 a person standing in loco parentis.

1 (2) “Employer” means a person employing another under an
2 appointment or contract of hire and includes the state, political
3 subdivisions of the state, and municipalities.

4 (3) “Parent” means a biological, foster, or adoptive parent, a
5 stepparent, or a legal guardian.

6 (4) (A) “Sick leave” means accrued increments of compensated
7 leave provided by an employer to an employee as a benefit of the
8 employment for use by the employee during an absence from the
9 employment for any of the following reasons:

10 (i) The employee is physically or mentally unable to perform
11 his or her duties due to illness, injury, or a medical condition of
12 the employee.

13 (ii) The absence is for the purpose of obtaining professional
14 diagnosis or treatment for a medical condition of the employee.

15 (iii) The absence is for other medical reasons of the employee,
16 such as pregnancy or obtaining a physical examination.

17 (B) “Sick leave” includes paid sick days as defined in Section
18 245.5.

19 (C) “Sick leave” does not include any benefit provided under
20 an employee welfare benefit plan subject to the federal Employee
21 Retirement Income Security Act of 1974 (P.L. 93-406, as amended)
22 and does not include any insurance benefit, workers’ compensation
23 benefit, unemployment compensation disability benefit, or benefit
24 not payable from the employer’s general assets.

25 (c) An employer shall not deny an employee the right to use
26 sick leave or discharge, threaten to discharge, demote, suspend,
27 or in any manner discriminate against an employee for using, or
28 attempting to exercise the right to use, sick leave to attend to an
29 illness of a child, parent, spouse, or domestic partner of the
30 employee.

31 (d) Any employee aggrieved by a violation of this section shall
32 be entitled to reinstatement and actual damages or one day’s pay,
33 whichever is greater, and to appropriate equitable relief.

34 (e) Upon the filing of a complaint by an employee, the Labor
35 Commissioner shall enforce the provisions of this section in
36 accordance with the provisions of Chapter 4 (commencing with
37 Section 79) of Division 1, including, but not limited to, Sections
38 92, 96.7, 98, and 98.1 to 98.8, inclusive. Alternatively, an employee
39 may bring a civil action for the remedies provided by this section

1 in a court of competent jurisdiction. If the employee prevails, the
2 court may award reasonable attorney’s fees.

3 (f) The rights and remedies specified in this section are
4 cumulative and nonexclusive and are in addition to any other rights
5 or remedies afforded by contract or under other provisions of law.

6 SEC. 5. Section 234 of the Labor Code is amended to read:

7 234. An employer absence control policy that counts sick leave
8 taken pursuant to Section 233 or Article 1.5 (commencing with
9 Section 245) as an absence that may lead to or result in discipline,
10 discharge, demotion, or suspension is a per se violation of Section
11 233. An employee working under this policy is entitled to
12 appropriate legal and equitable relief pursuant to Section 233.

13 SEC. 6. Article 1.5 (commencing with Section 245) is added
14 to Chapter 1 of Part 1 of Division 2 of the Labor Code, to read:

15

16 Article 1.5. Paid Sick Days

17

18 245. This article shall be known and may be cited as the
19 Healthy Families, Healthy Workplaces Act of 2008.

20 245.5. For the purposes of this article, the following terms have
21 the following meanings:

22 (a) ~~“Department” means the Department of Industrial Relations.~~

23 (b)

24 (a) “Family member” means any of the following:

25 (1) A biological, adopted, or foster child, stepchild, legal ward,
26 or a child to whom the employee stands in loco parentis.

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

31 (3) A spouse.

32 (4) A registered domestic partner.

33 (5) A grandparent.

34 (6) A grandchild.

35 (7) A sibling.

36 ~~(8) A designated person for whom the employee may use paid
37 sick days to provide care. For the purposes of this paragraph, an
38 employer shall allow each employee who has no spouse or
39 registered domestic partner to designate a person for whom he or
40 she may use paid sick days to provide care in addition to the family~~

1 members listed in paragraphs (1), (2), (5), (6), and (7). The
2 employer shall provide the opportunity to make this designation
3 no later than the date on which the employee has worked 30 hours
4 after paid sick days have begun to accrue. There shall be a 10-day
5 period during which the employee may make this designation.
6 Thereafter, the employer shall annually provide the employee a
7 10-day period within which to make this designation or change a
8 prior designation. If an employer fails to provide an opportunity
9 to make a designation, the employer shall permit an employee
10 without a spouse or registered partner to use paid sick days to care
11 for a person other than a family member listed in paragraph (1),
12 (2), (5), (6), or (7). That person shall become the employee's
13 designated person and shall remain so designated until the next
14 opportunity for the employee to change his or her designation.

15 (e) "Small business" means an employer who employs 10 or
16 fewer employees during 20 or more calendar workweeks in the
17 current or preceding calendar year.

18 (d)

19 (b) "Health care provider" has the same meaning as defined in
20 paragraph (6) of subdivision (c) of Section 12945.2 of the
21 Government Code.

22 (e)

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

27 (d) "Small business" mean an employer who employs 10 or
28 fewer employees during 20 or more calendar workweeks in the
29 current or preceding calendar year.

30 246. (a) An employee who works in California for seven or
31 more days in a calendar year is entitled to paid sick-time days as
32 specified in this section.

33 (b) (1) An employee shall accrue paid sick days at the rate of
34 no less than one hour for every 30 hours worked, beginning at the
35 commencement of employment or the operative date of this article,
36 whichever is first.

37 (2) An employee who is exempt from overtime requirements
38 as an administrative, executive, or professional employee under
39 any Wage Order of the Industrial Welfare Commission is deemed
40 to work 40 hours per workweek for the purposes of this section,

1 unless the employee’s normal workweek is less than 40 hours, in
2 which case the employee will accrue paid sick days based upon
3 that normal workweek.

4 (c) An employee shall be entitled to use accrued paid sick days
5 beginning on the 90th calendar day of employment, after which
6 the employee may use paid sick days as they are accrued.

7 (d) Paid sick days shall be carried over to the following calendar
8 year. However, an employer may limit an employee’s use of paid
9 sick days as follows:

10 (1) A small business employer may limit an employee’s use to
11 40 hours or five days in each calendar year.

12 (2) All other employers may limit an employee’s use to 72 hours
13 or nine days in each calendar year.

14 (e) An employer is not required to provide additional paid sick
15 days pursuant to this section if the employer has a paid leave *or*
16 *paid time off* policy and the employer makes available an amount
17 of leave that satisfies the accrual requirements of this section and
18 that may be used for the same purposes and under the same
19 conditions as specified in this section.

20 (f) (1) Except as specified in paragraph (2), an employer shall
21 not be required to provide compensation to an employee for
22 accrued, unused paid sick days upon termination, resignation,
23 retirement, or other separation from employment.

24 (2) If an employee separates from and is rehired by the same
25 employer within one year, any previously accrued, unused paid
26 sick days shall be reinstated. The employee shall be entitled to use
27 those accrued sick days and to accrue additional sick days upon
28 rehiring.

29 (g) An employer may lend paid sick days to an employee in
30 advance of accrual, at the employer’s discretion and with proper
31 documentation.

32 246.5. (a) Upon the oral or written request of an employee,
33 an employer shall provide paid sick days for the following
34 purposes:

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

38 (2) For an employee who is a victim of domestic violence or
39 sexual assault, the purposes described in subdivision (c) of Section

1 230 and subdivision (a) of Section 230.1, ~~regardless of how many~~
2 ~~employees are employed by the employee's employer.~~

3 (b) An employer shall not require as a condition of taking paid
4 sick days that the employee search for or find a replacement worker
5 to cover the days during which the employee is on paid sick days.

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

14 (2) There shall be a rebuttable presumption of unlawful
15 retaliation if an employer denies an employee the right to use sick
16 days, discharges, threatens to discharge, demotes, suspends, or in
17 any manner discriminates against an employee within 90 days of
18 any of the following:

19 (A) The employee files a complaint with the ~~department~~ *Labor*
20 *Commissioner* or in a court alleging a violation of this article.

21 (B) The employee cooperates with an investigation or
22 prosecution of any alleged violation of this article.

23 (C) The employee opposes any policy, practice, or act that is
24 prohibited by this article.

25 247. (a) An employer shall give each employee written notice
26 of the requirements of this article in English, Spanish, Chinese,
27 and any other language spoken by at least 5 percent of the
28 employees. The written notice must state the following:

29 (1) That employees are entitled to accrue, request, and use paid
30 sick days.

31 (2) The amount of paid sick days provided for by this article.

32 (3) The terms of use of paid sick days.

33 (4) That retaliation or discrimination against an employee who
34 requests paid sick days or uses paid sick days, or both is prohibited
35 and that an employee has the right under this article to file a
36 complaint or bring a civil action against an employer who retaliates
37 or discriminates against the employee.

38 (b) In each workplace, the employer shall display a poster in a
39 conspicuous place containing all the information specified in

1 subdivision (a). The ~~department~~ *Labor Commissioner* shall create
2 these posters and make them available to employers.

3 (c) An employer who willfully violates the notice and posting
4 requirements of this section shall be subject to a civil fine of not
5 more than one hundred dollars (\$100) for each offense.

6 247.5. Employers shall keep for five years records documenting
7 hours worked and paid sick days accrued and used by employees.
8 Employers shall allow the ~~department~~ *Labor Commissioner* access
9 to these records with appropriate notice and at a mutually agreeable
10 time to monitor compliance with this article. Employers shall make
11 these records available to employees pursuant to Section 226. If
12 an employer does not maintain adequate records pursuant to this
13 section, it shall be presumed that the employee is entitled to the
14 maximum number of hours accruable under this article, unless the
15 employer can show otherwise by clear and convincing evidence.

16 248. The ~~department~~ *Labor Commissioner* is authorized and
17 directed to coordinate implementation and enforcement of this
18 article and to promulgate guidelines and regulations for those
19 purposes.

20 248.5. (a) The ~~department~~ *Labor Commissioner* is authorized
21 and directed to enforce this article, including investigating an
22 alleged violation, and ordering appropriate temporary relief to
23 mitigate the violation or to maintain the status quo pending the
24 completion of a full investigation or hearing.

25 (b) If the ~~department~~ *commissioner*, after a hearing that affords
26 due process, determines that a violation has occurred, it may order
27 any appropriate relief, including reinstatement, back pay, the
28 payment of sick days unlawfully withheld, and the payment of an
29 additional sum as an administrative penalty to each employee or
30 person whose rights under this article were violated. If paid sick
31 days were unlawfully withheld, the dollar amount of paid sick days
32 withheld from the employee multiplied by three, or two hundred
33 fifty dollars (\$250), whichever amount is greater, shall be included
34 in the administrative penalty paid to the employee. In addition, if
35 a violation of this article results in other harm to the employee or
36 another person, such as discharge from employment, or otherwise
37 results in a violation of the rights of an employee or another person,
38 the administrative penalty shall include fifty dollars (\$50) to each
39 employee or person whose rights under this article were violated

1 for each day or portion thereof that the violation occurred or
2 continued.

3 (c) Where prompt compliance by an employer is not
4 forthcoming, the ~~department~~ *commissioner* may take any
5 appropriate enforcement action to secure compliance, including
6 filing a civil action. In compensation to the state for the costs of
7 investigating and remedying the violation, the ~~department~~
8 *commissioner* may order the violating employer or person to pay
9 to the state a sum of not more than fifty dollars (\$50) for each day
10 or portion of a day a violation occurs or continues for each
11 employee or person as to whom the violation applies. These funds
12 shall be allocated to the ~~department~~ *commissioner* to offset the
13 costs of implementing and enforcing this article.

14 (d) An employee or other person may report to the ~~department~~
15 *commissioner* a suspected violation of this article. The ~~department~~
16 *commissioner* shall encourage reporting pursuant to this subdivision
17 by keeping confidential, to the maximum extent permitted by
18 applicable laws, the name and other identifying information of the
19 employee or person reporting the violation. However, the
20 ~~department~~ *commissioner* may disclose that person's name and
21 identifying information as necessary to enforce this article or for
22 other appropriate purposes, upon the authorization of that person.

23 (e) The ~~department~~ *commissioner*, the Attorney General, a
24 person aggrieved by a violation of this article, or an entity a
25 member of which is aggrieved by a violation of this article may
26 bring a civil action in a court of competent jurisdiction against the
27 employer or other person violating this article and, upon prevailing,
28 shall be entitled to such legal or equitable relief as may be
29 appropriate to remedy the violation, including reinstatement,
30 backpay, the payment of any sick days unlawfully withheld, the
31 payment of an additional sum as liquidated damages in the amount
32 of fifty dollars (\$50) to each employee or person whose rights
33 under this article were violated for each day or portion thereof that
34 the violation occurred or continued, plus, if the employer has
35 unlawfully withheld paid sick days to an employee, the dollar
36 amount of paid sick days withheld from the employee multiplied
37 by three; or two hundred fifty dollars (\$250), whichever amount
38 is greater; and reinstatement in employment or injunctive relief;
39 and further shall be awarded reasonable attorney's fees and costs,
40 provided, however, that any person or entity enforcing this article

1 on behalf of the public as provided for under applicable state law
2 shall, upon prevailing, be entitled only to equitable, injunctive, or
3 restitutionary relief, and reasonable attorney's fees and costs.

4 (f) In any administrative or civil action brought under this article,
5 the ~~department~~ *commissioner* or court, as the case may be, shall
6 award interest on all amounts due and unpaid at the rate of interest
7 specified in subdivision (b) of Section 3289 of the Civil Code.

8 (g) The remedies, penalties, and procedures provided under this
9 article are cumulative.

10 249. (a) This article does not limit or affect any laws
11 guaranteeing the privacy of health information, or information
12 related to domestic violence or sexual assault, regarding an
13 employee or employee's family member. That information shall
14 be treated as confidential and shall not be disclosed to any person
15 except to the affected employee, or as required by law.

16 (b) This article shall not be construed to discourage or prohibit
17 an employer from the adoption or retention of a paid sick days
18 policy more generous than the one required herein.

19 (c) This article does not lessen the obligation of an employer to
20 comply with a contract, collective bargaining agreement,
21 employment benefit plan, or other agreement providing more
22 generous sick days to an employee than required herein.

23 (d) This article establishes minimum requirements pertaining
24 to paid sick days and does not preempt, limit, or otherwise affect
25 the applicability of any other law, regulation, requirement, policy,
26 or standard that provides for greater accrual or use by employees
27 of sick days, whether paid or unpaid, or that extends other
28 protections to employees.

29 249.5. This article does not apply to an employee covered by
30 a valid collective bargaining agreement if the agreement expressly
31 provides for the wages, hours of work, and working conditions of
32 employees, and expressly provides for paid sick days *or a paid*
33 *leave or paid time off policy that permits the use of sick days* for
34 those employees, final and binding arbitration of disputes
35 concerning the application of its paid sick days provisions,
36 premium wage rates for all overtime hours worked, and regular
37 hourly rate of pay of not less than 30 percent more than the state
38 minimum wage rate.

39 249.6. (a) This article does not apply to an employee in the
40 construction industry covered by a valid collective bargaining

1 agreement if the agreement expressly provides for the wages, hours
2 of work, and working conditions of employees, premium wage
3 rates for all overtime hours worked, and regular hourly pay of not
4 less than 30 percent more than the state minimum wage rate, and
5 the agreement expressly waives the requirements of this article in
6 clear and unambiguous terms.

7 (b) For purposes of this section, “employee in the construction
8 industry” means an employee performing onsite work associated
9 with construction, including work involving alteration, demolition,
10 building, excavation, renovation, remodeling, maintenance,
11 improvement, repair work, and any other work as described by
12 Chapter 9 (commencing with Section 7000) of Division 3 of the
13 Business and Professions Code, and other similar or related
14 occupations or trades.

O