



Upland
Chamber of
Commerce

April 12, 2023

The Honorable Marie Alvarado-Gil
California State Senate
1021 O Street, Suite 7240
Sacramento, CA 95814

**SUBJECT: SB 881 (ALVARADO-GIL) PAID SICK DAYS: ACCRUAL AND USE
SUPPORT – AS AMENDED MARCH 22, 2023**

Dear Senator Alvarado-Gil:

The California Chamber of Commerce and the undersigned organizations are pleased to **SUPPORT** your **SB 881 (Alvarado-Gil)**. **SB 881** is good for both employees and employers. While it increases paid sick leave from 3 to 5 days, it also addresses a significant number of existing compliance hurdles for employers:

- **Local Ordinances:** The biggest compliance hurdle for California employers under the Act is that it allows cities and counties to adopt different sick leave mandates. The proliferation of local ordinances creates inconsistency and confusion for California employers that operate in multiple jurisdictions. There are currently nine local ordinances in addition to the Act, which have different rules regarding accrual methods, accrual use caps, use increments, which employees are covered, reasons for using paid sick leave, amount of leave, and the permitted use of documentation. A worker who travels across the state as part of their job duties could easily pass through multiple different paid sick leave laws in a single day. **SB 881** addresses this issue by creating one statewide standard.
- **Documentation:** The Act prohibits employers from ever asking for documentation. Employers have discovered employees using paid sick leave for non-statutory reasons, but there is nothing they can do because otherwise they face an alleged violation for interfering with or discouraging the use of leave. Worse, it often means that employees subsequently come in sick because they have used their sick days for other reasons. Employers often also see increases in use of the leave around holidays or near the end of seasonal employment, leading to exacerbated labor shortage during those time periods.

SB 881 addresses this issue in two ways. First, it allows employers to request documentation if a worker is out for three or more consecutive days, which is modeled after multiple existing ordinances. Second, it allows the employer to request the employee sign a document certifying the reason for use of the leave is consistent with the reasons allowed under the statute.

- **Rate of Pay:** Currently, paid sick leave must be paid at the employee's "regular rate" of pay; however, "regular rate" of pay is not necessarily an employee's normal hourly rate because it must include almost all forms of pay that the employee receives. For example, the following payments are included in the regular rate of pay: hourly earnings, salary, commissions, non-discretionary bonuses, piece work earnings, and the value of meals and lodging. With a lot of uncertainty surrounding this calculation and what should be included, this requirement can become very confusing for employers with regards to paid sick leave.

For example, the employer offers holiday pay to their employees; however, what if the employee calls in sick on the holiday? Does the employer need to pay holiday pay

215 N. Second Avenue
Suite D
Upland, CA 91786

P 909.204.4465
F 909.204.4464

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even though the employee invoked sick leave? Further, paying at the regular rate instead of the base rate only increases the motivation for employees to take advantage of paid sick leave because they can make more money by calling in sick or, if they call in sick during peak times of work, they will make more money than if they had called in sick on a regular workday. **SB 881** would allow leave to be paid at the base rate of pay.

- **Enforcement:** While the Act was moving through the legislature, it was the understanding of the employer community that PAGA penalties were not recoverable under the final version of the bill. Courts agreed. *See, e.g., Stearne v. Heartland Payment Sys. LLC*, 2018 WL 746492 (E.D. Cal. Feb. 6, 2018). It was only last month that a California Court of Appeals upended that interpretation, holding that PAGA does apply to paid sick leave claims. This opens up businesses of every size to threats of litigation for significant penalties over any dispute regarding paid sick leave. **SB 881** would therefore clarify that PAGA penalties do not apply to paid sick leave claims.

For these and other reasons, we are pleased to **SUPPORT SB 881**.

Chris Alanis
Upland Chamber Chairman of the Board

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