April 17, 2019

The Honorable Lorena Gonzalez
California State Assembly
State Capitol, Room 2114
Sacramento, CA 95814

SUBJECT: AB 555 (GONZALEZ) EMPLOYEE SICK LEAVE
OPPOSED UNLESS AMENDED – AS AMENDED MARCH 28, 2019

The California Chamber of Commerce and the organizations listed below are respectfully **OPPOSED UNLESS AMENDED** to your **AB 555 (Gonzalez)**, which would amend the Healthy Workplaces, Healthy Families Act to extend the number of paid sick days employers are required to provide from 3 days to 5 days.

The Healthy Workplaces, Healthy Families Act (AB 1522 – Gonzalez) was signed by the Governor and went into effect on July 1, 2015. The Act requires all employers (regardless of size), except those with collective bargaining agreements, to provide any employee who has worked in California for 30 or more days with paid sick leave at an accrual rate of one hour for every thirty hours worked. After the 90th day of employment, employees are allowed to utilize their paid sick leave to care for themselves or a family member. Pursuant to the Act, any unused sick leave accrued in the preceding year is carried over to the

next year up to a cap. All employees are entitled to paid sick leave including temporary, seasonal and part-time employees.

Now, less than 4 years after the Act's implementation, **AB 555** intends to expand paid sick leave. **AB 555** would require employers to provide 40 hours, or 5 days, of sick leave by the employee's 200th calendar day of employment. Additionally, employers are only able to cap the amount of paid sick leave a worker earns to 80 hours, or 10 days. Finally, the employer is required to allow an employee to carry over up to 5 days of sick leave into the following year of employment.

Expansion of Sick Leave Is Overly Burdensome, Especially for Small Employers:

Increasing the number of paid sick days from 3 days to 5 days might not seem like a huge financial burden, unless you are a California employer. Employer costs in California continue to be on the rise as the minimum wage increases, we have the highest income tax rates in the nation, the highest base sales tax rate, and among the highest energy and workers' compensation costs.

Paid sick leave only adds to the cumulative financial impact of the cost of doing business in California. For example, unscheduled absenteeism costs roughly $3,600 per year for each hourly employee in this state. (*See* "The Causes and Costs of Absenteeism in The Workplace," a publication of workforce solution company Circadian.)

This financial burden is especially hard on small businesses given the fact that the employer has no discretion to deny paid sick leave or ask an employee to modify the leave to accommodate the employer's business operations or other employees who may be out of work on other California leaves of absence. If an employer denies, interferes with, or discourages the employee from taking the leave, the employer could be subject to costly litigation.

California Already Has a Myriad of Protected Leaves That May Be Compensated:

The number and length of protected leaves of absence that California already requires employers to provide their employees is extensive, including the California Family Rights Act (12 workweeks), pregnancy disability leave (4 months), domestic violence, stalking, harassment leave, and bone marrow/organ donor leave. This is in addition to federal leave laws, such as the Family and Medical Leave Act (12 workweeks).

California also has the Paid Family Leave program, which allows an employee to obtain a partial wage replacement for up to six weeks to care for an immediate family member (child, parent, parent-in-law, grandparent, grandchild, sibling, spouse, or registered domestic partner) or to bond with a new child entering the family through birth, adoption or foster care placement. Therefore, adding additional days to the already burdensome paid sick leave requirements is just too much for employers.

California Should Incentivize Paid Sick Leave, Not Mandate It:

Given the cumulative costs and existing protected leaves of absence with which California employers are already struggling to comply, California should refrain from mandating additional sick days and instead should provide incentives to employers to offer more expansive sick day benefits by reducing costs in other areas.

If Paid Sick Leave Is Going to Be Expanded, Additional Amendments Should Be Made:

While we feel that it is too soon to implement an expansion of paid sick leave, if there is going to be an expansion of the current law, the following additional amendments should be made to the Act:

(1) **Statewide Preemption Should Apply to All Provisions of the Bill:** While we appreciate the preemption **AB 555** creates over most local ordinances, **AB 555** still allows counties and cities to provide a greater number of sick days, greater accrual of sick leave and smaller increments of time for which sick leave may be taken.

These provisions create inconsistency and confusion for California employers who operate in different jurisdictions because each city and/or county may have different requirements. For example, the Act and most local ordinances state that an employer cannot require that paid sick leave be used in increments longer than 2 hours. However, the City of Berkeley, for example, differs in that the employer cannot require use of leave in increments longer than an hour for the initial hour, or longer than *15 minutes* thereafter.

On the other hand, the Cities of Oakland and San Francisco do not allow employers to require that paid sick leave be used in increments longer than 1 hour. Employers are already suffering from such confusion with the state minimum wage versus local living wage ordinances and do not need additional paid sick leave requirements that conflict. Therefore, we request that statewide preemption apply to all provisions of the bill.

(2) **Payment for Paid Sick Leave Should Be at the Employee's Base 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, production bonuses, piece work earnings, and the value of meals and lodging. This calculation 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 even though the employee invoked sick leave? This type of payment requirement only increases the motivation for employees to take advantage of paid sick leave because, if they call in sick during peak times of work, they will make more money than if they call in sick on a regular workday. Therefore, we request that the rate of pay for paid sick leave be the employee's "base rate" rather than the employee's "regular rate" of pay.

(3) **Delayed Implementation Should Apply to All Industries: AB 555** provides a delayed implementation date of January 1, 2026 for the in-home support services industry. We believe this delayed implementation date should apply to all industries.

(4) **Verification Should Be Allowed After 3 Consecutive Days:** Since the implementation of the Act, suspected abuse of the law by employees seems common and the Act's ambiguities have become more prevalent, leaving employers uncertain about proper compliance and, at times, understaffed due to utilization of the leave. For example, the Act does not require an employee to provide any specific amount of advanced warning for an "unplanned" illness. Thus, employees can and likely have used paid sick leave as vacation instead.

Anecdotal examples of this abuse have been provided, such as in the airlines industry where last-minute "no shows" during the holiday season have occurred, and can leave passengers stuck on the ground who are trying to fly home to see their own families. The intended purpose of the Act was to provide employees time off from work when they were sick or a family member was ill, not for vacation.

Now, however, **AB 555** prohibits a request for a doctor's note. We request that **AB 555** allow documentation (i.e., a doctor's note) to be requested by employers for absences exceeding three

consecutive workdays. We believe this approach strikes the appropriate balance between reasonable use of paid sick leave for employees while also curtaining potential abuse.

For these reasons, we are **OPPOSED UNLESS AMENDED** to your **AB 555**.

Sincerely,

Laura Curtis
Policy Advocate
California Chamber of Commerce

American Pistachio Growers
Auto Care Association
Building Owners and Managers Association
California Apartment Association
California Business Properties Association
California Forestry Association
California Hospital Association
California League of Food Producers
California Restaurant Association
California Retailers Association
California Trucking Association
CAWA – Representing the Automotive Parts Industry
Commercial Real Estate Development Association – NAIOP
Dana Point Chamber of Commerce
El Dorado Hills Chamber of Commerce
International Council of Shopping Centers
Murrieta/Wildomar Chamber of Commerce
National Federation of Independent Business
North Orange County Chamber
Official Police Garages of Los Angeles
Oxnard Chamber of Commerce
Santa Maria Valley Chamber of Commerce
United Chamber Advocacy Network
- El Dorado County Joint Chamber Commission
- Elk Grove Chamber of Commerce
- Folsom Chamber of Commerce
- Rancho Cordova Chamber of Commerce
- Roseville Area Chamber of Commerce

Western Plant Health Association

cc: Che Salinas, Office of the Governor