

Here's the additional information in response to Kathy's question, to share with the people who attended the webinar today.

Q: At the end of the benefit year, when we carry over up to 40 hours of sick leave, do we have to continue to accrue more hours?

A: The law does not require employers to let employees use more than 40 hours of sick leave in a year. So, although you have to carry it over, the employee doesn't get to use 80 hours in the next year (unless you want to do that). So, why is carry over important? It's not if you give the 40 hours up front. But without the carry over, employees have to wait until they've worked 30 shifts in order to take a full day off. So, it's a matter of timing: The carry over requirement ensures they will be able to use the sick leave they haven't already used at the start of the new year. Employers can choose to limit employees to 40 hours of use and 40 hours accrued. So if an employee uses no sick leave, and carries it all over, and doesn't use it the next year, they carry over another 40, but still can only use 40 in that next year (unless your policy is more generous).

On the other hand, if an employee uses all her sick leave as soon as it accrues, and carries nothing over, she has to build the bank up before using it (unless you put all the hours in a bank without accrual).

Q: If we have a policy of blacking out certain holidays (and the day before and after) that are not available for paid time off, but we pay employees for the holiday, can we take away the paid time off for the holiday if an employee takes an unscheduled sick leave day during those black out days?

A: That is going to depend on if the rescinding of holiday pay is considered retaliation (which the law prohibits). The new law defines “retaliatory personnel action” as the denial of "any right guaranteed under this act and any threat, discharge, including a constructive discharge, suspension, demotion, unfavorable reassignment, refusal to promote, disciplinary action, sanction, reduction of work hours, reporting or threatening to report the actual or suspected immigrant status of an employee or the employee’s family, or any other adverse action against an employee. (This would be a good topic to discuss as an association to see if it feasible to talk to the Department of LWD through or with AJ, to have this question resolved in the regulations. We have a strong argument that the employee still gets paid the statutorily required leave, but doesn't get paid the holiday, which she didn't work, it's not an adverse action.)

- We are in the process of scheduling a meeting with the Department of Labor's Director of Legal and Regulatory Affairs.

Documentation is important here. If you suspect the employee's absence was not for reasons covered by this law,

you can require reasonable documentation of the rationale for the unforeseeable leave. If it is not for one of the enumerated reasons in the law, you can take disciplinary action against that employee for using the sick leave. It is not explicit if you still have to pay them for taking the leave, but it seems reasonable that withholding the payment for the day off can be part of the disciplinary action. The law would allow non-payment for the holiday not worked as a disciplinary action if you determine that the day off on the black out day was not for a reason covered by the law.

If the need for leave is foreseeable, you can reasonably require the employee to schedule the leave for a time that does not disrupt operations.

Q: What is the status of pending legislation A3347 "Health Care Consumer's Out-of-Network Protection, Transparency, Cost Containment and Accountability Act," given the passage of A2039 "Out-of-network Consumer Protection, Transparency, Cost Containment and Accountability Act."

A: Great question, and I defer to AJ for a government relations behind-the-scenes look at how this worked as a practical matter. However, from a content point of view, although the bills have almost identical titles, and appear to have started off with the same skeleton, they are very different. A3347 was introduced on February 12, two months to the day before A2039 was passed by the Senate and even before it was reported out of committee in the first house. A2039 is hailed as

a compromise, so it is possible that the sponsors of A3347 may have voted for A3049 and decided not to pursue their bill. Or maybe we can see a new bill introduced seeking to amend this one, as soon as the Governor signs it into law (or after 45 days of passage if he does not sign it or veto it).

And, as always, this is not legal advice, just an explanation of the bill. I hope it is helpful.

- Margaret provided a very good description of the status and the difference between both bills. The one new development is that A2039 which Margaret accurately described as a compromise for the out-of-network legislation was signed into law on June 1, 2018.