Comments on SB 205 – Requiring Employers to Provide Paid Sick Leave
5/26/20

Page 5, Lines 26-27 & Pg. 6: (2)(a) states that employees earn at least one hour of paid sick leave for every 30 hrs worked by the employee, but (2)(c) states that paid sick leave accrues by non-exempt employees based on the assumption that non-exempt employees work 40 hours per week, unless they have a normal workweek of fewer than 40 hours. Since (2)(a) states that sick leave is accrued by the hour, one hour per 30 hours worked there is no need to refer to sick leave being accrued by non-exempt employees based on the number of hours in the work week. This language is confusing and needs to be simplified.

Page 7, lines 15-21 – remove language – creates significant administrative burden on HR staff to try to track and reinstate leave if an employee left the job.

Pg. 10/lines 11-26 – Need to clarify whether an employee receives an additional 80 hours paid sick leave under this provision or is the employer only required to supplement existing paid sick leave up to 80 hours.

Page 9, lines 19-22 – written notice should be required for the use of sick leave. Change “oral” to “written”, strike “When possible”

Pg. 10/Line 6 – insert “written” before “notice”

Page 14, lines 24-27 – Language fails to recognize that an employee could fraudulently use the leave. There is no disciplinary action or penalties for an employee who fraudulently uses the leave.

Page 15, lines 2-5 – strike rebuttable presumption language and allow CDLE to investigate complaints similar to other laws such as the Colorado Wage Act.

Pg. 15, Lines 23-25 – If the Division doesn’t investigate a denial in this situation what type of “information” will be provided by the Division that is unrelated to the claim? Why is language necessary?

Page 16, line 19 - strike “or bring a civil action” because claims need to be investigated by the Division. This is counter to the other investigatory language by the Division in the bill.

Page 17, line 2 - after “poster” insert “as created pursuant to subsection (3) of this section,”
Pg. 17 – add language allowing employers to electronically deliver written notice or a poster to employees.

Pg. 18, line 14-15 – Replace language with “Division may enforce the requirements of this part 4 after receipt of a written complaint.”

Pg. 18, line 5 – insert “willfully” before “violated”

Pg. 20, line 23 – remove language. Claims should be investigated through the Division and not through a private right of action that increases litigations costs for employers & employees.

Additional comments:
- Include language stating that sick leave runs concurrently with FMLA or state family leave.
- Include a seasonal employee exemption since ag community may have smaller number of full-time staff year-round but larger number of seasonal staff during different times of the year. To address this concern, add language about 50 full time, year-long employees.

Federal Visa worker exemption language:
“Does not apply to a seasonal worker who is employed as an H2A employee under 8 U.S.C. Sec. 1101(a)(15)(H)(ii)(a) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform agricultural labor or services, as defined by the Secretary of Labor in regulations and including agricultural labor defined in section 3121(g) of title 26, agriculture as defined in section 203(f) of title 29, and the pressing of apples for cider on a farm, of a temporary or seasonal nature, or…”

• Include exemption for industries that have staffing ratio requirements in order to effectively operate, i.e., airlines and railroads. Language is below:

“The provisions of the Act do not apply to an employee or employer as defined in the federal Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.). This Act does not apply to an employee of an employer subject to the provisions of Title II of the Railway Labor Act (45 U.S.C. 181 et seq.) or to an employer or employee as defined in either the federal Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.) or the Federal Employers' Liability Act, United States Code, Title 45, Sections 51 through 60, or other comparable federal law.

LRF, CO Chamber 5.26.20