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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

NATIONAL RAILROAD PASSENGER
CORP., et al.,

Plaintiff,

v.

JULIE SU, in her official capacity as Labor
Commissioner, State of California
Division of Labor Standards Enforcement,

Defendant,

and

TRANSPORTATION DIVISION OF THE
INTERNATIONAL ASSOCIATION OF
SHEET METAL, AIR, RAIL AND
TRANSPORTATION WORKERS, et al.,

Intervenors.

No. 2:15-cv-0924-KJM-EFB

ORDER

Several California railroad employers sue the California Labor Commissioner, seeking a declaration that federal law preempts provisions of a local paid sick leave law. Before the court are three cross-motions for partial summary judgment raising the question whether the Railroad Unemployment Insurance Act, 45 U.S.C. § 351 et seq. (“RUIA”), preempts California’s Healthy Workplaces, Healthy Families Act of 2014 (“California Act”). *See* ECF Nos. 49, 51, 53. The court heard all three motions on January 19, 2017. Hr’g Mins., ECF No. 67. As discussed below, the court finds RUIA preempts a portion of the California Act and therefore GRANTS and DENIES portions of each motion.

1 I. BACKGROUND

2 A. The Parties

3 Plaintiffs are several railroad companies: The National Railroad Passenger
4 Corporation, BNSF Railway Company, Union Pacific Railroad Company, Los Angeles Junction
5 Railway, TTX Company and Central California Traction Company. The following interested
6 unions have intervened: The Transportation Division of The International Association of Sheet
7 Metal, Air, Rail and Transportation Workers; Mechanical Division of the International
8 Association of Sheet Metal, Air, Rail and Transportation Workers; Brotherhood of Locomotive
9 Engineers and Trainmen; International Brotherhood of Electrical Workers; National Conference
10 of Firemen & Oilers District of Local 32BJ, Service Employees International Union (SEIU);
11 Brotherhood of Railroad Signalmen and Brotherhood of Maintenance of Way Employees
12 Division/International Brotherhood of Teamsters. Order May 17, 2016, ECF No. 37 (granting
13 unopposed intervention).

14 B. Overview of RUIA and the California Act

15 A basic understanding of the RUIA and the California Act is necessary to
16 understand the preemption analysis called for by the instant motions. Under the California Act,
17 employees that meet certain criteria accrue paid sick days that they can use for sickness-related
18 work absences. Cal. Lab. Code §§ 245.5(b), 246(a). Specifically, eligible employees are those
19 who, on or after July 1, 2015, have worked in California for the same employer for thirty or more
20 days within a year from their start date. *Id.* Although the California Act refers to the leave as a
21 “paid sick day,” employees may also use the leave for other reasons, such as preventive
22 treatment, caring for a family member, or taking protective measures against domestic violence,
23 sexual assault or stalking. *Id.* § 246.5(a)(2).

24 RUIA, although primarily a railroad unemployment law, also contains a sickness
25 benefits provision. Congress enacted RUIA in 1938 to create a national system of unemployment
26 insurance for railroad employees. *See* 45 U.S.C. § 351, *et seq.*; H.R. Rep. No. 75-2668 at 1
27 (1938) (“Congress has long recognized that a number of problems peculiar to the railroad
28 industry necessitate separate treatment of that industry in various aspects, rather than . . . leaving

1 it subject to varied State laws, and to meet that necessity has enacted such legislation as [the
2 RUIA].”). The borderless nature of railroad employees’ work made it challenging to define their
3 rights under various state unemployment insurance plans, H.R. Rep. No. 75-2668, at 2, so RUIA
4 removed these workers from state coverage and created a national unemployment insurance
5 system tailored to the “peculiar needs of the industry.” *Id.* Congress later amended RUIA to give
6 unemployment benefits to railroad employees who could not work because of sickness, injury or
7 pregnancy. 45 U.S.C. § 351(k)(2); *see also* S. Rep. No. 79-1710, at 5 (1946). Under this
8 “sickness provision,” the federal Railroad Retirement Board (“RRB”), which administers
9 retirement, survivor, unemployment and sickness benefits to railroad workers and their families,
10 pays employees that miss work for a qualifying sickness that debilitates them for more than four
11 days. *See* 45 U.S.C. § 351. Congress also added a “preemption provision” that expressly
12 provides “[n]o employee shall have or assert any right to unemployment benefits under an
13 unemployment compensation law of any State with respect to unemployment . . . or to sickness
14 benefits under a sickness law of any State with respect to sickness periods occurring after June
15 30, 1947, based upon employment (as defined in this chapter).” 45 U.S.C. § 363(b).

16 C. Complaint and Motions for Partial Summary Judgment

17 Plaintiff railroad employers have not implemented or complied with the California
18 Act because they contend RUIA preempts the paid sick leave provisions. Compl., ECF No. 1.
19 Plaintiffs seek a declaration that RUIA and two other federal statutes, the Railway Labor Act
20 (“RLA”), 45 U.S.C. § 151 *et seq.*, and the Employee Retirement Income Security Act (“ERISA”),
21 29 U.S.C. § 1140 *et seq.*, preempt the California Act as applied to railroad employees. Third
22 Amended Complaint (“TAC”) ¶¶ 1, 35–36, 41–42, 47, ECF No. 41. Plaintiffs also seek to enjoin
23 the California Act’s enforcement. *Id.* ¶ 1.

24 Plaintiffs, defendant and intervenors all move for summary judgment as to RUIA
25 preemption. Plaintiffs argue RUIA preempts all state laws providing paid leave and benefits to
26 railroad employees, particularly those provided under the California Act. Pls.’ Mem. P & A. at
27 2–3, 9, 11–15, 17 n.7, ECF No. 49-1. Defendant and intervenors oppose and cross-move for
28 summary judgment, arguing the California Act does not fall within RUIA’s narrow preemptive

1 domain. *See* Def.’s Mot., ECF No. 49; Intervenor’s Mot., ECF No. 53. Plaintiffs oppose both
2 cross-motions jointly. Pls.’ Opp’n, ECF No. 60. Defendant and intervenors reply separately.
3 Def.’s Reply, ECF No. 61; Intervenor’s Reply, ECF No. 62. The United States is not a party but
4 filed a statement defending its “substantial interest in ensuring that the preemptive reach of
5 section 13(b) of [RUIA] is not enlarged in a manner that would unduly interfere with the states’
6 traditional police powers in establishing minimum labor standards” U.S. Statement at 1,
7 ECF No. 58; 28 U.S.C. § 517 (authorizing “[t]he Solicitor General, or any officer of the
8 Department of Justice . . . to attend to the interests of the United States in a suit pending in a court
9 of the United States.”). Defendant, intervenors and the United States advance the same position;
10 for ease of reference solely, this order refers to them collectively as “defendants.”

11 II. PREEMPTION GENERALLY

12 The Constitution declares the laws of the United States “the supreme Law of the
13 Land; . . . any Thing in the Constitution or Laws of any state to the Contrary notwithstanding.”
14 U.S. Const. art. VI, cl. 2. This provision spawned the notion that if federal and state law conflicts,
15 the former “preempts” the latter. Preemption can be express. *Louisiana Public Serv. Comm’n v.*
16 *FCC*, 476 U.S. 355, 368 (1986) (express preemption exists “when Congress, in enacting a federal
17 statute, expresses a clear intent to pre-empt state law”) (citation omitted). Preemption can also be
18 implicit in the federal statute’s text or operation. *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504,
19 516 (1992). Courts find implicit preemption when the laws conflict, in the form of conflict
20 preemption, or if the statute’s scope indicates Congress intended federal law to occupy the
21 legislative field, in the form of field preemption. *Id.*

22 Here, plaintiffs argue for both express and implicit preemption. The court finds
23 the latter inapplicable. When a statute contains express preemptory language, as RUIA does, the
24 court need not guess at Congress’ implicit intent. *Id.* at 517 (“Congress’ enactment of a provision
25 defining the pre-emptive reach of a statute implies that matters beyond that reach are not pre-
26 empted.”). Even without RUIA’s express language, conflict and field preemption would not
27 apply because the two laws are harmonious in their goals and objectives: RUIA’s sickness
28 provisions ensure benefits to injured or sick employees who cannot work for more than four days,

1 *see* 45 U.S.C. § 352(a)(2); the California Act allows employees to use accrued paid sick days
2 when they cannot work in part for specified reasons, including injury and sickness, *see* Cal. Lab
3 Code § 245. Field preemption is also inapplicable because Congress limited RUIA’s sickness
4 provision to certain “sickness benefits”; RUIA does not pervasively occupy the paid-sick-leave
5 field. *See* 45 U.S.C. § 363(b) (“Congress makes exclusive provision . . . for the payment of
6 sickness benefits for sickness periods after June 30, 1947, based upon employment[.]”). Even if
7 only express preemption applies, that an express preemption clause exists is only the start of the
8 inquiry; the court still must assess the substance and scope of Congress’s displacement of state
9 law. *Altria Grp., Inc. v. Good*, 555 U.S. 70, 76-77 (2008).

10 A. Presumption Against Preemption

11 Generally, as a starting point, there is a presumption against preemption.
12 *Cipollone*, 505 U.S. at 516 (“Consideration of issues arising under the Supremacy Clause starts
13 with the assumption that the historic police powers of the States are not to be superseded by
14 Federal Act unless that is the clear and manifest purpose of Congress.”) (citation, quotation
15 marks, and brackets omitted).

16 Here, although employee sickness benefits arguably are traditionally the subject of
17 state regulation, *Cal. Div. of Labor Standards Enforcement v. Dillingham Constr., N. A., Inc.*, 519
18 U.S. 316, 330-34 (1997), the presumption cannot apply in light of RUIA’s express preemption
19 clause, *Altria*, 555 U.S. at 102 (“[T]here is no authority for invoking the presumption against pre-
20 emption in express pre-emption cases.”); *Arizona v. United States*, 567 U.S. 387, 400 (2012)
21 (finding no presumption against preemption where Congress makes its intent to supersede state
22 law “clear and manifest”). The presumption against preemption gains no traction here.

23 B. Express Preemption Domain

24 The parties interpret the scope of RUIA’s express preemption clause differently.
25 *See* 45 U.S.C. § 363(b). Plaintiffs argue the broad and unqualified language preempts “all state
26 sickness laws” as applied to railroad employees. Pls.’ Mem. at 9. Defendants argue RUIA’s text,
27 statutory framework and legislative history show that the scope of preemption is limited to state
28 benefits that parallel those available under RUIA.

1 1. Plain Language

2 To carve out limitations to an express preemption clause, the court must identify
3 the precise domain the express language preempts. *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 484
4 (1996); *Gordon v. Virtumundo, Inc.*, 575 F.3d 1040, 1060 (9th Cir. 2009). “[T]he plain wording
5 of the clause [] necessarily contains the best evidence of Congress’ pre-emptive intent.” *CSX*
6 *Transp., Inc. v. Easterwood*, 507 U.S. 658, 664 (1993). Express preemption provisions vary in
7 strength and specificity. The preemption clause of the Federal Aviation Administration
8 Authorization Act of 1994 (“FAAA”), for example, broadly declares, “States may not enact or
9 enforce a law, regulation, or other provision having the force and effect of law related to a price,
10 route, or service of an air carrier that may provide air transportation under this subpart.” 49
11 U.S.C. § 41713(b). The Employee Retirement Income Security Act of 1974 (“ERISA”) also
12 broadly preempts state laws “insofar as they . . . relate to any employee benefit plan.” 29 U.S.C.
13 § 1144(a).

14 Here, RUIA’s preemption provision, section 13(b) of 45 U.S.C. § 363(b), is titled
15 “Effect on State unemployment compensation laws,” and provides:

16 Congress makes exclusive provision . . . for the payment of
17 sickness benefits for sickness periods . . . based upon employment
18 (as defined in this subchapter). No employee shall have or assert
any right to . . . sickness benefits under a sickness law of any State
. . . based upon employment (as defined in this chapter)

19 45 U.S.C. § 363(b). Plaintiff argues that because the provision does not define “sickness benefits
20 under a sickness law,” the court should construe it as preempting all state laws that relate to
21 absences from work for any “health related reasons.” Pls.’ Mem. at 11. The court is not
22 persuaded by plaintiffs’ unfettered reading. Unlike ERISA’s broad preemption of state laws that
23 “relate to any employee benefit plan,” 29 U.S.C. § 1144(a), or the FAAA’s preemption of all state
24 laws that “relat[e] to a price, route, or service of an air carrier” 49 U.S.C. § 41713(b), RUIA
25 preempts only rights to “sickness benefits under a sickness law of any State,” 45 U.S.C. § 363(b).
26 It does not preempt “any laws that relate to sickness.” The more logical reading is that it
27 preempts the general type of sickness laws Congress contemplated when adopting RUIA’s
28 preemption provision. Because RUIA’s preemption provision alone does not clearly define the

1 type of sickness provisions RUIA preempts, the court looks to RUIA’s purpose and legislative
2 history to glean, if it can, clearer parameters. *United States v. Vance Crooked Arm*, 788 F.3d
3 1065, 1073 (9th Cir. 2014); *Funbus Sys. v. Cal. Pub. Util. Comm’n.*, 801 F.2d 1120, 1126 (9th
4 Cir. 1986).

5 2. Statutory Context and Congressional Purpose

6 “[T]he centerpiece of any preemption analysis is congressional purpose,” and “the
7 statute’s language, structure, subject matter, context, and history . . . help courts determine a
8 statute’s objectives and thereby illuminate its text.” *PG&E Co. v. Cal. ex rel. Cal. Dep’t of Toxic*
9 *Substances Control*, 350 F.3d 932, 942–43 (9th Cir. 2003) (internal citations omitted); *Gordon*,
10 575 F.3d at 1061-62 (looking beyond text to find relevant Act’s broader purpose supports limited
11 reading that text preempts laws only if they target fraud or deception). A broader statutory
12 analysis helps contextualize the preemptive language. *Medtronic*, 518 U.S. at 485-86.

13 Here, RUIA’s purpose illuminates its preemptive scope. RUIA creates a national
14 unemployment insurance program for railroad workers and “remove[s] [them] from the coverage
15 of [state] unemployment insurance acts” by preempting state laws that offer similar programs for
16 those workers. H.R. Rep. No. 75-2668, at 1, 2; 45 U.S.C. § 363(b). Congress added RUIA’s
17 sickness provision after acknowledging sickness also causes unemployment; a type of
18 unemployment RUIA originally overlooked. *See* S. Rep. No. 79-1710, at 5 (1946); 45 U.S.C.
19 §351(k)(2). Because the goal was a national short-term railroad worker disability insurance
20 program, Congress expressly preempted state laws that already provided such benefits. This
21 backdrop is crucial because it demonstrates RUIA is not a stand-alone sickness benefit statute; it
22 is an unemployment benefits statute with a sickness provision. The purpose of the preemption
23 clause therefore was not to supersede all state laws that compensate railroad employees for taking
24 a day off for any tangentially health-related reason, but rather to create a uniform standard for
25 sickness benefits that displaces similar state laws.

26 Defendants direct the court to the Report of the Senate Committee on Interstate
27 Commerce on RUIA’s 1946 Amendment, which indicates RUIA’s preemptive scope was limited

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1 to “similar” state sickness benefits. That report states, in pertinent part:

2 [S]ection 13(b) of the present unemployment insurance law
3 preempts to the Federal Government the field of railroad
4 unemployment insurance so as to exclude State unemployment
5 compensation laws from the field and thus to protect employers
6 from duplicate liability. The amendments made by this section of
7 the bill extend that preemption to the sickness benefits provided by
8 the bill.

9 Suppl. S. Rep. No. 79-1710, at 26 (1946). The report explains preemption was limited to the type
10 of sickness benefits “provided by this section of the bill,” meaning benefits that compensate
11 railroad employees when they are physically incapable of working because of their own injury or
12 sickness. *Id.* The goal of preemption was “to protect employers from duplicate liability,” which
13 signals the intent to displace laws that would otherwise provide railroad employees the same or
14 similar benefit a second time. Congress did not intend for section 13(b) to preempt “all state
15 sickness benefits”; just those similar to RUIA’s.

16 The meaning of “sickness benefit” as used in RUIA therefore delineates the scope
17 of preemption here. While RUIA does not explicitly define “sickness benefits,” *see generally* 45
18 U.S.C. § 351, the definitions it does provide inform the meaning of the term. RUIA defines a
19 “day of sickness” as “a calendar day on which because of any physical, mental, psychological, or
20 nervous injury, illness, sickness, [] disease” or because of “pregnancy, miscarriage, or the birth of
21 a child,” a covered employee “is not able to work” and does not receive or accrue
22 “remuneration.” 45 U.S.C. § 351(k). RUIA defines “benefits” as “money payments payable to
23 an employee as provided in this chapter.” *Id.* § 351(l)(1). “Sickness benefits” under RUIA thus
24 means wage-replacement payments for covered employees who are unable to work because they
25 are injured, ill, sick, or have an issue related to pregnancy or child birth. If a state law offers what
26 RUIA defines as a “sickness benefit,” then RUIA preempts it. The state law benefits need not be
27 identical or duplicative of RUIA to trigger preemption, they need only meet RUIA’s general
28 definition as here derived.

26 C. The California Act

27 Having defined the scope of RUIA preemption in this way, the court assesses
28 which California Act provisions, if any, it reaches. The California Act offers covered employees

1 an hour of paid sick leave for every thirty hours worked or a minimum of twenty-four hours of
2 paid sick leave per year. Cal. Lab. Code § 246(b)(1), (4). Employees may use this accumulated
3 leave for “diagnosis, care, or treatment of an existing health condition of, or preventative care” of
4 the employee or their family member. *Id.* § 246.5(a)(1). Employees also may use their paid sick
5 leave as “safe leave” to deal with domestic violence, sexual assault and stalking, including for
6 services from domestic violence shelters, programs, or rape crisis centers; or for preventative
7 measures like relocation. *Id.* §§ 230(c), 231(a), 246.5(a)(2).

8 RUIA preempts some of these California Act provisions and not others.
9 Specifically, RUIA preempts the provisions that allow railroad employees to use accumulated
10 paid leave on days when they cannot work because of their own sickness or injury. *See CSX*
11 *Transp., Inc. v. Healey*, 861 F.3d 276, 279-80, 287 (1st Cir. 2017) (affirming RUIA preemption
12 as to analogous provision in Massachusetts law, which provided paid leave to “care for the
13 employee's own physical or mental illness, injury, or medical condition that requires home care,
14 professional medical diagnosis or care, or preventative medical care[.]”) (quoting Massachusetts
15 Earned Sick Time Law (“MESTL”), Mass. Gen. Laws Ann. ch. 149, § 148C(c)(2)).

16 Defendants have not persuaded the court that, because these benefits attach
17 without a waiting period and in smaller increments or are otherwise not “identical” to RUIA’s
18 sickness benefits, they escape RUIA’s preemptive reach. But RUIA does not preempt the
19 California Act provisions that allow railroad employees to use their paid sick leave on days spent
20 caring for family members or seeking protection from domestic violence, sexual assault or
21 stalking. *See id.* at 279-80 (remanding for district court to assess preemption as to analogous
22 provisions within Massachusetts’ MESTL¹). RUIA does not so much as mention these other,

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24 ¹ The three MESTL provisions covered by the First Circuit’s remand for further
25 preemption and severance analyses, are virtually identical to the California Act provisions at issue
26 here. *See* Mass. Gen. Laws Ann. ch. 149, § 148C(c)(1) (paid leave to “care for the employee’s
27 child, spouse, parent, or parent of a spouse, who is suffering from a physical or mental illness,
28 injury, or medical condition that requires home care, professional medical diagnosis or care, or
preventative medical care); (c)(3) (paid leave to “attend the employee's routine medical
appointment or a routine medical appointment for the employee's child, spouse, parent, or parent
of spouse”); (c)(4) (paid leave to “address the psychological, physical or legal effects of domestic
violence. . .”).

1 substantively different benefits,² demonstrating that Congress did not regulate those matters and
2 preempt state laws that do.

3 D. Severability of the California Act

4 Because RUIA preempts only part of the California Act, the severability doctrine
5 dictates whether the court invalidates the entire Act as applied to plaintiffs' employees, or only
6 the preempted provisions. "Because a court may not use severability as a fig leaf for judicial
7 legislation, courts have fashioned limits on when a statute may be severed." *Vivid Entm't, LLC v.*
8 *Fielding*, 774 F.3d 566, 574 (9th Cir. 2014); *see also Yu Cong Eng v. Trinidad*, 271 U.S. 500, 518
9 (1926) ("[A] court may not exercise legislative functions to save the law from conflict with
10 constitutional limitation."). States determine the severability rules of their own laws. *City of*
11 *Lakewood v. Plain Dealer Pub. Co.*, 486 U.S. 750, 772 (1988).

12 California law limits severability to instances where the statute's invalid
13 provisions are grammatically, functionally and volitionally separable from the valid provisions.
14 *Vivid Entm't*, 774 F.3d at 574 (citing *Cal. Redev. Ass'n v. Matosantos*, 267 Cal. 4th 231, 267
15 (2011)). Provisions are grammatically severable if the court can erase them without changing the
16 meaning of the rest of the sentence or provision. *Id.* at 574. Provisions are functionally severable
17 if without them "the remainder . . . is complete in itself." *Santa Barbara Sch. Dist. v. Superior*
18 *Court*, 13 Cal. 3d 315, 331 (1975) (internal quotation marks omitted); *People's Advocate, Inc. v.*
19 *Superior Court*, 181 Cal. App. 3d, 332 (1986) (To be functionally severable, "[t]he remaining
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21 ² Railroad Retirement Board regulations confirm that RUIA sickness benefits attach only
22 when an absence is because of an employee's own condition or a family member's needs related to
23 sickness. *See* 20 CFR § 335.1(b) and (c). For example, the RRB's explanatory booklet on "Railroad
Unemployment and Sickness Benefits" states:

24 To be eligible for sickness benefits, you must be unable to work
25 because of illness or injury. A 'day of sickness' is a day on which
26 you meet this condition and for which you did not receive any pay
27 and have filed an application for sickness benefits and a statement
of sickness signed by your doctor or other authorized individual.
This statement provides evidence of your medical condition and its
expected duration.

28 Ex. A at 7–8, Intervenor's Mem., ECF No. 54-1.

1 provisions must stand on their own, unaided by the invalid provisions nor rendered vague by their
2 absence nor inextricably connected to them by policy considerations. They must be capable of
3 separate enforcement.”). Provisions are volitionally severable “[if the remaining provisions,
4 alone] would have been adopted by the legislative body had [it] foreseen the partial invalidation
5 of the statute.” *Santa Barbara Sch. Dist.*, 13 Cal. 3d. at 331 (citations and quotation marks
6 omitted); *see, e.g., Ex parte Bell*, 19 Cal. 2d 488, 498 (1942) (finding severability proper where
7 ordinance stated, “[i]f any section, subsection, sentence, clause or phrase of this ordinance is for
8 any reason held to be unconstitutional or invalid, such decision shall not affect the validity or
9 constitutionality of the remaining portions of this ordinance.”). Volitional severability also exists
10 where the remaining provisions “constitute[] a completely operative expression of the legislative
11 intent . . . and are not so connected with the rest of the statute as to be inseparable.” *Santa*
12 *Barbara Sch. Dist.*, 13 Cal. 3d. at 331 (citation, quotation marks, and parentheses omitted). If a
13 California statute includes an express “severability clause,” courts presume severability is
14 appropriate. *Cal. Redev. Ass’n*, 267 Cal. 4th at 270.

15 Here, the California Act does not have a severability clause and the parties dispute
16 the severability of the non-preempted provisions. Although plaintiffs contend that without a
17 severability clause the court must invalidate the entire Act, Pls.’ Opp’n 14, 20, severability does
18 not depend on the presence of such a clause, *see Alaska Airlines v. Brock*, 480 U.S. 678, 686
19 (1987) (finding silence as to severability “is just that—silence—and does not raise a presumption
20 against severability”) (citations omitted).

21 Rather, the analysis turns on the interplay and interdependence of the Act’s
22 preempted and non-preempted provisions. One provision within the California Act lists the
23 circumstances that trigger an employee’s paid sick leave. *See* Cal. Lab Code § 246.5(a) (“(1)
24 Diagnosis, care, or treatment of an existing health condition of, or preventive care for, an
25 employee or an employee's family member. (2) For an employee who is a victim of domestic
26 violence, sexual assault, or stalking”). The remaining sections define relevant terms and
27 detail how paid sick leave accrues. As explained above, RUIA preempts the provision that
28 provides for payment of railroad employees for missed work because of their own sickness,

1 illness, childbirth or pregnancy-related reason. RUIA does not preempt the provision that
2 provides for payment of railroad employees for missed work to care for family members or to
3 seek protection from domestic violence, sexual assault and stalking. Thus, if the court severed
4 the preempted portion, section 246.5(a) would read as follows:

5 (a) Upon the oral or written request of an employee, an employer shall
6 provide paid sick days for the following purposes:

7 (1) Diagnosis, care, or treatment of an existing health condition of,
8 or preventive care for, ~~an employee or~~ an employee's family
9 member.

10 (2) For an employee who is a victim of domestic violence, sexual
11 assault, or stalking, the purposes described in subdivision (c) of
12 Section 230 and subdivision (a) of Section 230.1.

13 Removing these three words neither changes the meaning nor the function of the remainder of
14 this provision or the statute at large. Thus, the provision remains grammatically and functionally
15 intact, as applied to railroad employees. *Vivid Entm't*, 774 F.3d at 574.

16 Also, in passing the California Act, the Legislature referenced specific rationales
17 and economic benefits associated only with these remaining provisions, which demonstrates
18 volitional separability. *See, e.g.*, 2014 Cal. Stat. c. 317 (A.B. 1522), §§ 1(i), 2 (explaining intent
19 to give employees time to address “the health needs of their families” and their “significant elder
20 care responsibilities.”); *see also* § 2 (declaring the goal of “[p]rovid[ing] economic security to
21 employees in California who take time off from work for reasons related to domestic violence or
22 sexual assault.”). The Legislature drew further connections between domestic violence and
23 workplace productivity, finding that “[a]ffording survivors of domestic violence and sexual
24 assault paid sick days is vital to their independence and recovery,” *id.* § 1(o). The Legislature also
25 found “[d]omestic violence . . . has a devastating effect on families, communities, and the workplace,”
26 and “impacts productivity, effectiveness, absenteeism, and employee turnover in the workplace,” *id.*
27 § 1(m), and that “[s]urvivors of domestic violence and sexual assault may be vulnerable at work while
28 trying to end an abusive relationship because the workplace may be the only place where the
perpetrator knows to contact the victim.” *Id.* at § 1(n). And, finally, the Legislature relied on studies
showing “up to one-half of domestic violence victims experience job loss. Forty percent reported on-

1 the-job harassment [and] [n]early 50 percent of sexual assault survivors lose their jobs or are forced to
2 quit in the aftermath of the assaults.” *Id.* at § 1(n). These references, studies and correlations
3 indicate the Legislature would opt for severability over total invalidation. The provisions as they
4 remain are volitionally intact. *Vivid Entm’t*, 774 F.3d at 574.

5 Accordingly, the court severs the three words in section 246.5(a)(1) – “an
6 employee or” – that allow railroad employees to use paid sick leave on days they cannot work
7 because of their own sickness, injury or pregnancy/childbirth reasons.

8 **III. CONCLUSION**

9 The court GRANTS in PART and DENIES in PART each motion for partial
10 summary judgment. The court finds RUIA preempts the California Act to the extent the latter
11 allows railroad employees to use paid sick days when they cannot work because of their own
12 illness or injury. RUIA does not preempt the Act to the extent it allows these employees to use
13 paid sick leave on days they miss work based on their family members’ illnesses or based on
14 reasons related to domestic violence, sexual assault and stalking.

15 IT IS SO ORDERED.

16 This resolves ECF Nos. 49, 51, 53.

17 DATED: October 10, 2017.

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20 UNITED STATES DISTRICT JUDGE
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