

Are You Ready for Washington's Paid Sick and Safe Leave Law?

Starting on January 1, 2018, all Washington employers, regardless of size, are required to provide paid sick leave to their employees. The definition of "employee" is broad and covers most Washington-based employees. Employers are required to provide paid sick leave, give notice to their employees, maintain and distribute records documenting paid sick leave, and enact policies (in order to apply certain procedures). Here's what you need to know.

Covered Employees

In general, all non-exempt employees employed "within the State of Washington" are entitled to paid sick leave. This includes part-time, full-time, seasonal, and temporary employees. Employees subject to a CBA are **not** exempt from receiving paid sick leave.

How Much Sick Leave Must Employers Pay?

Employers must provide one hour of paid sick leave for every 40 hours worked. Unlike other states requiring paid sick leave, Washington does **not** allow employers to set a cap on the amount of paid sick leave that can be accrued. The new law also requires employers to roll over up to 40 hours of unused paid sick leave at the end of the calendar year.

While frontloading of paid sick leave is allowed under the Washington law, because there is no cap allowed, employers must accurately predict the amount of annual paid sick leave that will be earned. Employers should also be prepared to pay the difference upon notice of discrepancies.

Paid sick leave must be paid at the hourly minimum wage (which is increasing to \$11.50) or the employee's "normal hourly compensation," whichever is greater. Washington's Department of Labor and Industries has defined "normal hourly compensation" to be "the hourly rate that the employee would have earned during the time during which the employee used the paid sick leave," excluding tips, service charges, holiday pay, premium pay, or other premium rates, where applicable.

Use of Paid Sick Leave

Paid sick leave can be used for a variety of reasons and generally covers all actual or preventative treatment for an illness of an employee or an employee's family member. The Washington law states that sick pay can be used:

1. for an employee's or the employee's family member's mental or physical illness, injury, or health condition;
2. when the employee's workplace or child's school/daycare is closed for a health-related reason; or
3. for the employee's or the employee's family member's need for services related to domestic violence, sexual assault, or stalking.

Family members include:

1. children (including biological, adopted, foster, step-children, and someone to whom the employee stands *in loco parentis*) regardless of age;
2. parents of the employee and his/her spouse or registered domestic partner (including biological, adoptive, foster, step-parent, legal guardian, or someone who stood *in loco parentis* to the employee as a minor);
3. spouse or registered domestic partner;

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4. grandparents and grandchildren; or
5. siblings

Paid sick leave can be used after an employee has worked for the employer for 90 days, and can be used in the same increment the employer tracks compensation. Thus, if an employer pays by the minute, an employee can use paid sick leave in one-minute increments. Employers may not require the use of paid sick leave in increments of more than one hour.

Verification and Suspected Fraud

Employers may require an employee to provide reasonable notice prior to taking the paid leave.

The new law also authorizes employers to seek verification for use of paid sick leave, but only when absences are for more than three consecutively scheduled work days. If an employee feels such a request would result in an unreasonable burden or expense, he/she may submit a written justification explaining why he/she cannot comply with the request and the employer must make a reasonable effort to identify alternate ways for the employee to meet the burden.

If an employer proves the employee was using his/her paid sick leave for an unauthorized reason, the employer may withhold pay.

However, employers must craft and provide written policies to employees before implementing these requirements.

Notice and Record Keeping Requirements

While accruals commence on January 1, all current employees must receive notice about the law by March 1, 2018. Employers must also provide a monthly notice to each employee outlining the amount of paid sick leave accrued, the amount of paid sick leave used since the prior notice, and the amount of unused paid sick leave available. This notice may be provided in a written or electronic form.

Interplay with Local Ordinances

Seattle, SeaTac, Tacoma, and Spokane currently have paid sick leave ordinances in place. The new Washington law explicitly states that it will not preempt local jurisdictions. However, Seattle and Tacoma have recently amended their Paid Sick Leave Ordinances to comply with the state law. To the extent the ordinances are more generous than the state law, those ordinances will continue to apply.

What Should You Do To Prepare?

Employers should review existing policies on paid leaves of absence and update paid sick leave policies to comply with Washington law. These should include detailed methods for how the employee must provide reasonable notice and how the employer will implement the verification process.

As of January 1, 2018, employers should ensure they are tracking and accruing paid sick leave for all of their eligible employees.

Employers should prepare notices to provide to all current employees, which should be distributed by March 1, 2018.

Cozen O'Connor's Labor & Employment attorneys are available to provide counsel and guidance on the issues discussed in this Alert.