

Management Alert



If Pain, Yes Gain—Part VIII: Paid Sick Time Coming to Philadelphia

By Joshua D. Seidman and William P. Perkins

Although the Philadelphia City Council's previous two attempts to provide paid sick time to individuals working in the City were met with mayoral vetoes in 2011 and 2013, the Council's persistence paid off as Mayor Michael Nutter signed the "Promoting Healthy Families and Workplaces" Ordinance (the "ordinance") into law on February 12, 2015. The ordinance, which will go into effect on May 13, 2015, makes Philadelphia the twentieth city in the country to have enacted or approved a paid sick leave law.¹

California and Massachusetts paid sick leave laws are scheduled to go into effect at the statewide level later this year joining Connecticut as the only states with such laws. The California law does not preempt the existing municipal paid sick leave laws in San Francisco, Oakland, Long Beach, and Los Angeles² leaving employers with the task of determining and implementing the most employee friendly law in those cities.

As we [previously reported](#), heading into 2015, Philadelphia was poised to pass a paid sick leave law as Mayor Nutter's task force recommendations and a changed economic climate were thought to be enough to sway the Mayor from his earlier position. Under the ordinance, employers with 10 or more employees will be required to provide one hour of paid sick time for every 40 hours worked in the City by an employee, up to 40 hours (*i.e.*, five days) of paid sick leave per year. The ordinance also covers smaller employers, however it only mandates that they provide their employees with unpaid sick leave at the above amounts.³ Notably, employers with paid leave policies, such as PTO, equal to or more generous than the ordinance's requirements need not offer additional paid time off, provided that such paid time can be used under the same circumstances and conditions as time under the ordinance.

The ordinance counts all full-time, part-time and temporary workers when determining if an employer crosses the 10-employee threshold. However, the ordinance does not cover employees who work less than 40 hours per year in Philadelphia, independent contractors, seasonal workers, interns, and other narrow categories of workers.

How do Employees Use Sick Time?

Employees begin accruing paid sick time at the commencement of their employment (or on May 13, 2015, for existing employees), and can start using the accumulated sick leave 90 days after accrual begins. Additionally, an employee who does not use all of his or her accrued sick time within a given year is allowed to carry over that time to the following year unless the employer front loads at least 40 hours of sick time at the beginning of the new year. In either case, an employer is not required to provide an employee with more than 40 sick leave hours in any single year.

When an employee's employment relationship ends, whether by termination, resignation, retirement, or otherwise, the employer has no obligation to pay the employee for accrued, unused sick time. Unlike some of the other municipal paid sick leave laws, the Philadelphia ordinance does not discuss whether previously accrued, unused sick time is reinstated to an employee who is rehired within a certain number of months of the separation.

Seyfarth Shaw LLP Management Alert | February 17, 2015

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Under What Circumstances May Employees Use Sick Time?

Under the ordinance, an employee can take sick leave for any of the following reasons:

- An employee's or an employee's family member's mental or physical illness, injury or health condition, need for medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition, or need for preventive medical care;⁴ and
- Certain absences due to domestic abuse, sexual assault or stalking and the employee or the employee's family member's need to obtain related medical attention, services from a victim services organization, psychological or other counseling, relocation, or legal services or remedies.

What Employers Can and Cannot Do

An employer may (a) loan an employee sick time prior to actual accrual, and require an employee to provide, (b) advance notice of the need to use earned sick leave and make a reasonable effort to schedule the use of sick time in a manner that does not unduly disrupt the employer's operations when such need is foreseeable, (c) notice of the need to use earned sick leave either before the start of the employee's shift or as soon as practicable when such need is unforeseeable, and (d) reasonable documentation that the use of earned sick leave was authorized for an absence of more than two consecutive days.

An employer may (a) loan an employee sick time prior to actual accrual, and (b) require an employee to provide (i) advance notice of the need to use earned sick leave and make a reasonable effort to schedule the use of sick time in a manner that does not unduly disrupt the employer's operations when such need is foreseeable, (ii) notice of the need to use earned sick leave either before the start of the employee's shift or as soon as practicable when such need is unforeseeable, and (iii) reasonable documentation that the use of earned sick leave was authorized for an absence of more than two consecutive days.

What Should Employers Do Now

Policy Review: Employers with operations in Philadelphia should review their sick leave policies immediately to ensure that they meet at least the minimum requirements of the ordinance no later than May 13, 2015.

Notice and Posting: After the ordinance goes into effect, employers must provide employees with notice stating that they are entitled to sick time, the amount of sick time to which they are entitled, the terms for using such sick time, the right to be free of retaliation, and the right to file a complaint or bring a civil action if they believe their rights have been violated. Employers can satisfy the notice requirement by either (a) displaying a poster in a conspicuous and accessible place in each establishment where covered employees are employed, or (b) providing each employee with written notice in English and any other language spoken by five percent of the employer's workforce. Furthermore, employers that distribute an employee handbook must include the above information in the handbook.

The ordinance states that the Agency chosen by Mayor Nutter will create and make available a model notice. We will be sure to advise you as soon as the model notice becomes available. Moreover, employers should be aware that violating the notice and posting requirements will result in a civil fine not to exceed \$100 for each separate offense.

Record Retention: After the ordinance goes into effect, employers are required to retain records for at least two years that document both the hours worked and sick time taken by employees, and corresponding payments made to employees for used sick time.

¹ The additional 19 cities are: (1) San Francisco, CA; (2) Washington, D.C.; (3) Seattle, WA; (4) Long Beach, CA; (5) SeaTac, WA; (6) Portland, OR; (7) New York City, NY; (8) Jersey City, NJ; (9) Newark, NJ; (10) Eugene, OR; (11) Passaic, NJ; (12) East Orange, NJ; (13) Paterson, NJ; (14) Irvington, NJ; (15) Los Angeles, CA; (16) Oakland, CA; (17) Montclair, NJ; (18) Trenton,

NJ; and (19) Tacoma, WA. The Tacoma ordinance was enacted on January 27, 2015 and is scheduled to go into effect on February 1, 2016.

² The Long Beach and Los Angeles ordinances, as well as the SeaTac, WA ordinance, only apply to hospitality or transportation employers.

³ Under the Philadelphia 21st Century Minimum Wage Act, which has been in effect since 2012, certain private Philadelphia employers -- (a) for-profit service contractors that receive or are subcontractors on contract(s) from the city of \$10,000 or more in a 12-month period, and have annual gross receipts of more than \$1 million, and (b) recipients of City leases, concessions, or franchises, or subcontractors or subrecipients thereof at any tier -- have already been required to provide their employees with paid sick leave. In particular, the Act requires covered businesses with more than five but fewer than 11 employees provide their employees with 32 hours of sick leave per year, while larger employers provide their employees with at least 56 hours of sick leave per year. Employers subject to both laws most likely will need to provide their employees with the most generous aspects of the laws.

⁴ The ordinance defines "family member" to include: (1) Child (biological, adopted or foster child, stepchild or legal ward or a child to whom the employee stands in loco parentis); (2) Parent (biological, foster, stepparent or adoptive parent or legal guardian of the employee or the employee's spouse or a person who stood in loco parentis when the employee was a minor child); (3) Person to whom the employee is legally married under Pennsylvania laws; (4) Grandparent; (5) Grandchild; (6) Sibling (biological, foster, or adopted sibling or spouse of a biological, foster or adopted sibling); and (7) Life Partner as defined in Section 9-1102 of Philadelphia Code.

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