

# Management Alert



## If Pain, Yes Gain – Part XI: Pittsburgh Passes Paid Sick Leave Law

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Following the lead set by Philadelphia earlier this year, the Pittsburgh City Council passed the “Paid Sick Days Act” (“the Act”) on August 3, 2015. If the Act is signed into law by Mayor Bill Peduto, which is expected, Pittsburgh would become the country’s 24th municipality<sup>1</sup> to have enacted or approved a paid sick leave law.<sup>2</sup> The Act becomes effective 90 days after the Pittsburgh Office of the City Controller (“the Agency”) posts the regulations and notice information for employers, most likely on the City of Pittsburgh’s website.<sup>3</sup>

The Act requires that employers with 15 or more employees provide each eligible employee with one hour of paid sick time for every 35 hours worked in Pittsburgh by the employee, up to 40 hours (i.e., five days) of paid sick leave per year. The paid sick leave accrual rate provided in the Act is more pro-employee than that under the Philadelphia “Promoting Healthy Families and Workplaces” Ordinance (“Philadelphia Ordinance”), which only requires covered employers to provide employees with one hour of paid sick leave for every 40 hours worked.<sup>4</sup>

The Act also covers smaller employers. Specifically, for the first year the Act is in effect, employers with fewer than 15 employees will be required to provide their employees with one hour of unpaid sick leave for every 35 hours worked in Pittsburgh, up to 24 hours (i.e., three days) of unpaid sick leave per year. After the one-year anniversary of the Act’s effective date, employers with fewer than 15 employees will then be required to provide paid sick leave at the same accrual rate and up to the same 24-hour cap as set forth during the Act’s inaugural year. By comparison, the Philadelphia Ordinance requires employers with fewer than 10 employees to provide their employees with up to 40 hours of unpaid sick leave per year.

<sup>1</sup> The other 23 municipalities that have enacted or approved paid sick leave laws 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; (19) Bloomfield, NJ; (20) Philadelphia, PA; (21) Tacoma, WA; (22) Emeryville, CA; and (23) Montgomery County, MD. The Tacoma ordinance was enacted on January 27, 2015 and is scheduled to go into effect on February 1, 2016. The Montgomery County ordinance was enacted on June 23, 2015 and is scheduled to go into effect in October 2016. The Long Beach, Los Angeles, and SeaTac, WA ordinances only apply to hospitality or transportation employers. The Eugene law, while enacted, will not go into effect and will be formally repealed on January 1, 2016 as a result of the impending Oregon statewide paid sick leave law.

<sup>2</sup> Connecticut, California, and Massachusetts maintain the only statewide paid sick leave laws that are currently in effect. Please see our earlier posts for more information on the [Connecticut, California](#), and [Massachusetts](#) paid sick leave laws. In addition, earlier this summer Oregon enacted the country’s fourth statewide paid sick leave law, which is scheduled to go into effect on January 1, 2016. Please see our earlier post for more information on the [Oregon paid sick leave law](#).

<sup>3</sup> In April 2015, Pennsylvania’s Republican controlled State Senate voted on and passed a bill, Senate Bill 333, that would prevent municipalities from passing paid sick leave laws. If ultimately signed into law, the bill would retroactively preempt both the Philadelphia and Pittsburgh paid sick leave laws. The proposal has since been sent to the State’s House of Representatives, which is also Republican-controlled. Governor Tom Wolf has indicated that he would veto any anti-paid sick leave bill that is approved by the State legislature.

<sup>4</sup> Please see our earlier post for more information on the [Philadelphia paid sick leave law](#).

Importantly, employers with paid leave policies, such as PTO, equal to or more generous than the Act's requirements need not offer additional paid time off, provided that such paid time can be used for the same purposes and under the same conditions as sick time under the Act. The same is true for employers that are part of a collective bargaining agreement that makes available a sufficient amount of paid leave to meet the Act's accrual requirements and that may be used for the same purposes and under the same conditions as sick time under the Act.

## Which Employees Are Covered by the Act?

In defining covered employees, the Act refers to the definition used in "the Act of January 17, 1968, P.L. 11, No. 5, (43 P.S. Section 333.103(g)),<sup>5</sup>" which refers to the Pennsylvania Minimum Wage Act of 1968 and defines "employee[e]" as "any individual employed by an employer."<sup>5</sup> The Act explicitly excludes from coverage independent contractors, State and Federal employees, any member of a construction union covered by a collective bargaining unit, and seasonal employees.<sup>6</sup>

## How do Employees Use Sick Time?

Existing employees begin accruing paid sick time on the Act's effective date, and employees hired thereafter begin accrual at the commencement of their employment. Employees can start using accumulated sick leave 90 days after accrual begins.<sup>7</sup> Employees may use their sick time in the smaller of hourly increments or the smallest increment that the employer's payroll system uses to account for absences or use of other time.

Additionally, an employee who does not use all of his or her accrued sick time within a given calendar year is allowed to carry over that time to the following calendar year unless the employer front loads at least 40 or 24 hours of sick time at the beginning of the new year, depending on the employer's size.<sup>8</sup> In either case, an employer is not required to provide an employee with more than 40 or 24 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. When there is a separation from employment and the employee is rehired within six months of separation by the same employer, the employer must reinstate the employee's previously accrued, unused paid sick time. Upon reinstatement, the employee is entitled to use previously accrued paid sick time and accrue additional paid sick time.

## 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<sup>9</sup> mental or physical illness, injury or health condition; an employee's or an employee's family member's need for medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition; an employee's or an employee's family member's need for preventive medical care; or

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<sup>5</sup> According to the Pennsylvania Department of Labor & Industry website, the definition of "employee[e]" is included in subsection (h) of the Pennsylvania Minimum Wage Act of 1968, rather than subsection (g) as stated in the Act. See <http://www.portal.state.pa.us/portal/server.pt?open=514&objID=552960&mode=2#3>.

<sup>6</sup> The Act defines "seasonal employee" as "[a] person who has been hired for a temporary period of not more than sixteen weeks during a calendar year and has been notified in writing at the time of hire that the individual's employment is limited to the beginning and ending dates of the employer's seasonal period, as determined by the employer."

<sup>7</sup> Section 3(f) of the Act states that "[a]ll employees shall be entitled to use accrued sick time beginning on the 90th calendar day following the commencement of their employment." It appears that this Section fails to take into account the usage waiting period for employees hired before the Act's effective date. While we expect clarification from the Agency on this point in the coming months, a review of existing paid sick leave laws makes it likely, although by no means certain, that individuals employed prior to the Act's effective date also will be subject to a 90-day usage waiting period.

<sup>8</sup> The Act defines "calendar year" as "[a] regular and consecutive 12-month period, as determined by an employer and communicated to all employees."

<sup>9</sup> The Act defines "family member" as: (1) A biological, adopted or foster child, stepchild or legal ward, a child of a domestic partner, or a child to whom the employee stands in loco parentis; (2) A biological, foster, adoptive, or step-parent, or legal guardian of an employee or an employee's spouse or domestic partner or a person who stood in loco parentis when the employee was a minor child; (3) A person to whom the employee is legally married under any state law; (4) A grandparent or spouse or domestic partner of a grandparent; (5) A grandchild; (6) A biological, foster, or adopted sibling; (7) A domestic partner; and (8) Any individual for whom the employee has received oral permission from the employer to care for at the time of the employee's request to make use of sick time.

- Closure of the employee's place of business by order of a public official due to a public health emergency or an employee's need to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency; or
- Care for a family member when it has been determined by the health authorities having jurisdiction or by a health care provider that the family member's presence in the community would jeopardize the health of others because of the family member's exposure to a communicable disease, whether or not the family member has actually contracted the communicable disease.

## What Can Employers Do and Not Do?

An employer cannot: (1) require that an employee using accrued sick time search for or find a replacement worker as a condition for providing sick time; (2) interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under the Act; (3) retaliate or discriminate against an employee because the employee has exercised rights protected under the Act; (4) maintain an absence control policy that counts sick time taken under the Act as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action; or (5) require disclosure of details relating to an employee's or an employee's family member's medical condition as a condition of providing sick time.

An employer may: (1) loan sick time to an employee in advance of accrual by such employee; and (2) count sick time taken under the Act as an absence that may lead to or result in adverse action if the employee does not follow the Act's notification and documentation procedures.

## What Notice Must Employees Provide When Using a Sick Day?

The Act mandates that employees provide their employers with an oral request to use sick leave, and that the request include the expected duration of the absence, if known. While an employer can maintain its own notification policy that spells out how soon before an employee's shift the employee must make his or her oral request, the policy must be reasonable and cannot impede an employee's use of sick time. If an employer does not maintain a notification policy, its employees must provide their oral request for the use of sick time at least one hour before the start of their shift. If the need to use sick time is not foreseeable, the employee must make a good faith effort to notify the employer as soon as possible.

Relatedly, where the need to use sick time is foreseeable, such as a scheduled appointment with a health care provider, the employer may require that the employee provide reasonable advance notice of his or her intention to use such sick time. The reasonable advance notice cannot exceed seven days prior to the date such sick time is to begin.

## Can Employers Require Employees to Provide a Medical Certification?

If an employee uses sick time for three or more full consecutive days, the employer may require the employee to present reasonable documentation that the sick time has been used for an allowable reason. Employers may not require that the documentation explain the precise nature of the illness.

## What Notice Must Employers Provide?

The Act requires that employers provide employees with written notice that they are entitled to sick time, the amount of sick time to which they are entitled, and the terms of its use under the Act, that retaliation against employees who request or use sick time is prohibited, and that each employee has the right to file a complaint with the Agency for suspected violations of the Act. The Agency will determine how employers can satisfy this notice requirement and provide employers with any necessary compliance materials prior to the Act's effective date. We will be sure to advise you as the Agency provides guidance on this requirement in the coming months.

## Are Employers Required to Retain Records?

For at least two years, employers must retain records documenting hours worked by employees, as well as sick time taken by employees.

## What Should Employers Do Now?

Employers with operations in Pittsburgh should review their sick leave or PTO policies immediately to ensure that they meet at least the minimum requirements of the Act. In addition, employers should review and, as necessary, revise anti-retaliation, attendance, conduct, and discipline policies to prevent retaliation against employees for taking time off under the Act. Moreover, employers should monitor the City of Pittsburgh's website for guidance on the Act's notice requirements and other clarification about the Act.

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