

Management Alert



If Pain, Yes Gain—Part XXVI: 2016 Election Infected With Paid Sick Leave

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Seyfarth Synopsis: On November 8, 2016, two states—Washington and Arizona—are poised to become the sixth and seventh states in the country to pass a statewide mandatory paid sick leave law.

The noise surrounding the 2016 election's major party candidates has left the American public full of both tension and hope heading into Election Day. While many have been focusing on Tweets, video recordings, and alleged scandals, the paid sick leave epidemic that has spread throughout the nation in recent years has quietly infected this year's election as well. In particular, both Washington and Arizona have proposed statewide paid sick leave bills on their respective ballots.¹ When the Election Day dust settles, the country will not only know its Commander in Chief for the next four years, but also whether the number of statewide paid sick leave laws has increased from five to either six or seven.²

The 2016 election would not be the first time a statewide paid sick leave law was passed through a ballot initiative. In 2014, Massachusetts residents voted on and passed the state's [Earned Sick Time Law](#), which at the time made Massachusetts the third state in the country with such a law. If the proposed Washington paid sick leave law, [Initiative Measure No. 1433](#), is passed as currently worded, covered employers will be required to provide paid sick leave benefits to eligible employees beginning on January 1, 2018. If the proposed Arizona paid sick leave law, [Proposition 206](#), is passed as currently worded, covered employers must comply by July 1, 2017.

We will provide updates on these expected major paid sick leave developments after the Election Day results are in. In the meantime, below is a summary of some of the primary requirements that would be imposed on covered employers if voters approve both proposals.

¹ The Berkeley, CA city council passed a paid sick leave ordinance in late-August 2016 that is set to become effective in October 2017. However, there are two competing paid sick leave initiatives on the city's ballot for the 2016 election (one placed on the ballot by the city council itself). If either ballot measure passes, it is unclear which law will control.

² The five states with paid sick leave laws are Connecticut, California, Massachusetts, Oregon, and Vermont. The Vermont law becomes effective on January 1, 2017 for most employers. Certain federal contractors will have to start complying with [paid sick leave obligations](#) on January 1, 2017. The current municipal paid sick leave laws include: (1) San Francisco, CA; (2) Washington, D.C.; (3) Seattle, WA; (4) Long Beach, CA; (5) SeaTac, WA; (6) New York City, NY; (7) Jersey City, NJ; (8) Newark, NJ; (9) Passaic, NJ; (10) East Orange, NJ; (11) Paterson, NJ; (12) Irvington, NJ; (13) Los Angeles, CA; (14) Oakland, CA; (15) Montclair, NJ; (16) Trenton, NJ; (17) Bloomfield, NJ; (18) Philadelphia, PA; (19) Tacoma, WA; (20) Emeryville, CA; (21) Montgomery County, MD; (22) Pittsburgh, PA; (23) Elizabeth, NJ; (24) New Brunswick, NJ; (25) Spokane, WA; (26) Santa Monica, CA; (27) Plainfield, NJ; (28) Minneapolis, MN; (29) San Diego, CA; (30) Chicago, IL; (31) Berkeley, CA; (32) Saint Paul, MN; (33) Morristown, NJ, and (34) Cook County, IL. A number of these laws, including Santa Monica, Spokane, Minneapolis, Chicago, Saint Paul, Berkeley, Cook County, and Pittsburgh, are not yet in effect. The Los Angeles law for private employers became effective for most companies on July 1, 2016. There is also a separate Los Angeles paid sick leave law that has been in effect since late-2014 and applies to certain hotel employers. Similarly, the Long Beach and SeaTac ordinances only apply to hospitality or transportation employers.

Washington Paid Sick Leave - Initiative Measure No. 1433

- **Preemption:** Significantly, the statewide law would **not** preempt existing or future municipal paid sick leave ordinances within the state from providing greater benefits to employees. Thus, if passed in its current form, the Washington law would add a new layer of complexity to the country's paid sick leave patchwork.³ There currently are municipal paid sick leave laws in effect or scheduled to go into effect in Seattle, Tacoma, Spokane, and SeaTac, WA.
 - The proposal specifically states that “[a]ny standards relating to...paid sick leave...established by any applicable federal, state, or local law or ordinance, or any rule or regulation issued thereunder, which are more favorable to employees...shall not be affected by this chapter..., shall be in full force and effect and may be enforced as provided by law.” The proposal does not stop there. In a separate section it states that “[n]othing in the act precludes local jurisdictions from enacting additional local fair labor standards that are more favorable to employees, including but not limited to more generous...paid sick leave requirements.”
- **Paid Sick Leave Accrual, Usage, and Carryover:**
 - Accrual Rate: One hour of paid sick leave for every 40 hours worked.
 - Accrual and Usage Caps: The proposal currently is **silent** on whether there is any cap on how much paid sick leave employees can ultimately accrue and use in a single year. Barring any further clarification from the state, if passed, the Washington proposal would be the first paid sick leave law in the country that does not set at least an accrual or usage cap.
 - Frontloading: While frontloading paid sick time is expressly permitted under the proposed law, it may **not** get rid of an employer's year-end carryover obligations. The proposal states that providing paid sick leave in advance of accrual is permitted if the frontloading “meets or exceeds the requirements of this section for accrual, use, and carryover of paid sick leave.”
 - Carryover of Unused Paid Sick Leave: Employers would only be required to allow 40 hours of earned, unused paid sick leave to carry over at year-end.
- **Reasons for Use:** Employees would be able to use earned paid sick leave for a number of reasons, including (a) their own injury, illness, or health condition, (b) the injury, illness, or health condition of a covered family member, (c) closure of the employee's place of business or employee's child's school or place of care by order of a public official, and (d) certain absences related to domestic violence as set forth under the state's Domestic Violence Leave law. Covered family members would include, among other relationships, the employee's children, parents, spouse, registered domestic partner, grandparents, grandchildren, and siblings.
- **Available Balance Notification:** Although the Washington proposal is silent on notice and posting obligations, it does explicitly state that employers would be responsible for providing “regular notification” to employees about the amount of paid sick leave available to the employee.

Arizona Proposed Fair Wages and Health Families Act - Proposition 206

- **Paid Sick Leave Accrual, Usage, and Carryover:**
 - Accrual Rate and Cap: (a) Employers with 15 or more employees would be required to allow paid sick leave to accrue at least as fast as one hour for every 30 hours worked, up to 40 hours per year; (b) While the accrual rate remains the same for smaller employers, such employers would only be obligated to allow employees to accrue up to 24 hours of paid sick leave per year.

³ Oregon and California faced similar issues when passing their respective statewide paid sick leave laws. California opted not to preempt local paid sick leave laws and now is the state with the second most municipal paid sick leave laws in the country. By comparison, [the Oregon statewide law](#) preempted the state's existing municipal paid sick leave laws, thereby setting a single paid sick leave standard for covered employers to follow.

- **Usage Cap:** (a) Employers with 15 or more employees - 40 hours per year; (b) Employers with fewer than 15 employees - 24 hours per year.
- **Carryover:** The proposal states that earned paid sick time shall carry over from one year to the next, subject to the above usage cap limitations. It is unclear from the current proposal if employers would be allowed to set a cap on how much unused sick time carries over at year-end.
- **Frontloading:** Employers would be able to get rid of their year-end carryover obligations if they (a) pay employees for unused paid sick leave at year-end, **and** (b) provide employees with a lump grant of sick time that is equal to the above amounts (depending on employer size).
- **Reasons for Use:** Employees would be able to use earned paid sick leave for a number of reasons, including (a) their own injury, illness, or health condition, (b) the injury, illness, or health condition of a covered family member, (c) closure of the employee's place of business or employee's child's school or place of care by order of a public official, (d) care of the employee or a covered family member when it has been determined by health authorities that the individual's presence in the community may jeopardize the health of others due to exposure to a communicable disease, and (e) certain absences related to domestic violence, sexual violence, abuse, or stalking of the employee or the employee's family member.
 - Covered family members would include, among other relationships, an employee's child (regardless of age), parent, spouse or registered domestic partner, grandparent, grandchild, and sibling, **and any other individual related by blood or affinity** whose close association with the employee is the equivalent of a family relationship.
- **Employee Notice of Unforeseeable Absences:** If an employer requires employees to provide notice of the need to use paid sick leave for unforeseeable absences, employers must provide workers with a **written policy** that contains procedures for providing such notice.
- **Available Balance Notification:** With each employee's regular paycheck, employers must provide employees with the amount of (a) available paid sick leave, (b) paid sick leave taken by the employee to date in the current benefit year, and (c) pay the employee has received as earned paid sick leave.
- **Notice and Posting:** Employers would need to provide their employees with written notice of certain rights at the commencement of employment or on July 1, 2017, whichever is later. The state would create a model notice for employers to use to satisfy this obligation.

Employers in Washington and Arizona should continue to track whether their states' respective paid sick leave initiatives have passed. And, if either initiative is approved, employers should begin taking steps as soon as possible to ensure that they will be able to achieve full compliance by the July 1, 2017 (Arizona) and January 1, 2018 (Washington) effective dates.

To stay up-to-date on Paid Sick Leave developments, [click here](#) to sign up for Seyfarth's Paid Sick Leave mailing list.

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Seyfarth Shaw LLP Management Alert | November 8, 2016

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