

Management Alert



If Pain, Yes Gain—Part XXIX: Arizona Announces Draft Sick Leave Rules

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Seyfarth Synopsis: Arizona—the sixth state with a paid sick leave law—has published its much anticipated Notice of Proposed Rulemaking for its law going into effect on July 1, 2017.

On July 1, 2017, while employees are enjoying their first taste of summer sun and ocean waves, employers will be managing a different kind of wave, specifically one that will see five paid sick leave laws become effective on this date. Arizona joins Chicago and Cook County, IL and Minneapolis and Saint Paul, MN¹ as the jurisdictions fueling this latest sick leave wave. When the tide settles, Arizona will be just the sixth state in the country with a statewide paid sick leave mandate that has gone into effect.²

As employers ready their policies and practices to comply with the impending Arizona Fair Wages and Healthy Families Act (the “Act”),³ the Industrial Commission of Arizona (the “Commission”) has taken steps to clarify certain aspects of the Act. Specifically, on May 5, 2017, the Commission released a [Notice of Proposed Rulemaking](#) regarding the Act. While not final, the proposed rules address a number of topics within the Act, including year-end carryover obligations, notice and posting requirements, recordkeeping, and payment of sick time.

The public will have until June 5, 2017, to submit comments on the proposed rules. On that same date, the Commission will be hosting an oral proceeding for further discussion on the proposed rules.

Here is a summary of the proposed rules’ key provisions:

- **Employment Relationship:** The proposed rules explain that volunteers and certain babysitters are not considered employees under the Act. Relatedly, and while not expressly stated, it appears that the proposed rules also exclude independent contractors from sick leave eligibility under the Act. The proposed rules note that determining whether an employment relationship exists depends on the circumstances of the relationship, and refer employers to factors that can be used to assess the economic dependency of a working relationship.
- **Accrual and Hours Worked:** The Act requires that employees accrue paid sick leave at least as fast as one hour of sick leave for every 30 hours worked, up to either 40 or 24 hours per year depending on the size of the employer. Under the proposed rules, “hours worked” is defined to mean all hours for which an employee covered under the Act is employed

¹ For more information, here are links to our prior alerts on the impending [Chicago](#), [Cook County](#), [Minneapolis](#), and [Saint Paul](#) paid sick leave laws.

² The five states with paid sick leave laws that are currently in effect are Connecticut, California, Massachusetts, Oregon, and Vermont. In addition, the state of Washington’s paid sick leave law is scheduled to become effective on January 1, 2018.

³ The Act was passed by Arizona voters during the November 8, 2016, election. Follow this link for our summary of the main [Arizona paid sick leave law](#) requirements.

and required to give to the employer, including all time during which an employee is on duty or at a prescribed work place and all time the employee is suffered or permitted to work.

- **Year-End Carryover:** The Act states that earned paid sick time shall be carried over to the following year, subject to limitations on usage (i.e., annual usage caps). On its face, this language could be read as not setting any cap on the amount of unused sick time that employers must allow employees to rollover at year-end. However, the proposed rules address this uncertainty and expressly state that employees may carry over up to a maximum of 40 or 24 hours of unused sick time at year-end, depending on the size of the employer.
 - Relatedly, the proposed rules reiterate that employers can avoid the Act's year-end carryover requirements only if they (a) cash out employees' unused sick time at year-end, **and** (b) provide employees with a lump grant of 40 or 24 sick time hours, depending on the size of the employer, at the start of the new benefit year.
- **Reasons for Use:** Arizona employees may use accrued paid sick leave for a number of reasons.⁴ The proposed rules contain language impacting two of the lesser known reasons for use:
 - First, employees are permitted to use paid sick leave to care for 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, whether or not the individual actually has the disease. The proposed rules define "communicable disease" to mean a contagious, epidemic or infectious disease required to be reported to the local board of health or Arizona department of health services.
 - Second, employees may use paid sick leave due to closure of the employee's place of business or employee's child's school or place of care by order of a public official due to a public health emergency. The proposed rules include a narrow definition of "public health emergency"—a state of emergency declared by the governor in which there is an occurrence or imminent threat of an illness or health condition caused by bioterrorism, an epidemic or pandemic disease or a highly fatal infectious agent or biological toxin and that poses a substantial risk of a significant number of human fatalities or incidents of permanent or long-term disability.
- **Payment of Sick Time:** The Act states in general terms that an employee should be compensated for used sick leave at the same hourly rate and with the same benefits, including health care benefits, as the employee normally earns during hours worked. This compensation must not be less than federal or state minimum wages. The proposed rules note that shift differentials and premiums that compensate an employee for work performed under differing conditions (such as hazard pay or a shift differential for working at night) must be included when determining an employee's same hourly rate. However, sick time payment need not include additions to an employee's base rate for overtime or holiday pay, bonuses or other types of incentive pay, tips, or gifts.
 - In addition and notably, the proposed rules provide guidance on calculating the "same hourly rate" in several circumstances, including for employees paid a single hourly rate, multiple hourly rates, on a salary basis, and on a commission, piece-rate, or fee-for-service basis.
- **Posting Requirement:** The proposed rules state that employers must display the Commission's [model sick leave poster](#) in a conspicuous place in every establishment where employees are employed and where notices to employees are customarily placed. Furthermore, the proposed rules add a "small employer" exception to the Act's posting requirement stating that the requirement does not apply to a corporation, proprietorship, partnership, joint venture, limited liability company, trust, or association that has less than \$500,000 in gross annual revenue.
- **Recordkeeping Requirement:** The Act requires that employers maintain payroll records showing the (a) hours worked for each day worked, and (b) wages and earned sick time paid to all employees for a period of four years. The proposed rules list additional types of payroll and other records that employers must retain to comply with the Act, including earned paid sick time accrued and used each pay period and current earned paid sick time balance.

⁴ Employees may also use Arizona paid sick leave for (a) their own injury, illness, or health condition, (b) the injury, illness, or health condition of a covered family member, and (c) certain absences related to domestic violence, sexual violence, abuse, or stalking of the employee or the employee's family member.

As the Act's July 1, 2017, effective date draws closer, employers should take steps now to ensure compliance, including (a) review and, as needed, update existing policies and procedures or, alternatively, create a new paid sick leave policy that complies with the Act, (b) develop systems and procedures to meet the Act's posting and notification requirements, and (c) train supervisory and managerial employees, as well as HR, on the Act's requirements.

With the paid sick leave landscape continuing to expand and grow in complexity, companies should reach out to their Seyfarth contact for solutions and recommendations on addressing compliance with this law and sick leave requirements generally. 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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