

# Management Alert



## If Pain, Yes Gain – Part XXXV: Rhode Island Legislature Approves Statewide Paid Sick Time Bill

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**Seyfarth Synopsis:** After Rhode Island's legislative efforts to pass a statewide paid sick time bill stalled in the Spring, the bill was resuscitated by state lawmakers on Tuesday evening. Rhode Island is now poised to become the 8th state in the country to pass a statewide mandatory paid sick leave law.

On September 19, 2017, the Rhode Island legislature passed the Healthy and Safe Families and Workplaces Act (the "Act"), which, if signed by state Governor Gina Raimondo, as expected, would make Rhode Island the eighth state in the country to impose paid sick leave obligations on employers.<sup>1</sup> The legislature passed the Act after efforts earlier this year to pass a paid sick leave bill floundered in the final days of the spring legislative session.

As discussed in greater detail below, some of the primary requirements imposed by the Act include:

- Employers with 18 or more employees *in Rhode Island* must provide employees with one hour of *paid* sick and safe leave ("PSSL") for every 35 hours worked up to a maximum of 24 hours in 2018, 32 hours in 2019, and 40 hours per year thereafter. Smaller employers will be required to provide their employees with the same amounts of protected, *unpaid* sick and safe leave.
- Employers that provide the above amounts of PSSL (or other paid leave that can be used for the reasons set forth under the Act) at the beginning of each benefit year most likely do *not* need to track accrual, allow any year-end carryover of unused time, or payout any unused time at year-end (see below for more information).
- The Act allows employees to use PSSL to care for various covered family members, including members of the employee's household.
- Employers must comply with express written policy requirements regarding employee notice to the company and documentation.

Assuming the Act is formally enacted, it will go into effect on July 1, 2018. Significantly, and unlike certain other statewide paid sick leave laws, the Act explicitly states that no municipality shall establish, mandate, or otherwise require an employer to provide paid sick leave benefits in excess of those required under the Act.

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<sup>1</sup> The seven other states with mandatory paid sick leave laws are [California](#), [Massachusetts](#), [Connecticut](#), [Oregon](#), [Arizona](#), [Vermont](#) and [Washington](#). The Washington paid sick leave law goes into effect on January 1, 2018. The other six laws are currently in effect. Links to our prior alerts on each of these laws are included in the preceding sentences.

## Which Employers Are Covered Under the Act?

The Act defines “employer” as “any individual or entity that includes any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer, in relation to an employee.”

Furthermore, the Act expressly states that employers who afford their employees the correct amount of paid leave in 2018, 2019 and thereafter, under either a paid time off or other paid leave policy, are exempt from the Act’s accrual and carryover requirements.

## Which Employees Are Covered by the Act?

The Act defines “employee” broadly. Specifically, the Act would cover “any person suffered or permitted to work by an employer,” with several exceptions. The Act expressly excludes the following from coverage -- independent contractors, subcontractors, work study participants, apprenticeships, interns, employees of the state or a municipality, and certain individuals licensed to practice nursing.

## How Much Sick Time Can Employees Accrue, Use and Carryover?

Employees would begin accruing PSSL on July 1, 2018 or their commencement of employment, whichever is later. However, most employees would not be entitled to begin using accrued PSSL until they have worked for the employer for at least 90 days.

The Act includes two exceptions to the above usage waiting period. First, the Act states that employers do not need to allow temporary employees<sup>2</sup> to begin using accrued PSSL until the 180th calendar day following commencement of their employment. Second, the Act states that employers do not need to allow seasonal employees to use accrued PSSL until the 150th calendar day following commencement of their employment.

As noted above, employers with 18 or more employees in Rhode Island must allow employees to accrue one hour of *paid* sick and safe leave for every 35 hours worked up to a maximum of 24 hours in 2018, 32 hours in 2019, and 40 hours per year thereafter. Smaller employers will be required to allow their employees to accrue the same amounts of protected, *unpaid* sick and safe leave. The Act expressly allows employers to assume that exempt employees work a maximum of 40 hours per week for purposes of sick leave accrual.

The Act states that accrued, unused PSSL shall carry over at year-end. However, regardless of carryover balances, employers are only required to allow employees to use 24 hours of PSSL in 2018, 32 hours in 2019, and 40 hours each year thereafter. In addition, the Act notes that employers may set a four hour minimum increment of using PSSL, as long as such an increment is reasonable under the circumstances.

The Act also appears to offer two alternatives to year-end carryover. First, the Act notes that employers can avoid year-end carryover if they (a) pay an employee for unused PSSL at the end of a benefit year *and* (b) frontload the employee a sufficient amount of PSSL, i.e., 24, 32 or 40 hours, at the start of the subsequent year and make that time immediately available for use.

Second, and potentially in contradiction with the first alternative described in the preceding paragraph, the Act states that employers can avoid carryover, as well as accrual and year-end payout of unused sick time, if they provide their employees with at least 24 hours of PSSL during calendar year 2018, 32 hours during calendar year 2019, and 40 hours per calendar year thereafter that can be used for the purposes consistent with the Act at the beginning of each benefit year.

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<sup>2</sup> The Act defines “temporary employee” as any person working for, or obtaining employment pursuant to an agreement with any employment agency, placement service, or training school or center.

## Under What Circumstances May Employees Use Sick Leave?

An employee may use PSSL earned under the Act for any of the following reasons:

- The employee's or a covered 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 preventive medical care;
- 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;
- Care for oneself or a covered family member when it has been determined by the health authorities having jurisdiction or by a health care provider that the employee's or family member's presence in the community may jeopardize the health of others because of their exposure to a communicable disease, whether or not the employee or family member has actually contracted the communicable disease; or
- Time off needed when the employee or a covered family member is a victim of domestic violence, sexual assault or stalking.

The Act defines "family member" to include child, parent, spouse, mother-in-law, father-in-law, grandparents, grandchildren, domestic partner, sibling, care recipient, or member of the employee's household.

## What Notice Must Employees Provide When Using Sick Leave?

The Act expressly states that employers must provide PSSL to an employee upon his or her request, and that such request can be made orally, in writing, by electronic means or by any other means acceptable to the employer. Employers can require employees' requests to include, if possible, the expected duration of the absence.

When an employee's need for PSSL is foreseeable, employers can require that the employee provide notice of the need for such time in advance of the absence and that the employee make a reasonable effort to schedule the use of PSSL in a manner that does not unduly disrupt the operations of the employer.

If an employer also will require employees to provide notice of their intent to use PSSL for unforeseeable absences, the employer must provide a written policy that contains procedures for the employees to follow in providing the notice. Failure to maintain and distribute a written policy with this information will prohibit an employer from denying PSSL to an employee based on non-compliance with such a policy.

## Can Employers Require Employees to Provide a Medical or Other Documentation?

When an employee's PSSL absence spans more than three consecutive work days, an employer may require the employee to provide reasonable documentation that the absence was for a covered purpose. However, employers can only take advantage of this provision if they have notified their employees in writing of the requirement in advance of the employee's use of PSSL.

Notably, the Act states that the above more than three consecutive work days requirement for documentation does not apply when the employee's use of PSSL occurs within two weeks prior to an employee's final scheduled day of work before termination of employment

## What Notice Must Employers Provide?

The Act is silent on any notice or posting requirements that employers must follow. We expect this information to be included in forthcoming regulations released by the state in advance of the July 1, 2018 effective date.

## What Records Must Employers Maintain?

The Act is silent on any recordkeeping requirements that employers must follow. We expect this information to be included in forthcoming regulations released by the state in advance of the July 1, 2018 effective date.

## What Can Employers Do if They Suspect Employee Abuse of Their Sick Leave Rights?

If an employee is committing fraud or abuse by engaging in an activity that is not consistent with allowable purposes for PSSSL, an employer may discipline the employee, up to and including termination of employment for misuse of sick leave. In addition, if an employee is exhibiting a clear pattern of taking PSSSL on days just before or after a weekend, vacation, or holiday, an employer may discipline the employee for misuse of PSSSL, unless the employee provides reasonable documentation that the leave has been used for a proper purpose. The Act relatedly states that PSSSL cannot be used as an excuse to be late for work without an authorized purpose.

## Must Unused Sick Time Be Paid Upon Employment Separation?

No, employers are not required to pay employees for earned, unused sick and safe leave upon termination or other separation of employment. However, when there is a separation from employment and the employee is rehired within 135 days of separation by the same employer, previously accrued, unused PSSSL must be reinstated.

## What Should Employers Do Now?

Rhode Island employers should take steps now to ensure that they will be able to achieve full compliance with the Act by its near certain July 1, 2018 effective date. These are among the actions to consider:

- Review existing sick leave policies and either implement new policies or revise existing policies to satisfy the Act.
- Review policies on attendance, anti-retaliation, conduct, and discipline for compliance with the Act.
- Monitor the Rhode Island Department of Labor and Training website for information on the Act, including proposed and final regulations.
- Train supervisory and managerial employees, as well as HR, on the new 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.

If you would like further information, please contact [Joshua D. Seidman](#) at [jseidman@seyfarth.com](mailto:jseidman@seyfarth.com), or [Tracy M. Billows](#) at [tbillows@seyfarth.com](mailto:tbillows@seyfarth.com).

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