

Management Alert



If Pain, Yes Gain—Part VI: Paid Sick Leave Temperature Rises After Election Day

By Joshua D. Seidman and Anne S. Bider

Entering Election Day, four jurisdictions—the state of Massachusetts, Oakland, CA, and Trenton and Montclair, NJ—presented mandatory paid sick leave ballot initiatives to their constituents. After the polls closed, paid sick leave took home a clean sweep as voters approved each of the four respective initiatives.

The four approved ballot initiatives continue what has been an extremely active year for paid sick leave laws in the United States. Including the four approved ballot initiatives, there are now 20 mandatory paid sick leave laws throughout the country. Fifteen of these laws have either gone into effect or been enacted/approved this year.¹

Notably, yesterday's vote saw Massachusetts join Connecticut and California as the only states in the country with mandatory paid sick leave laws at the statewide level. As the name suggests, the California "Healthy Workplaces, Healthy Families Act of 2014" also surfaced in 2014 (please see our earlier post on the [California](#) paid sick leave law). In addition, since January 1, 2014, paid sick leave ordinances have gone into effect in Portland, OR, SeaTac, WA,² Jersey City, NJ, New York City, and Newark, NJ (please see our earlier posts on the [Jersey City](#), [New York City](#), and [Newark](#) paid sick leave laws). Furthermore, since July 2014 paid sick leave ordinances have been enacted in Eugene, OR, the aforementioned state of California, and Passaic, East Orange, Paterson and Irvington, NJ.³

Paid Sick Leave Law Details from Election Day

Massachusetts

In Massachusetts, voters approved a ballot measure requiring employers with 11 or more employees to provide up to 40 hours of paid sick leave per year. Employers with less than 11 employees must provide up to 40 hours of unpaid sick leave.

Under the measure, which is set to take effect July 1, 2015, full-time and part-time employees will earn one hour of sick time for every 30 hours worked and may begin using accrued sick time the 90th day after hire. Employees may not earn or use more than 40 hours of sick time per calendar year, but may carry over any unused and accrued sick time from one year to another. The proposed law does not require employers to pay employees for unused sick time upon separation from their employment.

The measure specifies that employees may use sick time "(1) to care for a physical or mental illness, injury or medical condition affecting the employee or the employee's child, spouse, parent, or parent of a spouse; (2) to attend routine medical appointments of the employee or the employee's child, spouse, parent, or parent of a spouse; or (3) to address the effects of domestic violence on the employee or the employee's dependent child." If an employee uses more than 24 consecutive hours of sick time, the employer may require certification of the need for sick time. Failure to receive certification does

not, however, permit employers to withhold sick time pay or prevent employees from taking sick time. Moreover, the initiative requires only that employees make a “good faith effort” to notify employers in advance if the need for sick time is foreseeable.

As with many employee entitlement laws, the proposed law prohibits employers from retaliating against employees who exercise or attempt to exercise their sick time rights. The Attorney General will be responsible for enforcement of the proposed law, using the same procedures applicable to other state wage and hour laws. In addition, the proposed law gives employees a private right of action to sue for enforcement.

The proposed law sets forth only the minimum guarantees that employers must provide, does not override more generous sick time policies, and can be satisfied by existing paid sick time policies. The crediting of existing paid sick time against the state law requirements may present a wrinkle for unionized employers, to the extent that the crediting determination requires an interpretation of a sick pay provision in a collective bargaining agreement (“CBA”). Such provisions are frequently convoluted and complex, and federal labor policy preempts claims whose merits can be determined only by interpretation of a CBA. Claims for sick pay under the Massachusetts statute may be defeated by what has become known as “301 preemption,” referring to Section 301 of the Labor Management Relations Act (29 U.S. Code § 185).

Trenton and Montclair, NJ

In New Jersey, voters also approved paid sick leave ballot initiatives in two municipalities—Trenton, the state’s capital, and Montclair—making them the seventh and eighth such laws in the state after Jersey City, Newark, Passaic, East Orange, Paterson, and Irvington. Like the laws in Passaic, East Orange, Paterson, and Irvington, the Trenton and Montclair laws largely follow their Newark counterpart, the Newark “Sick Leave for Private Employees” Ordinance. The Newark ordinance requires employers with 10 or more employees to provide one hour of paid sick time for every 30 hours worked by the employee, up to 40 hours (i.e. five days) of paid sick leave per year. On the other hand, while smaller employers must still allow employees to accrue paid sick leave at the same rate, they need only offer up to 24 hours (i.e. three days) of paid sick leave per year.

Both the Trenton and Montclair ordinances that gave rise to the ballot initiatives state that the laws will, under most circumstances, become effective 120 days after enactment. In Trenton, the effective date is currently scheduled for March 4, 2015. In Montclair, the effective date will be known once the election results are certified. We are continuing to monitor these laws and will be sure to notify you once the Montclair date is set and as the two effective dates approach.

Oakland, CA

On Tuesday, voters in Oakland continued California’s hot paid sick leave run when they approved a measure mandating Oakland employers to begin providing their employees with paid sick leave on March 2, 2015.

Although, as noted above, California recently enacted a statewide paid sick leave law, the Oakland law is significant because it imposes greater restrictions on employers than does the statewide law. For example, the California statewide law allows employees to accrue paid sick days at the rate of one hour for every 30 hours worked, up to 24 hours (i.e. three days) of paid sick leave per year. While the Oakland law will impose the same accrual rate as the statewide law, Oakland employers of all sizes will be responsible for providing their employees with substantially more annual paid sick leave. Employers with 10 or more employees must allow their employees to earn up to 72 hours (i.e. nine days) of paid sick leave per year, and smaller employers must offer up to 40 hours (i.e. five days) of paid sick leave per year.

How the Approved Ballot Initiatives Compare to Preexisting Paid Sick Leave Laws

The amount of paid sick leave that will soon be available to workers covered by the four approved ballot initiatives falls squarely within the range of minimum hours employers must provide annually for their employees to use under the pre-Election Day 2014 paid sick leave laws. For instance, the 72-hour requirement in Oakland is tied for the largest such burden imposed on employers in any jurisdiction around the country that has a mandatory paid sick leave law. Only San Francisco and Seattle have a similar requirement. The 24-hour requirement in Trenton and Montclair is tied with a number of other municipalities, including Washington DC, the state of California, and Newark, Passaic, East Orange, Paterson, and Irvington, NJ, for imposing the smallest such burden on employers.

It is also instructive that each of the four ballot initiatives will enforce a 40-hour annual paid sick leave burden on certain employers because across the various laws the most common minimum annual amount of paid sick leave employers must offer employees is 40 hours. In fact, excluding the statewide California and SeaTac, WA laws, every other paid sick leave law enforces a 40-hour annual requirement on at least some employers depending on the size of their workforce.

Additionally, the Massachusetts statewide paid sick leave measure contains provisions that in many respects go beyond that of its predecessor statewide bills in Connecticut and California. For instance, the Connecticut paid sick leave ordinance only applies to employers that have 50 or more employees and perform services in certain industries. By comparison and as stated above, the Massachusetts law will apply to employers with 11 or more employees and is not restricted by particular industries. Moreover, while the California paid sick leave law applies to all employers regardless of the size of their workforce, the law allows employers to limit an employee's use of paid sick days to 24 hours per year. As noted earlier, Massachusetts employers will be required to provide employees with at least 40 hours of paid leave per year.

What This Means For Employers

Employers with operations in Massachusetts, New Jersey and California must be aware of the four approved ballot initiatives, whether they apply to the employer's business, the requirements they place on employers, and when they are scheduled to go into effect. It is also particularly important for employers in California and New Jersey to understand that they could be subject to multiple intrastate paid sick leave laws depending on what cities they operate out of.

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¹ The five paid sick leave laws that have been in effect since before 2014 are: 1) San Francisco, CA; 2) Washington DC; 3) the state of Connecticut; 4) Seattle, WA, and 5) Long Beach, CA. According to the Long Beach, CA ordinance, it only applies to "hotel employer[s]."

² According to the SeaTac, WA paid sick leave ordinance, it only applies to "Hospitality or Transportation Employers."

³ A paid sick leave law was also enacted in San Diego, CA in August 2014. However, last month the San Diego city council voted to place the measure on the June 2016 ballot and let voters decide measure's fate.

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