

One Minute Memo®



If Pain, Yes Gain — Part IV: Passaic Passes Paid Sick Time Ordinance

By Christopher Lowe and Joshua D. Seidman

Following the lead set by Jersey City and Newark, on September 2, 2014, the Passaic City Council unanimously passed its own mandatory paid sick leave ordinance. If Mayor Alex Blanco signs the ordinance as expected, it will go into effect 120 days after the enactment date,¹ at which time Passaic will become the eleventh municipality in the country to have enacted such a law.

The *ordinance* closely follows its Newark counterpart, the Newark “Sick Leave for Private Employees” Ordinance. For instance, like Newark, the Passaic ordinance requires employers with 10 or more Passaic-based 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 employers with fewer than 10 employees still must provide one hour of paid sick time for every 30 hours worked by the employee, they need only offer up to 24 hours (i.e. three days) of paid sick leave per year. Notably, employers with paid leave policies, such as PTO, equal to or more generous than the ordinance’s requirements need not offer additional paid time off, provided that such paid time can be used under the same circumstances as time under the ordinance.

For all employers, a person is deemed an “employee” under the law if he or she is a full-time, part-time, or temporary employee who works in Passaic for at least 80 hours per year. Employees begin to accrue paid sick time on their first day of employment, or when the ordinance goes into effect for existing employees, and can begin using accrued sick time starting on the 90th day following the start of his or her employment, or on the 90th day following the effective date of the ordinance for existing employees. In terms of accrued, but unused paid sick time, the Passaic ordinance is identical to that of Newark—employees can carry over up to 40 hours of accrued, but unused paid sick time to the next year,² or be paid out by their employer for any unused time at the end of the calendar year.

The ordinance allows either an individual claiming harm under the earned sick leave law or the Passaic Department of Human Services, Division of Health (on the employee’s behalf) to file a complaint in the Passaic Municipal Court, seeking a) a fine of up to \$2,000, and b) payment of restitution in the amount of any unlawfully withheld paid sick time. Claimants are also entitled to any other relief as deemed appropriate by the Court, including restitution, reinstatement, and injunctive or declaratory relief.

When the ordinance goes into effect, employers, even those that have a PTO or other paid leave policy equal to or more generous than the ordinance’s requirements, must (1) provide individual written notice to employees and (2) display a poster regarding employees’ right to sick time in “a conspicuous and accessible place” in each business establishment where employees are employed. Individual written notice must be given to employees at the commencement of their employment or as soon as practicable if the employee is already employed.

As noted above, the Passaic ordinance is the third of its kind in the State of New Jersey. On January 24 and June 21, 2014 respectively, the Jersey City and Newark paid sick time ordinances went into effect. For more information regarding the Jersey City and Newark laws, please see our earlier posts [here](#) and [here](#).

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¹ The Passaic ordinance does not apply to employees covered by a collective bargaining agreement ("CBA") to the extent that its requirements are expressly waived in the CBA in clear and unambiguous terms. However, if no such express waiver exists, the ordinance goes into effect for employees covered by the CBA upon the CBA's expiration.

² Even if an employee's accrued, but unused paid sick time carries over to the next year, employers are still not required to provide more than 40 sick leave hours in any single year.

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