

Seattle Requires Employers to Provide Paid Sick Leave

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September 26, 2011

The Seattle City Council has passed a [paid sick leave mandate](#) that requires employers to provide paid leave for employees to use for personal and family member illness, as well as certain safety concerns. The new ordinance takes effect next year on Sept. 1, 2012. Employers who already offer paid sick leave or paid time off still need to review, and likely revise, their policies. New businesses have an additional year to comply in some circumstances. Seattle employers should use the next 11 months to make sure their policies and practices are in compliance.

Detailed provisions related to accrual rates, carry-over, and other aspects of use and administration are included in the ordinance. There are required postings and record keeping. Employers not in compliance may be subject to investigation and fines by the Seattle Office for Civil Rights; however, the ordinance does not provide for a private right to bring a lawsuit against non-compliant employers.

Seattle joins San Francisco, Milwaukee, Washington, D.C., and the entire state of Connecticut, all of which have similar requirements either in effect or set to take effect soon. Many other cities are considering similar legislation.

Key aspects of the Seattle ordinance include:

Amount of leave required: The ordinance includes an exemption for “micro-businesses,” which are businesses with fewer than five employees. All other employees working in Seattle (including part-time and temporary employees) are entitled to accrue the leave based on the company size. The only exception is for individuals providing services pursuant to a work-study agreement. The size of a business is determined by total FTEs (full-time equivalent employees, based on a 40-hour work week), regardless of where those employees work. For example, if the employer has 250 FTEs but only 25 work in Seattle, the 25 employees in Seattle are entitled to earn paid sick days at the Tier Three accrual rate (see below).

Accrual rate: There are three tiers. The accrual rates and annual caps differ based on the size of the employer.

Tier One Employers (5 to 49 FTE): Employees accrue at least one hour of sick leave for every 40 hours worked, up to a minimum 40-hour annual cap (five days).

Tier Two Employers (50 to 249 FTE): Employees accrue at least one hour of sick leave for every 40 hours worked, up to a minimum 56-hour annual cap (seven days).

Tier Three Employers (Over 250 FTE): Employees accrue at least one hour of sick leave for every 30 hours worked, up to a minimum 72-hour cap (nine days).

Note: For non-exempt employees the accrual is based on hours worked. For exempt employees, the accrual is based on their full- or part-time status.

Carry-over and caps: Accrued sick leave (up to the cap) carries over into the next year. However, unless the employer allows it, employees are not entitled to use more leave than their capped amount in any given year. A practical effect of these provisions is to provide for a “carried over” sick leave balance at the start of a new year which is available to be used before the employee may have worked enough hours to have accrued enough sick leave to cover absences early in the year.

Cash-outs: Accrued but unused sick leave is not required to be paid out upon separation of employment.

Permitted uses of paid sick leave.

The ordinance mandates leave for situations that go beyond ordinary sick leave. The ordinance repeatedly uses the term “paid sick and safe leave.”

Employees may use this accrued leave:

- ❖ For the employee’s own illness or injury, diagnosis, treatment, and preventative care.
- ❖ For the health needs of an employee’s child, spouse, domestic partner, parent, parent-in-law, or grandparent (in coordination with the Washington Family Care Act).
- ❖ To deal with the consequences of domestic abuse, sexual assault, or stalking (in coordination with Washington’s Domestic Violence Leave provisions).
- ❖ If a place of business, or a child’s school or place of care, is closed for public health emergency.

Existing PTO and other paid leave: Employers who already provide paid sick leave or other paid time off (“PTO”) do not have to provide additional leave as long as their sick leave or PTO policies or practices meet the minimum accrual rates prescribed by this ordinance, and employees have access to the paid leave for the same reasons and in the same manner. Thus, existing sick leave PTO policies will need to be revised to mimic features of this ordinance for covered Seattle workforces.

Waiting period for new employees to access leave: Leave begins accruing immediately upon hire, but employees are not entitled to access the leave until 180 days after the commencement of employment.

Requiring verification: Employers may require documentation of illness if three consecutive days of leave is used. If the employer does not offer health insurance, the employer and the employee must share the expense of obtaining such documentation. It is not clear how these verification provisions of the ordinance will be reconciled with

different rules under the FMLA related to shorter absences and healthcare provider certifications of serious health conditions.

Collective bargaining agreements: The new sick leave mandate does not apply to employees covered by a collective bargaining agreement provided the ordinance's requirements are expressly waived in the CBA. Employers with union contracts will need to negotiate and document such waivers if they do not want the features of this ordinance automatically layered on top of the union contract provisions related to sick leave or PTO.

Compliance assistance: As the effective date of this ordinance approaches (Sept. 1, 2012), we will provide additional advisories and briefings, which will include strategies for compliance. In the meantime, do not hesitate to contact us for more information.

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