

Connecticut to Become First State to Require Paid Sick Leave for Service Workers

June 23, 2011

On June 8, Governor Daniel P. Malloy (D) signed into law “An Act Mandating Employers Provide Paid Sick Leave To Employees” (the Act), which requires employers to provide paid sick leave to their service workers. The Act takes effect on January 1, 2012 and provides for notice requirements, penalties against employers, and protection against retaliation for workers who complain about violations.

Coverage

The Act broadly applies to “employers,” which is defined to mean any person, business, or other entity that employs 50 or more individuals in the state of Connecticut in any one quarter in the previous year. The Act does not extend to manufacturing companies or any nationally chartered organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

The Act covers “service workers,” who are defined as individuals in certain occupations who are paid on an hourly basis or who are not exempt from the Fair Labor Standards Act (FLSA) minimum wage and overtime provisions. Examples of “service workers” under the Act include the following: Food Service Managers; Pharmacists; Registered Nurses; Home Health Aides; Nursing Aides, Orderlies, and Attendants; Medical Assistants; Security Guards; Food Preparation Workers; Waiters and Waitresses; Janitors and Cleaners, except Maids and Housekeeping Cleaners; Baggage Porters, Bellhops, and Concierges; Cashiers; Retail Salespersons; First-Line Supervisors of Sales Workers; Secretaries and Administrative Assistants; Insurance Claims and Policy Processing Clerks; Office Clerks; Office and Administrative Support Workers; Bus Drivers; and Taxi Drivers and Chauffeurs. Independent contractors, temporary workers, and day laborers are not considered “service workers” for purposes of the Act.

Requirements and Penalties

The Act will require employers to provide paid sick leave annually to each of the employers’ service workers in the state of Connecticut. The paid sick leave begins to accrue on January 1, 2012 or, for a service worker hired after January 1, 2012, on the service worker’s date of employment. A service worker will not be entitled to use the accrued paid sick leave, however, until he or she has completed 680 hours of employment after January 1, 2012, unless the employer agrees to an earlier date. Also, a service worker will not be entitled to use the accrued paid sick leave if he or she did not work an average of 10 or more hours per week for the employer in the most recent complete calendar quarter.

Under the Act, service workers will earn one hour of paid sick time for every 40 hours worked, up to a maximum of 40 hours per calendar year. Service workers will be entitled to carry over up to 40 unused accrued hours of paid sick leave to the following calendar year, but will not be permitted to use more than 40 accrued hours in any year.

Any employer who is found by the Labor Commissioner, by a preponderance of the evidence, to have violated the Act will be liable to the Department of Labor for a civil penalty of up to \$100 for each violation.

Compliance

An employer will be deemed to be in compliance with the Act if the employer offers any other paid leave that is accrued in total at a rate equal to or greater than one hour of paid sick leave for each 40 hours worked. "Other paid leave" may include paid vacation, personal days, or other paid time off. Paid sick leave may be used by the service worker for the following:

- The service worker's illness, injury, or health condition; the medical diagnosis, care, or treatment of the service worker's mental or physical illness, injury, or health condition; or the service worker's preventive medical care.
- The service worker's child's or spouse's illness, injury, or health condition; the medical diagnosis, care, or treatment of a child's or spouse's mental or physical illness, injury, or health condition; or preventive medical care for the child or spouse.
- Where a service worker is a victim of family violence or sexual assault, for medical care or psychological or other counseling for physical or psychological injury or disability, to obtain services from a victim services organization, to relocate due to family violence or sexual assault, or to participate in any civil or criminal proceedings related to or resulting from such family violence or sexual assault.

Employers will be required to pay each service worker for paid sick leave at a pay rate equal to the greater of either (1) the service worker's normal hourly wage or (2) the minimum fair wage rate under Section 31-58 of the Connecticut General Statutes.

The statute is not at all clear as to whether the normal hourly wage should include all components (such as tips, bonuses, and commissions) in the regular hourly rate. We will have to await guidance from the Connecticut Department of Labor on this issue. If the service worker's hourly wage varies depending on the work performed, the "normal hourly wage" will mean the service worker's average hourly wage in the pay period prior to the one in which the service worker used paid sick leave.

Antiretaliation Provision

An employer is prohibited from discriminating or retaliating against an employee if the employee requests or uses paid sick leave either in accordance with the Act or in accordance with the employer's own paid sick leave policy, or if the employee files a complaint with the Labor Commissioner alleging that the employer violated the Act. Any employer who is found by the Labor Commissioner, by a preponderance of the evidence, to have retaliated against an employee will be liable to the Department of Labor for a civil penalty of \$500 for each violation.

The Labor Commissioner may award the employee the payment for used paid sick leave, reinstatement to the employee's previous job, payment of back wages, and reestablishment of employee benefits to which the employee otherwise would have been entitled had the employee not been subject to retaliation.

Employer Notice Requirements

At the time of hiring, employers must provide the following notice to each service worker:

- The service worker's entitlement to sick leave, the amount of sick leave provided, and the terms under which sick leave may be used.
- That retaliation by the employer against the service worker for requesting or using sick leave for which the service worker is eligible is prohibited.
- That the service worker has a right to file a complaint with the Labor Commissioner for any violation of the Act.

An employer may comply with the notice requirements by displaying a poster in a conspicuous place, accessible to service workers, at the employer's place of business that contains the required information in both English and Spanish.

Employee Notice Requirements

An employer may require a service worker to provide up to seven days of advance notice if the need for paid sick leave is foreseeable. If the service worker's need to use paid sick leave is not foreseeable, the employer may require the service worker to provide notice "as soon as practicable."

For paid sick leave that lasts three or more consecutive days, an employer may require a service worker to provide "reasonable documentation" that the leave is being taken for the purposes permitted by the Act. For paid sick leave taken for the service worker's or the service worker's child's or spouse's illness, injury, or health condition; medical diagnosis, care, or treatment; or preventive care, documentation signed by the healthcare provider who is treating the service worker, or the service worker's child or spouse, shall be considered "reasonable documentation." For sick leave taken by a service worker who is the victim of family violence or sexual assault, a court record or documentation signed by a volunteer working for a victim services organization, an attorney, a police officer, or some other counselor involved with the service worker shall be considered "reasonable documentation."

Impact on Employers

The Act allows employers to provide more paid sick leave than is required under the Act, and it does not diminish any rights provided to any employee or service worker under a collective bargaining agreement. However, the Act also does not preempt or override the terms of any collective bargaining agreement effective prior to January 1, 2012; presumably, then, if a collective bargaining agreement provides for fewer sick days than the statute requires, the collective bargaining agreement will control and preempt any claim under the statute.

Unless an employee policy or collective bargaining agreement provides for the payment of accrued fringe benefits upon termination, service workers will not be entitled to payment of unused accrued sick leave upon termination of employment. As a practical matter, however, employers will be required to

adjust their current Paid Time Off (PTO) policies to provide, as a base minimum, the statutory requirements under the Act.

Since the Act does not apply to employees who work on average less than 10 hours a week in a given calendar quarter, the Act will likely not apply to most light part-time workers or event workers.

If you have any questions or would like more information on the issues discussed in this LawFlash, please contact any of the following Morgan Lewis attorneys:

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