

Employer's Guide to Connecticut's Paid Sick Leave Law

January 2012

Overview

Effective January 1, 2012, Connecticut became the first state to require paid sick leave. Public Act No. 11-52. Employers should make sure their handbooks, and policies, including those covering leaves of absence, paid time off, attendance, and medical documentation procedures, all comply with the new law.

Covered Employers

Under the law, most employers of 50 or more employees within the state are covered. More specifically, an employer who lists 50 or more employees in its Quarterly Earnings Report filed with the Connecticut Department of Labor ("Department") during any quarter in the previous calendar year is covered. For companies with multiple unemployment registration numbers, each such number is evaluated separately. Therefore, if one employer has two unemployment registration numbers and files separate Quarterly Earnings Reports for each, each reporting unit is evaluated separately against the 50 employee threshold. If unit A reports 75 employees and unit B 30; only unit A is covered.

Once an employer is covered it must determine if any of its locations ("establishments") are exempt. Employer "establishments" listed in sectors 31, 32 or 33 of the North American Industry Classification System are exempt from the Act. Although manufacturing companies initially presumed they were completely excluded from the Act's coverage, along with nationally

charted organizations exempt from taxation under section 501(c)(3) of the tax code, it turns out this thinking was premature.

Instead, because the Department has taken the position that each single physical location of a company must separately qualify for the exemption, a manufacturing company with a manufacturing plant, and a separately located warehouse would be exempt from the law at its plant, but covered by the law at its warehouse. Further complicating matters, where both buildings are located on a single campus, if the primary activity on the campus is manufacturing, all buildings are exempt. If not, then even manufacturing buildings must comply with the law. Corporate offices of manufacturing companies, separate from their manufacturing sites, are also covered by the law.

Covered Employees

Once a covered employer determines it has covered locations, it must then determine which employees at the covered location are entitled to paid sick leave. Employees who meet the definition of “service worker” are entitled to paid sick leave under the law. “Service workers” are hourly paid employees, or those exempt from the minimum wage and overtime provisions of the Fair Labor Standards Act, who primarily work in specifically defined occupational codes defined in the Act. Generally, non exempt employees engaged in health services, food services, security, hospitality, retail, child care, administration, and information technology will be covered. Day or temporary workers are not considered “service workers.” Part-timers are, as long as they averaged 10 hours or more per week during the last complete calendar quarter prior to accruing or taking the leave.

When determining what jobs fall within the “service worker” definition do not rely on job titles alone. Just because a title is not listed does not mean the job is not covered. Employers

must read through the job descriptions to see if the duties are covered, even if the title is not listed. Also, employees who work in more than one job are covered if they are primarily engaged to perform work in a covered classification.

Once you determine a job is covered, an employee must complete 680 hours of actual work, not including paid time off, before being able to take accrued sick leave, unless agreed to by the employer. Sick time, however, accrues during the 680 hour period. The employee must also have averaged at least 10 hours of work per week in the most recent complete calendar quarter in order to take time off. The counting of the 680 hours began on January 1, 2012, or upon the date of hire, whichever is later.

Employees who leave the company prior to completing 680 hours and then return are considered to have had a break in service and any hours worked before the break must be counted toward the 680 hour rule upon the employee's rehire. This is true regardless of how long the break was. However, any sick time accrued prior to the break is forfeited and the actual accrual of sick time begins anew upon rehire.

Seasonal employees, like school bus drivers, are treated as part-time employees so that their summer break is not considered a "break in service" and they do not forfeit time accrued prior to the school shutdown period once school resumes in the Fall.

Employees covered by a collective bargaining agreement shall become eligible under the Act at the expiration of their current agreement. Any labor agreement beginning on or after January 1, 2012 must comply with the Act.

How Much Leave Must Be Provided

Covered employers must allow their "service workers" to accrue one (1) hour of paid sick leave for each forty (40) hours worked, to a maximum of forty (40) hours per calendar year.

Sick leave is to be accrued in not less than one hour increments. “Service workers” must be allowed to use their leave in one hour increments, and may not use it in less than one hour increments, unless permitted by the employer. An employee can take a maximum of 40 hours of paid leave each calendar year.

Employees must be paid their normal hourly rate for any paid time off. Excluded from the definition of normal hourly rate are overtime and commissions. Tipped employees whose normal hourly rate is below the normal minimum wage must be paid the statutory minimum wage for non-tipped employees.

In lieu of taking sick time off, the company and employee may agree to permit the employee to work additional hours, in the same or subsequent pay period, equal to the number of hours absent, without reducing the employee’s sick leave bank. Allowing an employee to work more hours in a subsequent pay period in order to preserve hours in the sick leave bank, does not excuse the employer from any overtime obligations it may have if the employee works more than 40 hours in the subsequent period. Employers may also permit employees to donate unused accrued time to another employee.

Employers who already offer paid time off for the purposes outlined in the Act, which accrues at the same rate and is at least equal to that required by the Act, need not provide additional sick leave by virtue of the new law.

Carryover and Cash-Out Rules

Employers must permit their “service workers” to carry accrued but unused hours (up to 40) into the following calendar year, but no more than 40 hours of paid leave can be taken in any calendar year. Employers may permit “service workers” to voluntarily take a cash-out at year end for any accrued, but unused leave time, instead of carrying those hours forward. Employers

may not, however, require involuntary cash-outs. Accrued, but unused sick leave need not be paid out upon termination, regardless of the reason for separation.

PRACTICE POINTER: The carryover rules are more complex than the above explanation implies. The simplest way to comply with the law is to front load each employee's sick leave bank with at least five PTO days on January 1 each year. This way you have complied up front with the current year accrual requirement, and have no carryover issues to deal with. This is because the employee is not entitled to more than five days for the entire year and you will have met that requirement on January 1. Therefore, there is no need, or right, to carry over days from the prior year for purposes of the law.

If you decide to not front load PTO, you cannot have a year-end "use it or lose it" PTO policy. For instance, if you allow an employee to accrue time by law over the course of the year and at the end of the year they have accrued 5 days, and used 2, you must allow them to carry over 3, because as of January 1 they have no other PTO in their bank.

Further complicating the issue are instances where employers accrue over the course of the year but do so at a more generous rate than required by law. For example, if an employee accrues 10 days per year and has taken 6 as sick leave, 3 as vacation, and has 1 left at year-end, the employer need not let the employee carry over the 1 day left as the employee has already used at least 5 days for sick leave purposes that year. If, however the employee has taken 6 vacation days, 3 sick leave days and has 1 day left, that 1 day is eligible for carryover, because the employee has not used his full allotment of sick time in the current year. This forces employers to record the reason for each PTO day taken, and flies in the face of why most employers instituted PTO programs, which was to eliminate such recordkeeping and allow

employees to take the time off for any reason. To overcome this problem, employers can decide to allow all unused PTO to be carried over.

Please note many employment attorneys believe the law does not require the carryover of any PTO once an employee uses 5 days for any purpose, but the Department has interpreted the statutory language in a manner that requires the approach outlined above. This will most likely be litigated and eventually resolved by the courts.

What Can the Leave Be Used For

Sick Leave can be taken for the service worker's own illness, injury, health condition, medical diagnosis, treatment, or preventative care, as well as that of a child's, or spouse's. Also, service workers who are the victim of family violence or sexual assault are permitted time off for medical care, to obtain victim services, relocate, or participate in legal proceedings related to the violence. Any unpaid leave provided under Conn. Gen. Stat. § 31-51ss (leaves for victims of family violence) is in addition to leave under this Act, and the two leaves are not required to be taken concurrently.

Employee Notice Requirements

Employee notice of up to seven (7) days is required, if foreseeable, and if not then notice must be given as soon as practicable. Employees who could have provided required notice and failed to do so may be denied paid sick leave and can be disciplined if they take the time off. Employers may require appropriate documentation for leaves of three (3) or more consecutive work days, but do not have the right to seek clarification or additional opinions as permitted under the FMLA.

Retaliation Provisions

Covered employers may not discriminate or retaliate against **any** employee, not just “service workers,” for taking sick leave, including leave permitted by policy, or for filing a complaint with the Labor Department. Civil fines of \$100 per violation may be assessed where employees are not given their statutory rights, and \$500 for retaliatory conduct. In addition, employees are entitled to make whole relief for any violations.

Complaint Process

Complaints may be filed with the Connecticut Department of Labor. Employees covered by a collective bargaining agreement may also pursue a separate claim under the grievance procedure in their labor agreement.

If a formal hearing is conducted, the Labor Commissioner can order the employer to pay civil penalties. Aggrieved employees are entitled to reinstatement, back pay, pay for the use of sick leave, and reestablishment of benefits. Parties may appeal the Commissioner’s final decision to Superior Court, but have no other private right of action.

Employer Informational and Posting Requirements

New employees must be provided notice of their entitlement to sick leave, the amount of leave they are eligible for, and the terms under which the leave may be used. They must also be informed of the anti-retaliation provisions of the Act and the right to file a complaint with the Labor Commissioner. Notices must be provided in English and Spanish. Posters available from the Department satisfy this requirement.

Helpful Links

Public Act 11-52-[Download Here](#)

CT DOL Guidance-[Download Here](#)

CT DOL Paid Sick Leave Poster-[Download Here](#)

CT DOL Paid Sick Leave Poster-Spanish-[Download Here](#)

North American Industry Classification System-[Download Here](#)

List of covered Service Worker Titles and Descriptions- www.bls.gov/soc

For more information contact scott@schaffer-law.com or (860) 216-1965.

www.schaffer-law.com