



Washington Safe and Sick Leave to Take Effect on January 1, 2018

By Darren Feider

Employers that have employees located in Washington should be aware of the new mandatory safe and sick leave law, which takes effect on January 1, 2018. Several Washington cities – Seattle, SeaTac, Tacoma and Spokane – already have mandatory safe and sick leave laws in place, but the citizens of Washington voted to institute a state-wide safe and sick leave in November 2016. Washington now joins five other states with similar mandatory sick leave laws, California, Connecticut, Massachusetts, Oregon and Vermont. What you need to know about the law is covered below.

Coverage

The law applies to all employers who have Washington employees. There is no carve out for small employers, union employers, or out-of-state employers. If an employer has an employee in Washington, it is covered even if it is located elsewhere. The law applies to full-time, part-time, casual, seasonal or temporary employees. Every type of employee is covered. There are no exclusions from coverage.

Leave Accrual

Starting January 1, 2018, all Washington employees will begin to accrue one hour of sick leave for every 40 hours worked. For each hour used, the employee must be paid his or her normal hourly compensation. For ease of administration, employers may front load the paid leave if the frontloaded amount meets the requirements of the law. Of course, front loading poses an accrual problem because entitlement turns on hours worked, which is difficult to project in the future. Front loading could be costly if an employee takes leave immediately after receiving it and then his or her employment is terminated.

Universal paid time off (PTO) programs are acceptable if they meet the accrual and usage requirements of the law. If an employee uses PTO for other purposes (like vacation), it appears employers do *not* have to provide additional leave.

Leave accrual begins on the first day of employment after January 1, 2018, but the employer can restrict usage of the leave until the 90th calendar day after the start of accrual. Leave accrual is not capped, meaning there is no limit on the amount of paid sick leave hours an employee may accrue in one year. Overtime hours should be counted toward paid leave accrual. Thus, the longer an employee works the more he or she will be entitled to use.

Leave Usage

Leave may be used in increments as little as one hour. Employers may not impose a mandatory full day or partial day usage. Various employer groups are negotiating with the Department of Labor & Industries to issue an interpretive rule amending one-hour increment usage to full-day or at least half day increments. That has not yet occurred. The accrued leave carries over from year-to-year, but employer can limit the carryover to 40 hours of paid leave. Thus, employer “use it or lose it” policies are unenforceable with sole exception of 40-hour carryover cap.

An employee may take accrued leave for his or her or a family member’s illness, or injury, to receive medical care, treatment, diagnosis or preventative medical care. That means an employee

may stay home on protected leave to care for a sick child, spouse, sibling or parent. Leave can also be used for domestic violence or closure of a business or school by a public health official.

Leave Requests and Certification

Employees must provide “reasonable notice” of an absence from work if such notice does not interfere with the use of the paid leave. Such a notice requirement must be in the employer’s written policies or handbook. If an employee will be absent for more than 3 days he or she may be required to provide verification that leave was used for either safe or sick purposes. Employers are not allowed to obtain the details of the treatment or safety event – only verification that it occurred. And, obtaining such verification cannot be unduly costly for employees.

Leave Accrual Notice

An employer is required to provide employees with written and regular written notice of the amount of paid safe and sick leave available. Generally, such information may be memorialized on a pay stub.

Non-Retaliation

An employer may not retaliate against an employee for using or exercising rights under the law. Thus, an employer cannot transfer, demote, terminate an employee who uses accrued leave even if such usage impacts operations. All accrued leave is protected.

Termination

At the end of employment, an employer is not required to pay out any accrued, unused leave. However, it should check its handbook to ensure that written policies do not provide for payout. If an employee is rehired within 12 months of the separation from service, the accrued leave at separation is reinstated.