

Mandatory Paid Sick Leave Law Passed in Seattle – What Can You Do Now?



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As the New Year dawns, healthcare continues to dominate the landscape. But one area that continues to plague employers that have 5 or more employees located in Seattle, is the Mandatory Paid Sick Leave Law.

Beginning September 1, 2012, the City of Seattle will require that all but the smallest employers provide paid sick leave to their Seattle employees. Sick leave mandates under the new law increase depending on the size of a company's workforce, and employees must be allowed to use the leave for their own or their family members' illnesses ("Paid Sick Leave"), as well as for certain safety-related reasons ("Paid Safe Leave").

Seattle employers should use the coming months to plan how to best structure their paid leave programs to comply with the new law. The law has posting requirements and allows complaints to the Seattle Office for Civil Rights, including recovery of damages when violations are found, but does not allow private lawsuits. Employers have an opportunity to provide comments to the City regarding the law before rules under the law are issued (see below).

Key aspects of the comprehensive new Paid Sick Leave and Paid Safe Leave ordinance include:

- **Coverage.** Employers of five or more full-time equivalent ("FTE") employees (employees working outside Seattle must be counted) are covered. Employees, including temporary and part-time employees, who work in Seattle at least 240 hours in a calendar year, must be allowed to accrue leave.
- **Waiting Period.** Leave accrues from date of hire, but employees cannot begin to take leave until 180 calendar days after date of hire.
- **Mandated Leave and Minimum Ceilings.** The amount of required leave increases with the number of FTE employees. Employers in the different tiers are required to allow their employees to accrue leave at the following minimum levels:
 - **Tier One Employers** of 5-49 FTE employees must provide at least one hour of accrued paid leave time for each 40 hours worked, up to a minimum ceiling of 40 hours per year.
 - **Tier Two Employers** of 50-249 FTE employees must provide at least one hour of accrued paid leave time for each 40 hours worked, up to a minimum ceiling of 56 hours per year.
 - **Tier Three Employers** of 250 or more FTE employees must provide at least one hour of accrued paid leave time for each 30 hours worked, up to a minimum ceiling of 72 hours per year.
- **Basis of Accrual.** Non-exempt employees accrue leave time based on hours actually worked. Exempt employees' leave accrual is based on their regular weekly schedule, up to 40 hours maximum.
- **Carryover Required; No Payout on Termination.** Mandated carryover is required for up to the same amount of leave time employers are required to allow an employee to accrue in any given year. (For instance, for employers of 49 or fewer FTE employees, up to 40 hours may be carried over.) Payout on termination is not required.
- **Special PTO Requirement for Largest Employers.** Tier Three Employers that use a "universal" paid leave program (usually referred to as "paid time off" or "PTO"), rather than dedicated sick leave, must provide more paid leave under the law than those employers with dedicated sick leave. Tier Three Employers must allow accrual of at least 108 hours of paid leave per year and allow carryover up to the same amount.

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- **Leave Use.** Leave can be used for the following purposes:
 - **Sick Leave.** Absence resulting from an employee's or a qualifying family member's illness or injury, including diagnosis, treatment and preventative care. (Qualifying family members are the same as under Washington's Family Care Act: spouse, registered domestic partner, child, parent, parent-in-law or grandparent.)
 - **Safe Leave.** Absence (1) related to domestic violence, stalking or sexual assault of an employee or qualifying family member (amount of leave allowed and qualifying family members are the same as under Washington's domestic violence leave law), or (2) due to a public health-related closure of the employee's place of business or the employee's child's school.
 - **Notice and Certification.** An employee must provide at least 10 days' notice of foreseeable leave, and must generally follow employer notice policies. Certification of leave use is limited to leaves of three or more days. When the employer does not provide health insurance, the employer must pay at least half of medical costs associated with obtaining the certification.
 - **Considerations and "To-Dos"**
 - **Opportunity for Comment to the City.** Employers have the opportunity to provide comments to and receive updates from the City of Seattle related to the implementation of the law. A FAQ is expected by the end of the year on their website, and draft rules are expected in the spring of 2012. Write to Elliott Bronstein at the Seattle Office for Civil Rights, elliott.bronstein@seattle.gov, to be included on the notification list, and to ask any questions or provide comments you have about the law.
 - **Collective Bargaining Agreements.** The ordinance allows unions to expressly waive their members' rights under the law. To avoid application of the law, employers should take steps to negotiate with their unions for a "clear and unambiguous" waiver and put it in writing.
 - **Review Sick and Related Leave Policies, Including Short-Term Disability Policies.** Employers must review policies and consider whether changes are needed to meet requirements under the new law.
 - **Special PTO Requirements.** Tier One and Tier Two Employers should make sure their PTO policies meet the requirements of the law to avoid having to provide additional paid sick and safe leave. Tier Three Employers that use a PTO program need to allow accrual and carryover of additional paid leave as described above.

Parker Smith & Feek is committed to keeping you informed. We will provide you with additional details as the rules are developed. If you have any questions in the meantime, please reach out to a member of our Benefits team.