

Connecticut's Paid Sick Leave Law

Questions and Answers

2015 Update

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Connecticut's Paid Sick Leave Law Questions & Answers

CONNECTICUT'S PAID SICK LEAVE LAW QUESTIONS AND ANSWERS

The Connecticut Paid Sick Leave law (technically, "An Act Mandating Employers Provide Paid Sick Leave to Employees") went into effect on January 1, 2012, making Connecticut the first state in the nation to pass this type of law. The law requires employers with 50 or more employees within the state (excluding most manufacturing establishments and the nationally chartered tax-exempt organizations described in the law) to provide non-exempt "service workers" with paid sick leave that accrues at a rate of one hour per 40 hours worked, to a maximum of 40 hours per year. "Service workers" are employees whose primary duties track those of the 69 federal Standard Occupational Classification System titles listed in the law. The law also prohibits covered employers from retaliating against any employee for requesting, or using paid sick leave as provided by the law or in accordance with the employer's own paid sick leave policy, or for filing a complaint against the employer for violation of the law.

In July 2011, Jackson Lewis specialists on the law developed and issued a comprehensive Question & Answer Guide to its terms. In November 2011 we updated that Guide when the Connecticut Department of Labor ("CT DOL") issued a "Guidance" interpreting certain aspects of it. This 2015 update reflects the revisions the Connecticut Legislature passed to the law (eff. 01/01/15) and the associated revisions the CT DOL made to its Guidance (which is not technically a legally binding document, but it provides insight into the CT DOL's positions on some key components of the law, which is important because the CT DOL is the agency with statutory responsibility for enforcing the law) (Appendix A).

Purpose

Q-1. What is the purpose of the paid sick leave law?

Governor Dannel Malloy's statement after the General Assembly's approval of the bill said, in part:

[T]his is good public policy and specifically, good public health. Why would you want to eat food from a sick restaurant cook? Or have your children taken care of by a sick day care worker? The simple answer is – you wouldn't. And now, you won't have to. Without paid sick leave, frontline service workers – people who serve us food, who care for our children, and who work in hospitals, for example – are forced to go to work sick to keep their jobs. That's not a choice I'm comfortable having people make under my tenure, and I'm proud to sign this bill when it comes to my desk.

Covered Employers

Q-2. Which employers must provide paid sick leave under this law? (AMENDED 2015)

The law defines "employer" as any person, firm, business, educational institution, nonprofit agency, corporation, LLC or other entity that employs 50 or more individuals in the state based on the company's payroll for the week containing October 1 annually. All part-time and full-time employees are included in this calculation; employees working at the employer's worksite who are on the payroll of a temporary staffing company are not. Employers do not need to include employees of other affiliated entities under theories of joint or integrated employment when assessing this number; however, the law prohibits termination or transfer to affiliated entities for the purpose of coming in under the 50-employee threshold.

Q-3. Are there specific exclusions from the definition of employer?

Yes. "Employer" does not include any business establishment classified in sector 31, 32 or 33 in the North American Industrial Classification System (NAICS), or any nationally chartered organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986 that provides all of the following services: recreation, child care and education. The legislative history reveals that the Section 501(c)(3) exclusion was intended to exempt YMCAs/YWCAs specifically, although it is conceivable that other organizations also may satisfy the requirements for this exclusion.

The exclusion for manufacturers extends to include all forms of manufacturing, including food, textiles, wood, petroleum, chemical, plastics, metal, machinery, motor vehicles, aerospace, computer, electronic, and miscellaneous products, provided it is the primary operation actually performed at the site. However, per the Guidance, the exclusion for manufacturing establishments extends only to the sites at which manufacturing operations are conducted (a "campus-type setting" will be considered to be one site for purposes of this analysis), and not to other locations that an employer may have in the state, such as a distribution warehouse where no manufacturing occurs. Consequently, an employer may have some facilities subject to the law and others that are not. A company in bankruptcy proceedings is not exempt from the law.

Employees Eligible for Paid Sick Leave

Q-4. Who are "service workers"?

A "service worker" is an employee engaged primarily in an occupation within one of the occupation code numbers/titles identified in the statute that are listed by the federal Bureau of Labor Statistics Standard in its Occupational Classification system (www.bls.gov/soc/), who is paid on an hourly basis or is otherwise not exempt from the federal Fair Labor Standards Act (FLSA) minimum wage and overtime requirements. (Appendix B – **AMENDED in 2015 to include the category of "Radiologic Technologists" - 29-2034.**) In determining whether an employee is a "service worker," an employer should focus on the duties primarily performed by the employee, as opposed to a specific job title. The list includes some obvious job titles, such as cashier, while excluding others that would seem to fit the definition of a service worker, such as a grocery store bagger. The list also includes some that do not seem to fit, such as pharmacists. Accordingly, employers should not assume they do or do not employ service workers without carefully reviewing the list.

As the Guidance makes clear, if an employee performs both service worker and non-service worker functions, the employee is entitled to paid sick leave if the employee spends more than half of his or her time as a service worker. According to the House hearing transcript, if an employee is transferred from a service worker to a non-service worker position, the employee "gets the sick days for that year."

Q-5. Are there employees performing the "service worker" duties who are not eligible for paid sick leave?

Employees not eligible for paid sick leave include those in positions properly classified as exempt under the federal FLSA (as opposed to under Connecticut law).

Covered employers are also not required to provide paid sick leave to "day or temporary workers," defined as those who perform work on a per diem basis or an occasional or irregular basis, for only the time required to complete the work, whether they are paid by the person for whom such work is performed or by an employment agency or temporary help service, as defined by C.G.S. § 31-129. The Guidance provides that in evaluating an individual's "per diem" status, the Labor Commissioner will consider the following factors:

- Whether the individual is being treated and acting like a per diem, e.g., does the employment reflect a traditional per diem relationship?
- Can the individual accept or refuse work at will?
- What is the individual's relationship to the employer?
- What is the structure of the assignment?

The Guidance notes that the CT DOL will evaluate an individual's "temporary worker" status based on the nature of the employee's assignment, the length of the assignment and the employee's duties.

It remains unclear whether undocumented immigrants who are service workers are entitled to paid leave.

Q-6. Are service workers who work part-time eligible for paid sick leave?

Yes, part-time service workers are eligible to accrue paid sick leave time. Note the limitation on usage of that time describe in Q-8, however.

Administration of the Paid Sick Leave Requirement

Q-7. What is the paid sick leave accrual requirement? (AMENDED 2015)

The law requires that employers provide eligible employees paid sick leave hour accrual on a yearly basis – on any 365-day cycle the company uses to calculate employee benefits, beginning on the employee's date of hire (pro-rated, if necessary) – not after a probationary or introductory period. The accrual rate must be a minimum of one hour for every 40 hours worked (actually working – this does not include vacation time and the like), in one-hour increments, to a maximum of 40 hours per year.

Q-8. What are the law's requirements for employee usage of paid sick leave time?

The law allows an employer to impose 680 hours (approximately 4 months for a 40-hour/week employee) of employment requisite to use of paid sick leave time. This is a one-time requirement, meaning that once a service worker works 680 hours for an employer, this threshold for usage is satisfied. This is so even if the individual leaves employment and returns at a later date (in which circumstance the employee would lose all accrued hours, but not the hours worked toward the usage threshold).

Also, service workers must have worked an average of at least 10 hours a week in the most recently completed quarter to be eligible to use accrued paid sick leave time.

Q-9. If an employer allows an employee to use paid sick leave before it has accrued, does that leave count against the law's entitlement?

An employer may agree to allow employees to use accrued paid sick leave prior to completion of 680 hours of employment. Neither the law nor the Guidance addresses explicitly the effect of an employer's advancing paid sick leave on the paid sick leave entitlement, but because doing so will be viewed as an additional benefit, it appears the CT DOL will sanction such a practice.

Q-10. Can an employer require service workers to take paid sick leave in minimum increments, such as four-hour increments?

The Guidance states that employees must be permitted to take paid sick leave in increments of as little as an hour. Accordingly, a four-hour minimum (or any amount greater than one hour) is prohibited.

Q-11. What is the effect of switching shifts or working extra hours to make up for sick leave?

If the employer and service worker agree that the worker will switch shifts or work extra hours during the same or following pay period as the sick leave in lieu of taking sick leave, the time should not be counted against the service worker's paid sick leave bank. The Guidance notes that any decision to allow a shift exchange in lieu of paid sick leave must be agreed upon mutually and cannot be required by the employer. An employer is also prohibited from requiring a service worker to work extra shifts to cover work missed for a reason covered by the law.

Q-12. Can paid sick leave be carried over from year to year?

The law provides that a service worker may carry over up to 40 unused accrued hours of paid sick leave into the following year, but restricts an employee's usage of paid sick leave time to a maximum of 40 hours in any year. We know from the legislative history that the carryover provision was included in the law to incentivize service workers not to use all of the 40 hours provided in a given year so there would be time left to use at the beginning of the next year's accrual cycle. This applies only if the employer provides the time on an accrual basis. If an employer provides the 40-hour paid sick leave allotment in lump sum on a date certain each year, the CT DOL has stated that there is no carryover (the hours are fungible, and the usage limited to 40, so there is no need for carryover in that circumstance). Also, the CT DOL has opined that with an accrual-based system, at the end of the year employers are free to offer a service worker a payout of accrued sick leave hours in lieu of carryover, but may not require the employee to accept the payout in lieu of carryover.

Q-13. At what pay rate must the employer pay the accrued sick leave?

An employer must pay the service worker for paid sick leave at the worker's normal hourly wage or the minimum wage, if higher. If the service worker's hourly wage varies based on the duties performed, the "normal hourly wage" is the average hourly wage paid to the employee in the pay period prior to the leave. The Guidance clarifies that overtime and commissions are not included in the determination of a service worker's "normal hourly wage." Restaurant employees who are paid a "tipped" rate that is below the minimum wage must be paid the minimum wage for paid sick leave time off.

Q-14. Must an employer pay accrued but unused sick leave upon termination?

No, not unless an employer policy or collective bargaining agreement provides otherwise.

Q-15. Does a rehired employee regain formerly accrued paid sick leave?

No, not unless the employer agrees otherwise. In the legislative history, it was noted that at the moment an employee terminates employment, the employee loses accrued paid sick leave, regardless of whether the individual is rehired a day later. However, as discussed above, hours previously awarded count toward meeting the 680-hour requirement.

Q-16. For what purpose may paid sick leave be used?

A service worker may use paid sick leave for his or her, or a spouse's or child's:

1. illness, injury, or health condition;
2. medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or
3. preventive medical care.

A "child" is an employee's biological, adopted, or foster child, stepchild, legal ward, or a child of an employee acting instead of a parent, when the child is either under 18 years old or over 18 but incapable of self-care due to mental or physical disability. This is the same definition as under the Connecticut Family and Medical Leave Act. A "spouse" means a husband or wife. The law does not provide any guidance concerning the term "preventive medical care."

A service worker also may use paid sick leave when the service worker (not the spouse or child) is a victim of family violence or sexual assault for:

1. medical care or psychological or other counseling for physical injury or disability;
2. services from a victim services organization;
3. relocating; or
4. participation in any civil or criminal legal proceedings.

The Guidance notes that paid sick leave time does not run concurrently with the 12 (unpaid) days provided by Connecticut's family violence leave law (C.G.S. § 31-55ss).

Q-17. May a service worker donate paid sick leave to another service worker?

An employer may, but is not required to, allow a service worker to donate unused accrued paid sick leave to another service worker.

Q-18. What if an employee uses paid sick leave for a purpose not allowed by law?

Employers are not prohibited from taking disciplinary action against a service worker who uses paid sick leave for purposes other than those described by the law. However, employers may not require employees to produce documentation substantiating the reason for taking paid sick leave unless the employee is out of work for three consecutive days.

Notice and Documentation Requirements

Q-19. What are an employee's notice requirements for using paid sick leave?

Employers may require service workers to provide up to seven days' notice before taking the leave, if it is foreseeable, or notice as soon as practicable if it is not foreseeable. Employers may be able to deny leave or even take disciplinary action against an employee who fails to comply. It is thus of critical importance that employers include call-in and other notice requirements in their policies.

Q-20. May an employer require documentation to ensure that the leave is being used for its intended purpose?

For paid sick leave of three or more consecutive days, an employer may require reasonable documentation. The Guidance states that in calculating the three or more consecutive days, the absences need not be full days, but rather may consist of any time taken off from work as paid sick leave. In addition, the days are calculated as consecutive work days rather than consecutive calendar days. For example, a service worker who is scheduled to work Monday, Wednesday, and Friday, who uses paid sick leave for any portion of those three days in a row, could be required to provide documentation for such leave.

For mental or physical illness, treatment of an illness or injury, mental or physical diagnosis, or preventive medical care for the service worker or the employee's child, or spouse, an employer may require documentation signed by the health care provider treating the service worker or the service worker's child or spouse, indicating the need for the number of days of the leave.

For a victim of family violence or sexual assault taking leave of three or more consecutive days, an employer may require a court record or documentation signed by an employee or volunteer working for a victim services organization, an attorney, police officer, or other counselor involved with the service worker.

Q-21. What are an employer's notice requirements?

Employers subject to the law must give notice to each service worker at the time of hire that:

1. the service worker is entitled to paid sick leave, the amount provided, and the terms under which it can be used;
2. the employer cannot retaliate against the employee for requesting or using sick leave; and
3. the service worker can file a complaint with the Labor Commissioner for any violation.

An employer can comply with this requirement by displaying a poster containing this information in English and Spanish in a conspicuous place, accessible to employees, at the employer's place of business. The CT DOL has published on its website a poster for employers to display to satisfy the notice requirement. (Appendix C.) The poster is currently published only in English, but employers should continue to check the Department's website for publication of a Spanish version before year end.

Purpose

Q-22. What retaliatory conduct does the law prohibit?

The law prohibits covered employers from terminating, suspending, constructively discharging, demoting, unfavorably assigning, refusing to promote, disciplining, or taking any other adverse employment action against any employee (not limited to service workers) because the employee requested or used paid sick leave as provided by the law, or in accordance with the employer's "own paid sick leave policy," or filed a complaint with the Labor Commissioner alleging an employer violated the law.

Accordingly, covered employers may not retaliate, including taking disciplinary or other adverse job action against a service worker who requests or uses paid sick leave (scheduled or unscheduled and no matter the increment in which it is taken) for one of the purposes covered by the law or under an employer's paid sick leave policy. Of course, if the service worker is taking the leave for reasons not covered by the law, the employer may take appropriate disciplinary action.

Although the mandate to provide paid sick leave is limited to service workers, the provision prohibiting retaliation for taking or using paid sick leave was intentionally not limited to service workers. With respect to the prohibition on retaliating against non-service workers who request or use paid sick leave, the Guidance indicates that the Labor Commissioner will enforce the terms of an employer's own paid sick/other paid time off policy. In other words, in the Labor Commissioner's view, an employer will not be deemed to be in violation of the law so long as it has complied with its own policies, whatever they may be.

Integration with Other Laws, Policies and Labor Contracts

Q-23. How does this law affect an employer's existing paid sick leave policy?

An employer that provides sick leave or "other paid leave," such as vacation, personal days or paid time off (PTO), is "deemed to be in compliance" with the paid sick leave aspect of the law if: (a) service workers can use the leave for the purposes provided by the law; and (b) leave accrues at a rate equal to or greater than the rate described in the law.

The law does not provide any further explanation of this "safe harbor" or the interplay between an employer's policies and the paid sick leave law. What is clear is that employers seeking to rely on this "safe harbor" must reconcile their existing paid leave policies with the requirements of the paid sick leave law with respect to its application to service workers. Thus, for example, for leave requested or taken for reasons enumerated in the law, the policy cannot exclude part-time service workers, cannot delay accrual of leave until completion of an introductory period, cannot impose greater notice or documentation requirements, cannot require that leave be taken in minimum increments greater than one hour and the request or use of leave for covered reasons cannot lead to disciplinary or other adverse job action.

Once an employee uses 40 hours of paid leave for reasons covered by the law, the employer should be deemed to have fully complied with its obligations and should thereafter be able to attach conditions or take disciplinary action in accordance with its policies.

The law does not address what happens if the employee uses available paid leave under the employer's policies for a reason other than those enumerated in the paid sick leave law. The following illustration was used at the House hearing: if an employer's vacation policy meets the paid sick leave law's requirements, and the employee takes five vacation days early in the year and gets sick later in the year, the employer need not pay the employee for those sick days under this law. This example appears to address the situation in which the employer offers only 40 hours of paid leave per year. It does not address a situation in which the employer offers more than 40 hours of paid leave and that same employee chooses to take that additional time when he or she gets sick later in the year. The question in that circumstance is whether that additional time (beyond the initial 40 hours) is still subject to the requirements and prohibitions of the paid sick leave law if taken for a reason covered by the law? The Guidance does not address this question, but the CT DOL has informally suggested that the answer is yes – that is, if paid leave beyond 40 hours is available, until an employee exhausts 40 hours of leave **for one of the reasons covered by the law**, any such leave taken must be treated in accordance with the law.

Q-24. What is the effect of this law on collective bargaining agreements?

The law states that it shall not be construed to diminish any rights provided to any employee or service worker under a collective bargaining agreement, or preempt or override the terms of any collective bargaining agreement effective prior to January 1, 2012. The Guidance makes clear that the law will not supersede the terms of any CBA in effect as January 1, 2012 even if that CBA provides for less paid sick leave time than contemplated by the law. An equivalent or greater paid sick leave allotment must be offered either after expiration of the CBA or upon renegotiation of it, whichever is earlier. The law provides that the Labor Commissioner shall advise employees who file a complaint under this law and who are covered by a collective bargaining agreement of their right to pursue a grievance with their collective bargaining agent. The Guidance notes that the department will not view a CBA as an "employer policy" for purposes of enforcing the law. Therefore, employees who are governed by a CBA cannot file a complaint alleging discrimination or retaliation for requesting or using paid sick leave in accordance with the employer's paid sick leave policy.

Also of note is that the law applies to service workers who are parties to employment contracts other than CBAs.

Q-25. How does this law integrate with the federal or state family and medical leave act?

Neither the law nor the Guidance addresses this issue.

Federal law allows an employer to require an employee to substitute any other paid leave for otherwise unpaid FMLA leave. The Connecticut Family and Medical Leave Act also allows an employer to require such substitution. At the House hearing, when asked about the relationship between this law and the family and medical leave law, the response was that "we felt there was a difference between paid and unpaid [sick leave]." We believe, however, that to the extent such laws permit employers to request medical documentation for absences of fewer than three consecutive days in duration (such as in the case of intermittent FMLA leave), it is likely that an employer will be able to continue to do so to ensure that the employee gets the protection and benefits of those laws.

Enforcement

Q-26. How is this law enforced?

Any employee may file a complaint with the Labor Commissioner. After a hearing, an employer found to have violated the law shall be liable for a civil penalty as follows:

1. up to \$100 for each violation of the general provisions of the bill; and
2. up to \$500 for each violation of the retaliation provision.

The Labor Commissioner can award the employee all appropriate relief, including payment for used paid sick leave, rehiring or reinstatement to the employee's previous job, payment of back wages, and reestablishment of benefits for which the employee was otherwise eligible if not for the retaliatory personnel action or being discriminated against. Aggrieved parties can appeal the Commissioner's decision to Superior Court.

The law does not provide an aggrieved employee the right to file an action directly in court.

Q-27. Will the Labor Commissioner be issuing further regulations?

The Labor Commissioner will not issue formal Regulations on the law as such an action is not authorized by the statute. As noted in the introduction to the Guidance, however, the positions articulated therein are subject to change as questions arise and interpretations develop.

Jackson Lewis attorneys are available to assist employers with the new paid sick leave law and other workplace requirements.

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Appendix

A

[Click here for Guidance from the CT Department of Labor regarding CGS 31-57r \(P.A. 11-52\)](#)

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Appendix

B

The Connecticut paid sick leave law identifies individuals employed in jobs with the same or similar primary duty as the titles below as “service workers” subject to its provisions:

Title	Code	Title	Code
Food Service Managers	11-9050	Medical and Health Services Managers	11-9110
Social Workers	21-1020	Social and Human Service Assistants	21-1093
Community Health Workers	21-1094	Community and Social Service Specialists, All Other	21-1099
Librarians	25-4020	Pharmacists	29-1050
Physician Assistants	29-1070	Therapists	29-1120
Registered Nurses	29-1140	Nurse Anesthetists	29-1150
Nurse Midwives	29-1160	Nurse Practitioners	29-1170
Dental Hygienists	29-2020	NEW Radiologic Technologists	29-2034
Health Practitioner Support Technologists and Technicians	29-2050	Emergency Medical Technicians and Paramedics	29-2040
Home Health Aides	31-1011	Licensed Practical and Licensed Vocational Nurses	29-2060
Psychiatric Aides	31-1013	Nursing Aides, Orderlies and Attendants	31-1012
Medical Assistants	31-9092	Dental Assistants	31-9091
Crossing Guards	33-9091	Security Guards	33-9032
Cooks	35-2010	Supervisors of Food Preparation and Serving Workers	35-1010
Bartenders	35-3010	Food Preparation Workers	35-2020
Waiters and Waitresses	35-3030	Fast Food and Counter Workers	35-3020
Dining Room and Cafeteria Attendants and Bartender Helpers	35-9010	Food Servers, Non-restaurant	35-3040
Hosts and Hostesses, Restaurant, Lounge and Coffee Shop	35-9030	Dishwashers	35-9020
Janitors and Cleaners, Except Maids and Housekeeping Cleaners	37-2011	Miscellaneous Food Preparation and Serving Related Workers	35-9090

Title	Code	Title	Code
Ushers, Lobby Attendants, and Ticket Takers	39-3030	Building Cleaning Workers, All Other	37-2019
Baggage Porters, Bellhops, and Concierges	39-6010	Barbers, Hairdressers, Hairstylists, and Cosmetologists	39-5010
Personal Care Aides	39-9021	Child Care Workers	39-910
Cashiers	41-2011	First-Line Supervisors of Sales Workers	41-1010
Retail Salespersons	41-2030	Counter and Rental Clerks	43-2021
Hotel, Motel, and Resort Desk Clerks	43-4080	Tellers	43-3070
Couriers and Messengers	43-5020	Receptionists and Information Clerks	43-4170
Computer Operators	43-9010	Secretaries and Administrative Assistants	43-6010
Desktop Publishers	43-9030	Data Entry and Information Processing Workers	43-9020
Mail Clerks and Mail Machine Operators, Except Postal Service	43-9050	Insurance Claims and Policy Processing Clerks	43-9040
Office Machine Operators, Except Computer	43-9070	Office Clerks, General	43-9060
Statistical Assistants	43-9110	Proofreaders and Copy Markers	43-9080
Bakers	51-3010	Miscellaneous Office and Administrative Support Workers	43-9190
Miscellaneous Food Processing Workers	51-3090	Butchers and Other Meat, Poultry, and Fish Processing Workers	53-3020
Bus Drivers	53-3020	Ambulance Drivers and Attendants, Except Emergency Medical Technicians	53-3010
		Taxi Drivers and Chauffeurs	53-3040

Appendix

C

[Click here to download a Poster
for Employers \(English\)](#)

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for Employers \(Spanish\)](#)

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