

New Year Brings Paid Sick and Safe Leave to Washington

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Washington has joined the growing list of jurisdictions requiring employers to provide paid sick leave to employees. All Washington employers, regardless of size, must provide their employees paid sick and safe leave ("PSSL") starting January 1, 2018.

Which Employees are Covered?

In general, every non-exempt employee engaged in employment "within the state of Washington" is entitled to PSSL.

According to the Department of Labor & Industries, this includes "Washington-based employees." The Department, however, has yet to issue administrative guidance on that concept. Therefore, employers should seek guidance from counsel on whether Washington residents working remotely or physically elsewhere or non-Washington residents working in Washington should receive PSSL under the state law.

How Much Leave?

Beginning on their first day of employment, employees accrue one hour of PSSL for every 40 hours actually worked. Employees may start using the accrued PSSL on the 90th day of employment. There is no cap on the number of PSSL hours employees may accrue or use in a benefit year.

Employees also must be allowed to carry over up to 40 hours of unused leave to the following year.

What are Acceptable Uses of PSSL?

Employees may use their new PSSL for the following reasons:

- Their own or a family member's mental or physical illness, injury, or health condition;
- When their workplace or child's school or daycare is closed by order of a public official for any "health-related reason," as defined; and
- Their own or a family member's need for various services and care relating to domestic violence, sexual assault, or stalking.

Who is a "Family Member"?

The definition of a family member is broadly defined as:

- A biological, adopted, foster, or step-child, regardless of age of dependency, including someone to whom the employee stands *in loco parentis* or is a de facto parent;
- A biological, adoptive, foster, or step-parent, legal guardian of the employee or the employee's spouse or registered domestic partner, or a person who stood *in loco parentis* to the employee as a minor;
- A spouse or registered domestic partner;
- A grandparent;
- A grandchild; or
- A sibling.

How Much Must Employers Pay?

For each hour of PSSL used, employers must pay the employee the greater of the hourly minimum wage or the employee's "normal hourly compensation." "Normal hourly compensation" is "the hourly rate that an employee would have earned for the time during which the employee used paid sick leave," excluding tips, service charges, holiday pay, premium pay, and overtime rates, where applicable. This can be a difficult calculation, depending on the method of compensation for a particular employee, so employers should confer with counsel.

What Increments of Leave Can Employees Use?

Employers must permit employees to use PSSL in the same increment of time used to track compensation, but it should be no greater than one hour. For many employers, this means that employees will be able to use PSSL in one-minute increments.

Can Employers Require Advance Notice?

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Employers may require employees to abide by a reasonable written policy for advance notice for using PSSL, provided that the policy does not interfere with the lawful use of leave.

For a foreseeable absence, employers may require employees to provide up to 10 days' advance notice or notice as early as practicable.

For unforeseeable absences, employers may require notice as soon as possible before the start of the shift. If that is impracticable, the employer must permit another person to give notice on the employee's behalf.

Moreover, employers also must comply with the notice requirements of the Washington Domestic Violence Leave Act and other laws.

Can Employers Require Verification of Appropriate Use?

Employers may require verification that PSSL is used for an authorized purpose only for absences of more than three work days, as long as the employer complies with numerous requirements. Further, an employer must participate in a detailed process if the employee objects that verification would cause an unreasonable burden or expense.

What Other Features are There?

Other features of the new PSSL include options for frontloading, paid time off (PTO), sharing programs, and shift swapping.

In addition, employers are not required to reimburse employees for unused PSSL at the end of employment. However, if employers choose to, any terms must be in a mutually agreed writing.

Further, employers must reinstate unused PSSL to an employee rehired at any of their locations within 12 months, unless the unused time previously was reimbursed.

The new law also implements a variety of new reporting and employee notification requirements.

Moreover, while the new PSSL does not provide a waiver or exception for collective bargaining agreements, the existence of such an agreement may be a basis for obtaining a variance from the increment-of-use requirement.

What about Municipal Laws?

Employers with operations in multiple cities in Washington must comply with local ordinances in addition to the new Washington PSSL.

While Seattle amended its PSSL ordinance on December 11 to be more consistent with the new state law, Seattle kept some provisions that are more generous to employees. Similarly, Tacoma updated its ordinance, but kept some provisions. Seattle and Tacoma employers will have to navigate the interplay between state and local laws in order to determine the correct course.

Employers in Spokane, however, will not need to contend with competing paid sick leave laws. Spokane's ordinance has a sunset clause that phases out the ordinance to expire on December 31, 2017, when the Washington law takes effect.

What Should Employers Do?

Employers should review their existing policies and practices and make the necessary changes. This includes drafting new policies to comply with the new Washington law by January 1, 2018.

Please contact your Jackson Lewis attorney with any questions and to discuss the new law and your specific organizational needs.

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