

# Arizona's Industrial Commission Issues Guidance on Use of Paid Sick for COVID-19-Related Absences

By Jeffrey W. Toppel and Andrew M. Gaggin

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The Industrial Commission of Arizona, which enforces and implements Arizona's Paid Sick Leave law (also known as the Fair Wages and Healthy Families Act), has issued guidance to employers and employees on the effect of the coronavirus (COVID-19) pandemic on the use of paid sick leave in Arizona. The Commission's guidance also addresses how the new federal Families First Coronavirus Response Act (FFCRA) will affect Arizona businesses and workers.

## Paid Sick Leave Law

Under Arizona's Paid Sick Leave law, employers with at least 15 employees are required to provide employees with up to 40 hours of earned paid sick time per year. Employers with fewer than 15 employees must provide up to 24 hours of earned paid sick time per year.

In addition to use for an employee's own illness, or to care for an ill family member, the Paid Sick Leave law expressly provides that employees may use paid sick leave for the following reason:

Closure of the employee's place of business by order of a public official due to a public health emergency or an employee's need to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency, or care for oneself or a family member when it has been determined by the health authorities having jurisdiction or by a health care provider that the employee's or family member's presence in the community may jeopardize the health of others because of his or her exposure to a communicable disease, whether or not the employee or family member has actually contracted the communicable disease; or ....

A.R.S. § 23-373.

On March 30, 2020, Governor Doug Ducey announced the extension of school closures through the remainder of the school year.

## Executive Order

On March 11, 2020, Governor Ducey declared COVID-19 a "public health emergency." He followed up by issuing an Executive Order on March 19 that included directives that affect employers in the healthcare and restaurant industries to help combat the spread of COVID-19. These include:

- Halting all elective surgeries in the state to free up medical resources and to maintain the capacity for hospitals and providers to continue offering vital services.
- Requiring restaurants in counties with confirmed cases of COVID-19 to provide dine-out options only, and closing bars, movie theaters, and gyms. Restaurants will be allowed to deliver alcoholic beverages with food purchases.

## Industrial Commission Guidance

In its Guidance, the Industrial Commission clarified that employees may use their accrued and earned paid sick leave subject to any usage limitations for all of the following reasons:

- If an employee, or a family member, contracts COVID-19;
- If an employee, or a family member, must be tested for COVID-19;
- If the employee's place of business has been closed "by order of a public official due to the

## Meet the Authors



[Jeffrey W. Toppel](#)

Principal  
Phoenix 602-714-7044  
Email



[Andrew M. Gaggin](#)

Associate  
Phoenix 602-714-7028  
Email

COVID-19 public health emergency;

- If an employee must care for a child whose school has been closed due to COVID-19, but only if the school has been closed by an order of a public official due to a public health emergency; and
- If an employee is quarantined or must care for a family member who has been quarantined due to a potential exposure to COVID-19.

Consistent with recommendations from the Centers for Disease Control and Prevention (CDC), the Industrial Commission encouraged employers to maintain flexible sick leave policies that are consistent with public health guidance. Employers are encouraged to permit employees to stay home if they contract COVID-19 or to care for a sick family member.

If an employee has exhausted accrued earned paid sick time due to circumstances associated with COVID-19, the Industrial Commission encouraged employers to consider additional options, including donating or loaning earned paid sick time to the employee.

The CDC has encouraged employers not to require a healthcare provider's note for employees who are sick with acute respiratory illness to validate their illness or to return to work, as healthcare providers and medical facilities may be extremely busy and unable to provide documentation in a timely manner.

### Interplay with FFCRA

In the Guidance, the Industrial Commission addressed the interplay between the Arizona Paid Sick Leave law and the FFCRA. FFCRA imposes additional requirements on certain employers with fewer than 500 employees, as part of a nationwide effort to provide relief to employees affected by COVID-19.

The Industrial Commission noted that the paid sick leave provisions of the FFCRA are *in addition* to any paid sick leave offered by employers, including paid sick time under the Arizona statute. Therefore, employers are not permitted to require an employee to use other paid leave, including Arizona paid sick, *before* the employee uses paid sick time under the FFCRA.

For additional guidance, please contact a Jackson Lewis attorney.

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