

Washington's Paid Sick Leave Law is Here! Are you Ready?



Today's webinar will
begin shortly. We are
waiting for attendees
to log on

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Washington's New Paid Sick Leave Law is Here! Are You Ready?

**Fisher
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Today we will cover...

1. Which Employees are Covered?
2. What About City Law?
3. Employer Responsibilities
4. Retaliation
5. FAQ's



Who's Covered? Employees

- Includes any individual employed by an employer, **except:**
 - Employees of charitable institutions charged with childcare responsibilities
 - Individuals whose duties require they reside or sleep at their place of employment or who otherwise spend a substantial portion of their work time subject to call.
 - Inmates and others in custody
 - Elected or appointed public officials and employees of the state legislature
 - Washington State ferry crews
 - Crews of non-American vessels



Who's Covered? Employees

- Includes any individual employed by an employer, **except**:
 - Certain agricultural workers
 - Casual laborers
 - **White-collar exempt employees**
 - Educational, charitable, religious, state or local government, or non-profit organization volunteers
 - Newspaper vendors or carriers
 - Forest protection and fire prevention employees
 - Any carrier subject to regulation by Part 1 of the Interstate Commerce Act



“White Collar”?

- Overtime exemptions: Bona fide executive, administrative, professional or outside salesperson.
- Remember, WA has its own tests for these exemptions that are not necessarily identical to the FLSA’s.

What about independent contractors?

A **bona fide** independent contractor is exempt from Washington's Paid Sick Leave law because that person is not "employed" by an employer.



What About Seattle, SeaTac, Spokane and Tacoma?

- Except for Spokane, you must follow them all.
- If a conflict, you must follow the more generous provision, i.e., the law that gives the employee the most rights
- More later . . .

Paid Sick Leave Accrual – Start Tracking!

- **Employees must accrue at least 1 hour of paid sick leave for every 40 hours worked.**
 - Employees who are employed on or before January 1, 2018 will accrue paid sick leave for all hours worked beginning on January 1, 2018.
 - Employees hired after January 1, 2018 will begin to accrue paid sick leave **upon the commencement of employment.**



Can I Frontload Paid Sick Leave?



Yes! Just make sure...

- You frontload all of the time at the beginning of the benefit year
- Based on a reasonable calculation to determine the amount of paid sick leave the employee would be projected to accrue.
- Employer **must** have a written policy or collective bargaining agreement that sets forth the frontloading policy and the employer must notify employees of such policy.

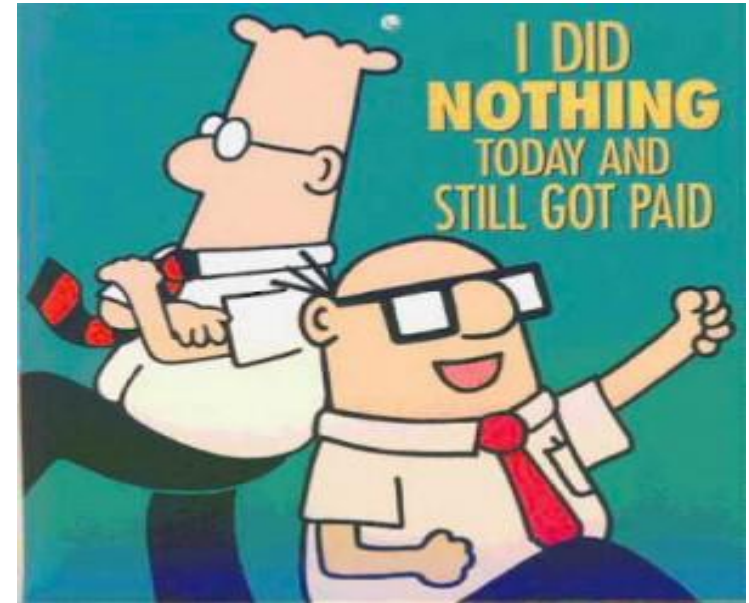
Can I Frontload Paid Sick Leave?

CAUTION!

- If the employee uses an amount of frontloaded paid sick leave which exceeds the paid sick leave the employee would have otherwise accrued, the employer may not seek reimbursement from the employee for such paid sick leave.
- If an employee frontloads paid sick leave to an employee, but the frontloaded amount is less than the amount the employee was entitled to accrue, the employer must make such additional paid sick leave available to the employee no later than thirty days after identifying the discrepancy.
- Employers **may not** deduct frontloaded paid sick leave from an employee's final paycheck, unless there is a specific agreement in place to do so.

Hours Worked vs. Hours Paid

Employers are not required to allow employees to accrue paid sick leave for hours paid when not working.



When can employees use paid sick leave?



**KEEP
CALM
ONLY
90 DAYS
LEFT**

Employees are entitled to use accrued paid sick leave beginning on the 90th calendar day after the start of their employment.

Employers must allow employees to use paid sick leave in increments consistent with the employer's payroll system and practices, not to exceed one hour.

Using Paid Sick Leave

Employees may use paid sick leave:

- To care for themselves or their family members.
- When the employees' workplace or their child's school or place of care has been closed by a public official for any health-related reason.
- For absences that qualify for leave under the state's Domestic Violence Leave Act.

Employers may allow employees to use paid sick leave for additional purposes.



Family Member?

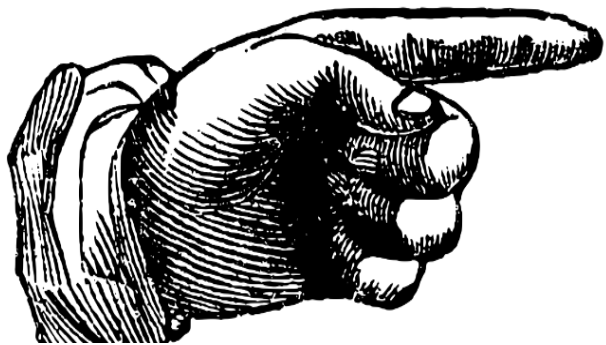
- A child, including a biological, adopted, or foster child, stepchild, or a child to whom the employee stands in loco parentis, is a legal guardian, or is a de facto parent, regardless of age or dependency status;
- A biological, adoptive, de facto, or foster parent, stepparent, or legal guardian of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

Note: Not identical to Seattle



Reasonable Notice

Please Notice This

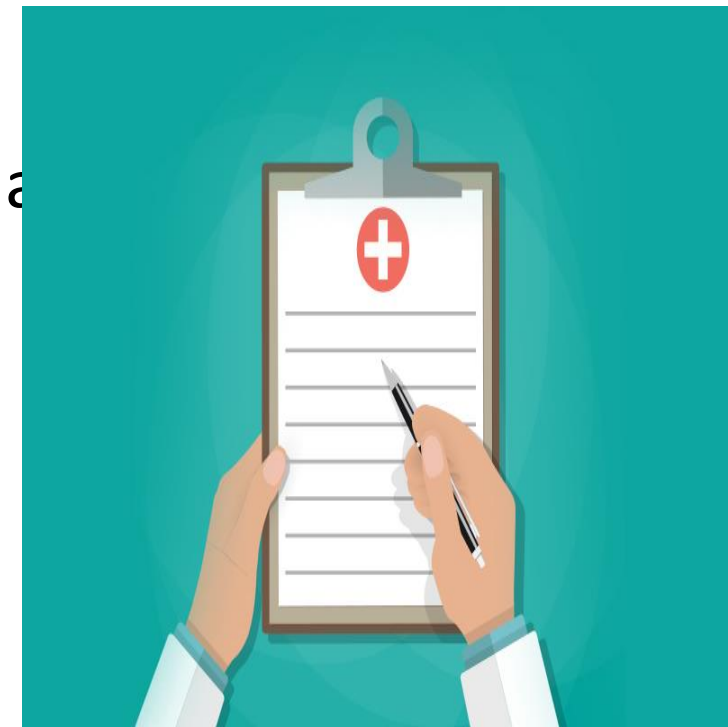


- If the need for paid sick leave is *foreseeable*, the employer may require advance notice from the employee.
- If the need for paid sick leave is *unforeseeable*, the employer may require notice from the employee.
 - The employee must provide notice to the employer as soon as possible before the required start of their shift, unless it is not practicable to do so.
 - In the event it is impracticable for an employee to provide notice to their employer, a person on the employee's behalf may provide notice to the employer.

Verification

If an employee is seeking to use or has used paid sick leave for **absences exceeding three days**, during which the employee is/was required to work, the employee may be required to provide verification that establishes or confirms that the use of paid sick leave is for an authorized purpose.

Verification must be provided to the employer within a reasonable time period during or after the leave.



What is An Absence Exceeding 3 Days?

“Absences exceeding 3 consecutive days an employee is required to work”

Example:

Assume an employee is required to work on Mondays, Wednesdays, and Fridays, and then the employee uses paid sick leave for any portion of those three work days in a row.

If the employee uses paid sick leave again on the following Monday, the employee would have absences exceeding three days.

Verification?

- The WA law is silent on whether an employer can require verification for
 - ✓ Suspected Abuse
 - ✓ Suspected Misuse

* Different than Seattle!

MATTHEW BRODERICK

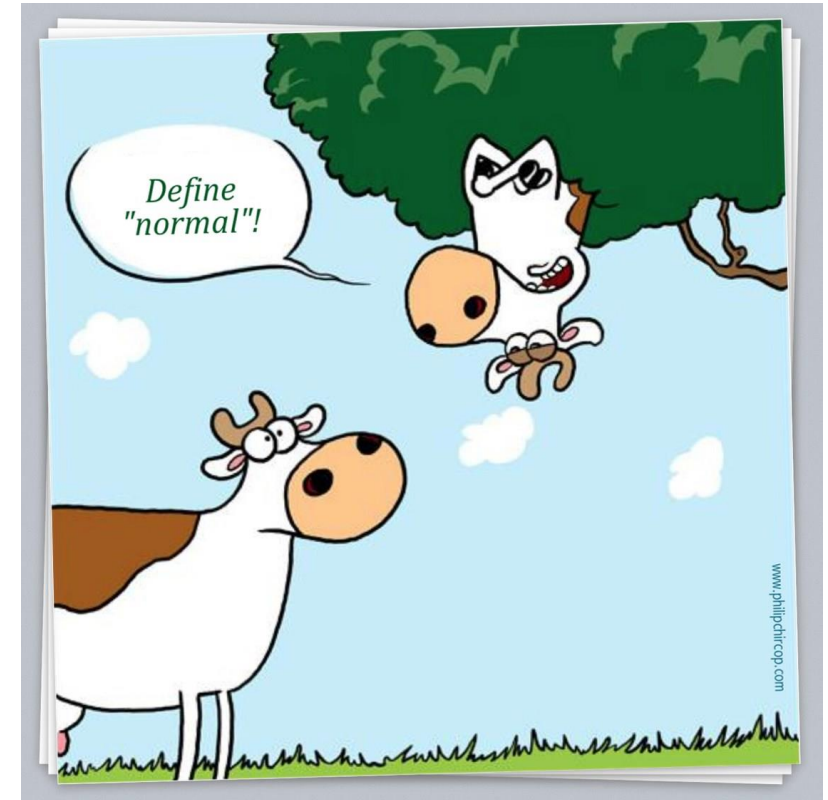
**FERRIS'S
BUELLER'S
DAY OFF**



Rate of Pay

Employees must be paid the greater of the minimum hourly wage rate established by Washington's Minimum Wage Act or the employee's **normal hourly compensation**.

- Normal hourly compensation must be calculated based on **the hourly rate that an employee would have earned** for the time during which the employee used paid sick leave.



Rate of Pay

Normal hourly compensation does not include:

- Normal hourly compensation does not include **tips, gratuities, service charges, holiday pay, or other premium rates**, unless the employer or a collective bargaining agreement allow for such considerations.
- However, where an employee's normal hourly compensation is a **differential rate**, meaning a different rate paid for the same work performed under differing conditions (e.g., a night shift), the differential rate is not a premium.



How to Calculate Normal Hourly Compensation

- For an employee paid partially or wholly on a commission basis, dividing the total earnings by the total hours worked in the full pay periods in the prior 90 days of employment.
- For an employee paid partially or wholly on a piece rate basis, dividing the total earnings by the total hours worked in the most recent workweek in which the employee performed identical or substantially similar work to the work they would have performed had they not used paid sick leave.
- For a nonexempt employee paid a salary, dividing the annual salary by 52 to determine the weekly salary, and then dividing the weekly salary by the employee's normal scheduled hours of work.



When is payday?



Generally, employers must pay paid sick leave to the employee no later than the payday for the pay period in which the employee took the leave.

What happens to accrued paid sick leave when the employee leaves the employer?

Employers may choose, but are not required, to reimburse an employee for any portion of their accrued paid sick leave when the employee separates from his/her employment.

- **Must be in your written policy!**



The Carryover

Unused paid sick leave of 40 hours or less must be carried over to the following year.

If an employee carries over forty hours of unused paid sick leave to the following year, accrual of paid sick leave in the subsequent year would be in addition to the forty hours accrued in the previous year and carried over.



Can I Combine Sick and Safe Leave with Vacation ?

- Yes, but . . .



But what about my PTO policy?

PTO policies must meet or exceed the provisions of Washington's Paid Sick Leave Law:

- Accrual of not less than one hour of PTO for every 40 hours worked.
- Payment of PTO must be at the employee's normal hourly compensation.
- Carryover of at least 40 hours of accrued, unused PTO to the following year.
- Employees must be permitted to use PTO for all the purposes authorized under the Paid Sick Leave law.
- Must comply with recordkeeping and notification requirements.

What happens when PTO is exhausted?

If combined, universal PTO Policy and an employee exhausts his/her PTO for purposes other than those authorized under Paid Sick Leave law, and the need for use of paid sick leave later arises when no additional PTO leave is available . . .

The employer is not required to provide any additional PTO leave to the employee as long as the employer's PTO program meets or exceeds the provisions of Paid Sick Leave law.

Shared Leave

- An employer may establish a shared paid sick leave program in which an employee may choose to donate paid sick leave to a co-worker.
- If an employer establishes a shared paid sick leave program, the employer **must** have a written policy or a collective bargaining agreement which specifies that an employee may donate accrued, unused paid sick leave to a co-worker for purposes authorized purposes.
- The employer must notify employees of such policy or agreement prior to allowing an employee to donate or use shared paid sick leave. An employer must make this information readily available to all employees.

Let's Swap Shifts!

- An employer may not require an employee using paid sick leave to search for or find a replacement worker to cover the employee using paid sick leave.
- If the employer and the employee(s) agree, an employee may work additional hours or shifts, or trade shifts with another employee, in lieu of using available paid sick leave for missed hours or shifts that qualify for the use of paid sick leave.

My employee used paid sick leave for an unauthorized purpose- now what?

- If an employer can demonstrate that an employee used paid sick leave for an unauthorized purpose, the employer
 - Can withhold payment of paid sick leave for such hours
 - Keep in mind:
 - If the employer withholds payment, the employer must provide notification to the employee.
 - If the employee maintains that the use of paid sick leave was for an authorized purpose, the employee may file a complaint with the Department of Labor and Industries.
 - Can NOT deduct those hours from an employee's legitimately accrued, unused paid sick leave.

What are my responsibilities as an employer?

- Employers must notify employees in either written or electronic form of the following:
 - Employee entitlement to paid sick leave.
 - The rate at which the employee will accrue paid sick leave.
 - The authorized purposes for which paid sick leave can be used.
 - Retaliation is prohibited.
- This information must be readily available to employees and must be provided to employees no later than the first day of employment.
 - For existing employees, the employer must notify the employees by March 1, 2018.

What are my responsibilities as an employer?

- At least monthly, employers **must** provide each employee with notification detailing:
 - the amount of paid sick leave accrued
 - paid sick leave reductions since the last notification, and
 - any unused paid sick leave available for use by the employee.

Record Keeping Requirements

- Employers are required to keep and preserve records containing the following information:
 - Name in full and the employee's identifying symbol or number if such is used in place of the employee's name on any time, work, or payroll records.
 - Home address.
 - Occupation.
 - Date of birth.
 - Time of day and day of week on which the employee's workweek begins.
 - Total daily or weekly straight-time earnings or wages.
 - Total overtime excess compensation for the workweek.
 - Total additions or deduction from wages paid each pay period.
 - When an employer makes additions to or deductions from wages shall also maintain a record of the dates, amounts, and nature of the items which make up the total additions and deductions.
 - Total wages paid each pay period.
 - Date of payment and the pay period covered by the payment.
 - **Paid sick leave accruals each month, and any unused paid sick leave available for use by an employee.**
 - **Paid sick leave reductions each month.**
 - The date of commencement of the employee's employment.

No Retaliation Zone



Employers may not interfere with any right protected by the Paid Sick Leave law.



Employer may not use an employee's exercise of any of his/her paid sick leave rights as a negative factor in any employment action.



Employers may not adopt or enforce any policy that counts the use of paid sick leave for an authorized purpose as an absence that may lead to or result in discipline.



Employers may not take, or threaten to take, any adverse employment action against an employee because the employee exercised his/her rights under the Paid Sick Leave law.

What about the City Sick Leave Laws?

- Seattle (Mostly matches now except for higher accrual rate and carry overs still remain)
- SeaTac
- Spokane (Will **sunset** when state law takes effect)
- Tacoma (Will match WA law as of 1/1/18)
- Statewide

None are identical. For example. . .

Key Element	Statewide	Seattle	Sea-Tac*	Tacoma
Carry Over	40	Varies by employer size	None, because of mandatory pay out	40
Annual Use Cap	None	Varies by employer size	None	None
Verification?	3 consecutive days	3 days, or misuse or abuse	None	3 consecutive days
Rate of Pay	“normal hourly compensation”	Base rate	“normal hourly compensation”?	Hourly
Private Right of Action	No	Yes	No	No
Notification of Paid Leave Available	Monthly	Each pay period	Each pay period	Monthly

Still Confused?



FAQs

Do I need to offer paid sick leave to my salaried employees?

- That depends.
- Some salaried workers are specifically exempt from the new law. Types of workers who are exempt from paid sick leave under the law include:
 - Any individual employed in a bona fide executive, administrative, or professional capacity, or employed as an outside salesperson.
 - (In other words, if the employee meets one of these fact specific legal tests for Washington's overtime pay exemption.)
- Additional definitions of the exemptions may be found here (RCW 49.46.010)

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FAQs

When must I let employees use their accrued paid sick or safe leave?

- The waiting period can be no more than 90 days of continuous employment. This includes employees who may have started work before Jan. 1, 2018. Employers may adopt a shorter waiting period if they choose

FAQs

What if an employee wants to use leave before they have accrued enough time to cover their entire shift?

- An employee is only entitled to use paid sick leave for the length of their scheduled shift, and only up to the amount of paid leave already accrued.

FAQs

Do I really have to track and allow PSL use < 1 hour?

- Yes, you must track and allow use consistent with your timekeeping system.
- Example: If an employer's normal practice is to track increments of work for the purposes of compensation in 15-minute increments, then an employer must allow employees to use paid sick leave in 15-minute increments.

Is there really no cap on use or accrual?

- Yes.

FAQs

What if an employee wants to use leave before they have accrued enough time to cover their entire shift?

- An employee is only entitled to use paid sick leave for the length of their scheduled shift, and only up to the amount of paid leave already accrued.

What happens to the accrued time when an employee quits or gets terminated?

- Employers must state what will happen to unused leave at separation of employment in their written policy. If you do not include these provisions in your policy, the default is that you must pay out the paid sick leave when the employee leaves employment.

FAQs

Can I pay out my employee's paid sick leave every pay period instead of letting it accrue and build up?

- No. The only pay out that is allowed is (1) if you choose to (or may be required to under SeaTac's law) pay out unused accrued hours at the end of the year that exceed the minimum 40 hour carry over, or (2) you choose to pay out unused accrued hours at separation of employment

FAQs

Can an employer request a doctor's note to prove illness?

- Yes, but an employer must have a written policy stating so. The employer also cannot require a doctor's note unless an employee has missed 3 consecutive scheduled days of work.
- An employer-required verification also may not result in an unreasonable burden or expense on the employee.
- There are different rules for survivors of sexual assault or domestic violence.

FAQs

Can an employer delay a paycheck when paid sick leave is used?

- No. An employer must pay sick leave during the same pay period of when the paid sick leave is used.

Does an employee need to request that they want to use their accrued hours either verbally or in writing?

- No. It is sufficient for an employee to call out sick.
- Employers also cannot require employees to find a replacement for their shift or to swap shifts.

FAQs

What do I have to do right now?

- Write your policy (accrue? Frontload? Payout? Sick notes?)
- Decide if you are going to notify current and new employee's using the state's form or another method.
- Current employees must have notice by 3/1, but new employees must have notice upon hire; and the accrual already started . . .

FAQs

If I have a more generous paid sick and safe leave accrual do I need to do anything?

- Yes. The law includes additional employee notification requirements.
- Although accrual of paid sick leave begins Jan. 1, 2018 and states that a formal policy must be given to employees by March 1, 2018, it does not mean you can or should wait to implement and notify your employees of the paid sick leave policies. It is better to provide your employees with your paid sick leave policy as soon as possible.

More FAQs

- <http://www.Ini.wa.gov/WorkplaceRights/files/FamilyLeave/PSLFAQ.pdf>.

Final Questions?

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