



# Pittsburgh Expands COVID-19 Paid Sick Time As Pennsylvania Issues New Shut-Down Orders

Insights

12.14.20

Last week was another one of those whiplash weeks for Pennsylvania employers, especially those with operations in Pittsburgh. On December 9, Mayor Bill Peduto signed Pittsburgh's Temporary COVID-19 Emergency Paid Sick Leave Ordinance, which immediately gave certain workers in the city up to an *additional* 80 hours of paid sick time. Then, on December 10, Governor Wolf and Secretary of Health Dr. Rachel Levine announced new orders that, starting December 12, prohibit certain in-person operations and reduce capacity until January 4. So what do Pittsburgh employers – and all other businesses throughout Pennsylvania – need to know? Here are the key highlights to consider.

## Pittsburgh's Temporary COVID-19 Emergency Paid Sick Leave Ordinance

The Ordinance applies to employers with 50 or more employees. Employees are covered if they have been employed for the previous 90 days, and either:

- work in Pittsburgh;
- normally work in Pittsburgh, but currently telework from any location because of COVID-19; or
- work in multiple or mobile locations, if 51% or more of their time is spent in Pittsburgh.

Unless the employer designates a higher limit, the amount of "COVID-19 Sick Time" available under the Ordinance is:

- For employees working 40+ hours per week (including exempt employees, who are presumed to work 40 hours): 80 hours;
- For employees working fewer than 40 hours per week: an amount equal to the employee's hours scheduled or actually worked on average in a 14-day period, whichever is greater; and
- For employees with a variable schedule: an amount equal to the average time worked in a 14-day period, calculated by averaging the number of hours the employee was scheduled to work in the last 90 days, including any hours for which the employee took any kind of leave.

Covered employees can use COVID-19 Sick Time immediately, **without a waiting period or accrual**, if they are unable to work or telework for the following reasons:

1. A public official, public health authority, health care provider, **or an employer** determines that the employee's presence on the job or in the community would jeopardize the health of others

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because the employee has been exposed to COVID-19 or is exhibiting symptoms, **regardless of whether the individual has been diagnosed with COVID-19**;

2. To care for a family member who has been determined to be a risk for the same reasons set forth in category 1 above;
3. The employee needs to (a) self-isolate because of a COVID-19 diagnosis; (b) self-isolate because they are experiencing symptoms of COVID-19; or (c) seek or obtain medical diagnosis, care, or treatment if experiencing symptoms of an illness related to COVID-19; or
4. To care for a family member with the same needs sets forth in category 3 above.

Notably, the sick leave is in addition to any other paid leave or sick time provided by employer policy, including time accrued under the Pittsburgh Paid Sick Days Act. The Ordinance explicitly prohibits employers from changing their policies to avoid having to provide COVID-19 Sick Time. Employees can choose to use COVID-19 Sick Time before other types of leave, unless state or federal law requires otherwise. However, employers can substitute other paid leave or paid sick time for Pittsburgh's COVID-19 Sick Time to the extent that:

- Other federal or state laws require paid time off for reasons related to COVID-19 and allow concurrent use of paid leave; and
- The employer adopted a paid sick time policy after March 13, 2020, specifically for use during the COVID-19

Employers must provide COVID-19 Sick Time to the extent it exceeds the paid time allotment of those other laws or the employer's COVID-19-specific paid sick time policy.

Pittsburgh's Ordinance is likely designed to meet employees' need for leave after the FFCRA expires on December 31. The Ordinance remains in effect until one week after the official termination of the public health emergency declared by either the Commonwealth or the City of Pittsburgh (Pennsylvania recently extended its emergency proclamation through February 22, 2021).

### **Pennsylvania's December 12 Shut-Down Orders**

As for the Commonwealth more broadly, the following rules went into effect on 12:01 a.m. on December 12 and will be in place until 8:00 a.m. on January 4, 2021:

- All in-person dining is prohibited;
- Outdoor dining, takeout food service, and takeout alcohol sales can continue (subject to existing mitigation requirements);
- Indoor operations at gyms, fitness facilities, and entertainment venues (such as casinos, theaters, private clubs, etc.) are prohibited;
- In-person businesses serving the public can only operate at 50% capacity (unless an existing order imposes a smaller limit);

- Indoor gatherings of more than 10 people are prohibited (except for religious worship services);
- Outdoor gatherings of more than 50 people are prohibited;
- Extracurricular activities are suspended;
- School athletics (within a school or against other schools) and sports leagues/tournaments (intramurals, clubs, etc.) are suspended for all sports; and
- Professional and collegiate sports can continue (subject to existing guidance) but can have no spectators.

### **What Employers Should Do Now**

Affected employers with workers in Pittsburgh should take the following steps to ensure compliance:

- Carefully review the Ordinance to fully understand obligations;
- Evaluate whether, and to what extent, there is an opportunity to substitute other kinds of leave for COVID-19 Sick Time (especially if the employer is covered by FFCRA, which provides for tax credits not available under the Ordinance);
- Prepare a notice to employees of their potential eligibility for COVID-19 Sick Time (especially when ordering an employee home due to a positive test or symptoms);
- Ensure payroll and timekeeping systems are equipped to manage and record this new category of leave; and
- Be prepared to have employees clarify the reason they are requesting leave.

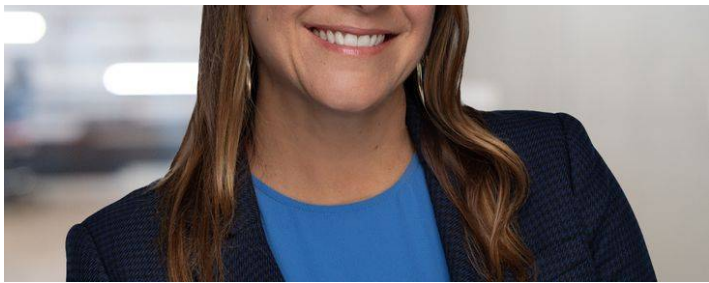
These ordinances and executive orders can be nuanced and change frequently. We will continue to monitor this rapidly developing situation and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' alert system](#) to gather the most up-to-date information. For further information, contact your Fisher Phillips attorney or any member of our [Pittsburgh office](#), and please visit our [FP COVID-19 Resource Center for Employers](#).

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