

SEATTLE'S NEW PAID SICK LEAVE ORDINANCE

Insights

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On September 1, 2012, Seattle's paid sick and safe-leave ordinance went into effect. The ordinance will require nearly all private-sector employers to provide employees who work in Seattle with specified amounts of accrued paid sick and safe time (PSST). Sick leave is, of course, self explanatory. "Safe leave" refers to time off related to domestic violence, sexual assault, or stalking.

This Alert will provide a general overview of how the ordinance affects employers with employees who work in Seattle.

Notice Requirements

Employers are required to immediately provide Seattle employees of their PSST rights. The notice requirement can be met by displaying a [poster created by the Seattle Office of Civil Rights](#) (available on the right side of the page under "Resources" in a conspicuous and accessible location, including a copy of the notice in employee handbooks, or distributing the notice by other means (either written or electronic)).

Employers must also provide employees with a written statement of available PSST each time wages are paid. Some employers are choosing to include the figure on paystubs.

BASICS OF THE NEW LAW

Coverage Issues

The ordinance requires businesses operating within the Seattle city limits to provide paid sick and safe leave for their employees.

All employees within Seattle city limits are covered. This includes full-time, part-time, and temporary employees. The coverage includes employees who are based outside of Seattle but occasionally work in Seattle, provided that 1) they perform work in Seattle for more than 240 hours within the calendar year, and 2) the employer has five or more employees. But non-Seattle employees can only use PSST when working in Seattle. Employees can waive their right to protection under PSST only as part of a bona fide collective bargaining agreement. Individual waivers are invalid.

All employers that have at least one employee working within Seattle are covered by some aspect of PSST (such as the notice and anti-retaliation provision). However, only employers with four or more “full-time equivalent” (FTE) employees are obligated to provide some amount of paid leave under the ordinance. The exact obligations of the employer are determined by the number of FTE employees employed nationwide. The total number of employees results in the employer being placed in a specific “tier” of benefits (see the chart below).

FTE refers to the number of hours worked for compensation that add up to one full-time employee (based either on a typical 40-day workweek or the employer’s alternative definition of full time). The number of FTE employees is *not* determined by looking at the number of actual individuals employed. Instead, an employer’s tier level is determined by counting all the compensated hours of all nationwide employees (full-time, part-time, etc.) from the prior calendar year.

Leave To Be Provided

The amount of required paid leave increases with the number of FTE employees. Thus, as a general rule, a larger company is obligated to provide for more paid leave than a smaller company. In determining tier size, employers must count all the compensated hours of its employees in all of their locations (even if those locations are outside of Seattle and/or Washington state). For example, a nationwide employer with 250 FTE employees but only a single employee in Seattle is a “Tier Three Employer.” Therefore, that employer generally must provide that Seattle employee with at least 72 hours of accrued paid leave time per year.

The following chart, from the Seattle Office for Civil Rights (the body in charge of enforcing the Seattle ordinance), demonstrates the varying employer obligations:

	Small Employer (4 to 49 employees) Tier 1	Medium Employer (50 to 249 employees) Tier 2	Large Employer (250+ employees) Tier 3
Accrual of paid sick/safe time	1 hour per 40 hours worked	1 hour per 40 hours worked	1 hour per 30 hours worked

Use of paid sick/safe time	40 hours per calendar year	56 hours per calendar year	72 hours per calendar year
Carryover of unused paid sick/safe time	40 hours per calendar year	56 hours per calendar year	72 hours per calendar year

Accrual And Use

Current employees began accruing PSST on September 1, 2012, the date the ordinance took effect. The accrual rates will not apply to hours worked before that date. Employees hired on or after September 1, 2012 will begin to accrue PSST from the start-date of employment.

PSST comes from a single bank of paid time off. Under the ordinance, employees accrue PSST at the same time and then have the option of either using it for sick leave or safe leave.

Employees are permitted to carry over a large number of unused hours over to the next year. As noted in the above chart, the exact amount of hours carried over depends on the employer's tier size.

The ordinance provides for both paid sick leave and paid safe leave. Employees can choose to use their accrued PSST in the following scenarios:

- *The employee's own illness or medical care.* This is defined to include any employee's mental or physical illness, injury, or health condition; an employee's need for medical diagnosis care or treatment of a mental or physical illness, injury, or health condition; or an employee's need for preventive medical care.
- *Family care.* This allows for an employee to care for a covered family member who has the medical issues listed above. The "covered family member" standard is generally the same as under the Washington Family Care Act and thus includes a child, spouse, registered domestic partner, parent, parent-in-law or grandparent.
- *Business or school closures.* This includes situations where the employee's place of business or an employee's child's school or place of care is closed by the order of an public official to limit the exposure to an infectious agent, biological toxin, or hazardous material.
- *Domestic violence, sexual assault, or stalking.* This allows an employee to use safe time for reasons related to domestic violence, sexual assault, or stalking that affect either the employee or the employee's covered family member. The covered

family member standard is the same as is used under the ordinance's sick leave provision.

When the need for leave is foreseeable, employees may be required to provide a written request at least 10 days ahead of time. In instances of unforeseeable leave, employees must provide notice as soon as is practicable. Employers may continue to use their existing notice/call-in policies, so long as the policies meet the ordinance's minimum requirements described above.

Employers are generally **not** allowed to require the employee to provide documentation for use of PSST, unless the employee is absent for more than three consecutive days.

As is common with laws of this nature, the Seattle law includes an anti-retaliation provision. The provision prohibits an employer from discriminating against an employee for exercising his or her good-faith rights under the ordinance. The "exercise of rights" includes such things as using PSST, notifying the employer about any alleged violations, and informing other employees of their PSST rights.

Effect Of PSST Requirements On Existing PTO Policies

It has become increasingly popular for employers to voluntarily offer their employees paid time off (PTO). Unfortunately, most existing PTO policies will not be in compliance with the Seattle's PSST ordinance. Thus, employers with Seattle employees essentially face two choices: 1) establish a separate leave bank specifically for PSST, or 2) bring the existing paid leave program into compliance with the ordinance. For Tier 3 employers who choose to bring the existing leave program into compliance with the ordinance, the annual accrual and carryover increases from 72 to hours per year to 108 hours per year.

Bringing an existing policy into compliance is an extremely fact-specific determination. It's advisable to have an experienced labor and employment counsel review your policy. Three of the primary areas where existing PTO policies could run afoul of the Seattle ordinance involve the ordinance's mandatory accrual requirement, immediate-qualification provision, and its bar on various leave prerequisites.

- ***Accrual of Unused Time.*** Many employers have "use it or lose it" time off policies. That is, employees may not carry over any accrued, unused time off from year to year, or carryover is limited to a certain number of hours or days. If employers want to comply with the Seattle ordinance using their PTO policy, the PTO policy must allow employees to carry over the amounts provided under the ordinance: 40 hours per calendar year for Tier 1 employers, 56 hours per year for Tier 2 employers, and 108 hours per year for Tier 3 employers. Note that the Seattle ordinance, like Washington law generally, does not require payout of accrued,

unused time off at termination.

- **Qualification Periods.** Voluntary paid-leave programs often have qualifying periods before an employee begins accruing paid time off (e.g., the employee must work for the employer for at least six months). PSST begins accruing from the employee's first day of work. Thus, an employer who is seeking to bring their existing leave program into compliance with the Seattle ordinance must amend their policy to reflect this requirement.
- **Imposition of Use Conditions.** Some conditions commonly imposed upon employees seeking to use paid time off under an existing program are not allowed under Seattle law. For example, an employer cannot require a doctor's note or other form of verification from an employee using PSST unless the employee is out for more than three consecutive days.

Conclusion

The Seattle PSST ordinance imposes a variety of new obligations on employers with employees working in Seattle. If you are such an employer, you should review your leave policies to ensure compliance with the new ordinance, and work to revise as necessary immediately.

The ordinance has received a lot of media attention around the Pacific Northwest; other cities could follow Seattle's lead. For example, in Portland, Oregon, a campaign known as "Everybody Benefits," is calling on the Portland City Council to pass a paid sick leave ordinance.

For more information about the ordinance's requirements, or to receive guidance on updating written policies, contact any attorney in our Portland, Oregon, office at (503) 242-4262.

This Legal Alert provides an overview of a specific new state law. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.