

TACOMA'S NEW PAID SICK LEAVE ORDINANCE: WHAT EMPLOYERS NEED TO KNOW

Insights
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Tacoma has now joined Seattle as the third city in Washington State to mandate paid sick leave for employees (certain hospitality and transportation workers employees in SeaTac also receive this benefit). The new law will go into effect February 1, 2016.

Tacoma has just issued its rules interpreting this law, making this the best time for employers to take steps to comply. Employers should note that Tacoma's law differs from Seattle's law in many aspects, and should thus not assume compliance with Seattle means compliance with Tacoma.

Who Is Covered

Any employee who works 80+ hours per year within the geographical bounds of the City of Tacoma is eligible for paid leave. This determination is based on where the work is performed, not where the employer is located. Once employees are covered by the ordinance, they remain covered through the next calendar year, even if they do not meet the 80-hour threshold.

Accrual And Use Of Paid Leave Time

At a minimum, employees are entitled to accrue one hour of paid leave time for every 40 hours worked within Tacoma's city limits, and they can earn up to 24

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hours per calendar year. This minimum accrual rate does not differ by employer size. Employees can carry over up to 24 hours of any unused accrued time into the next year, and can start using their accrued leave 180 days after their hire date.

Employees can use up to 40 hours of their accrued leave, each calendar year, for any of the following reasons:

- to care for his or her own illness, injury, health condition, diagnosis, or preventative medical care of the same; or to care for a covered family member with mental or physical illness, injury, or medical appointment;
- if the employee's place of business has closed by order of a public official due to health concerns, or to care for a child whose school or place of care has been closed for the same reasons;
- to seek legal or law enforcement assistance, or seek safe accommodations, due to domestic violence, sexual assault, or stalking, or to assist a qualified family member in taking shelter from the same; and
- for bereavement following the death of a family member.

Employees are entitled to be compensated at their normal hourly rate of pay. However, you are not required to compensate employees for loss of tips, gratuities, or travel allowances. Salespersons are not entitled to a calculation of their lost commissions, unless they qualify as an "outside salesperson" under Washington law.

Some Flexibility

The ordinance offers some flexibility for employers. For example, you can set your own "Calendar Year," so long as it is declared and uniformly applied to all employees. You can also take reasonable disciplinary action against employees who exhibit a clear instance or pattern of abuse in taking their paid leave.

By written policy, you can also:

- offer “front-loaded” leave time at the beginning of the calendar year, instead of tracking accruals;
- impose reasonable attendance policies that require documentation for absences;
- permit donations of accrued leave among coworkers;
- permit the use of leave in increments of more or less than one hour;
- implement a Premium Pay Program, whereby employees earn a wage premium in lieu of leave accrual (which must be approved by the Finance Director of Tacoma);
- permit shift swapping and substitute shifts; and
- offer pay out of accrued leave upon separation.

Notice and Enforcement

The City of Tacoma will require businesses to certify on their business license applications and annual renewals that they have a paid leave policy that complies with the Paid Leave Ordinance. Employers also must provide employees with a written notice, alerting employees to their right to paid leave and alerting them to the fact that employers are prohibited from taking any adverse action against them for exercising their paid leave rights. Employees alleging violations of this ordinance can do so by filing a charge with the Finance Director of Tacoma. The Director assesses claims, and may impose back payment of paid leave, a payment of paid leave to the aggrieved employee with interest, and also impose a \$250 civil penalty.

Also, failure to properly track hours worked within Tacoma limits, failure to indicate amount of accrued leave on each paycheck, and failure to comply with record retention requirements could result in fines or backpay awards.

The good news is that the ordinance does not create a private right of action which would allow an employee to sue you in court.

Miscellaneous Provisions

These are some of the ordinance's basic provisions; however, there are numerous other compliance requirements that could trap an unprepared employer. For example, even if you do not have any Tacoma employees, you may be required to offer paid leave to a delivery driver who regularly stops in Tacoma. Employees who telecommute from their home in Tacoma are working in Tacoma, and are thus entitled to accrue leave time for those hours worked.

Employees cannot waive their right to paid leave through an employment contract. This right can only be waived through a bona fide collective bargaining agreement.

Employers who require sick leave verification from their employees, such as a doctor's note, must comply with specific regulatory procedures, as well as FLSA requirements.

Conclusion

If you have any questions about this new law, or how it may affect your business, please contact your Fisher Phillips attorney or one of the attorneys in our Seattle office at 206.682.2308.

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