



# Seattle Adds Serious Teeth To Sick And Safe Leave Law

Insights

12.18.15

Amidst the uber-media commotion over the Seattle City Council's December 14 adoption of a law allowing independent contractor rideshare drivers to unionize, many missed that Seattle also passed a significant bill amending Seattle's Paid Sick and Safe Leave law to give it serious enforcement teeth. Among other new provisions, noncompliance now means facing higher civil penalties and a lawsuit from your employees – with the potential for an award of treble damages.

## Employee Remedies

Seattle is now the first city in the country to create a private right of action under its mandatory paid leave laws (joining several states, including Oregon and Massachusetts). Employees who claim to have suffered an “adverse action” because of their good faith use or attempt to use paid leave required by Seattle's law may now bring their own lawsuit against their employer.

The ordinance's amendments expand the definition of “adverse action” by specifically calling out employment-related actions, including denying promotions, failing to re-hire after seasonal work interruptions, engaging in unfair immigration-related practices, and terminations. And the employee need only show that their exercise or attempt to exercise paid leave rights was a “motivating factor” in the adverse employment decision in order to prevail.

A successful employee is entitled to reinstatement, or front pay in lieu of reinstatement, along with payment of unpaid wages plus interest. Prevailing individuals are also entitled to receive twice the amount of unpaid wages as liquidated damages, and receipt of a \$5,000 to \$20,000 penalty payment from the employer. The applicable statute of limitations is three years.

## Civil Penalties

Other monetary civil penalties have also increased, including for situations where employers fail to meet the ordinance's employee notice and posting requirements, hinder an agency investigation, or otherwise violate the ordinance's requirements as related to an individual employee. Employers who violate even just the notice and posting requirements will be subject to a civil penalty of \$750 for the first violation, increasing to \$1,000 for subsequent violations.

## Enforcement

Local agency enforcement activities now fall under the recently created Office of Labor Standards, whose enforcement powers include the right to investigate complaints or suspected violations, subpoenas witnesses, demand documents, confirm U Visa eligibility of workers (nonimmigrant visas

for certain crime victims), and, if a violation is found, order corrective actions including monitored compliance for a reasonable time period.

The Agency also has the power to order payment of civil penalties, but also to order penalties paid directly to the aggrieved employee, including unpaid wages and liquidated damages up to twice the amount of unpaid wages.

### **Other Changes**

Among other significant changes, the new law also changes the minimum-use increment that an employer can set. The law currently sets the floor at one hour. The amendments will require that employers must permit employees who are nonexempt from overtime laws to use leave in as small as a quarter-hour increment, unless it is not feasible for the employers to do so because of their payroll systems. Without more guidance on what “feasible” means, it is quite possible that this new minimum increment requirement will apply to virtually all employers.

Another key change is clarification as to what it means to be employed “in Seattle.” Once the amendments take effect, employees who perform work “in whole or in substantial part” (at least 50 percent of the time) within Seattle’s city limits will be entitled to paid sick and safe leave. Currently, only employees who “regularly” work within Seattle are covered.

Likewise, the amendments expand the existing definitions of an “occasional” basis worker, and retain the exemption for workers who spend time in Seattle solely for the purpose of traveling through, with no work-related stops other than breaks.

The bill also offers a “new employer” exemption, whereby brand-new businesses with fewer than 250 employees are exempt from paid sick leave requirements until their second year with hired employees. Among other smaller changes, the amendments alter record retention requirements and the method for calculating employer tiers.

### **Effective Date**

The private right-of-action becomes effective beginning April 1, 2016 for businesses with 50 or more employees, and April 1, 2017 for all other businesses. As for the remaining provisions in the amendments, those will presumably become effective after the Mayor signs the ordinance. However, the City did not respond to inquiries regarding when that will occur as of the date of this Alert. Such information will likely be available on the Department of Labor Standard’s website at some point in the near future.

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

Employers have a short window to bring themselves into compliance before the changes become effective. To avoid stiff penalties, now is the time to take a look at your paid leave policies for any employees who perform work within the City of Seattle.

It is likely your policies will need revisions to comply with the amendments, particularly regarding increment of leave use. Employers should also keep an eye out for the City's updated mandatory workplace poster, which will clearly state that employees have the right to file an agency complaint if retaliated against in violation of the law.

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.

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*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.*

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