

IMPLEMENTING LOS ANGELES' MINIMUM WAGE AND PAID SICK LEAVE ORDINANCE

Insights
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The City of Los Angeles Office of Wage Standards (OWS) recently issued regulations providing clarification to the Minimum Wage and Paid Sick Leave Ordinance that went into effect on July 1, 2016. Last month, Mayor Eric Garcetti signed the Ordinance into law leaving employers with only a few weeks to coordinate their compliance efforts. The OWS' regulations appear to bridge the gap and provide employers with necessary guidance and clarity in light of the increasing uncertainty regarding three key areas in the Ordinance.

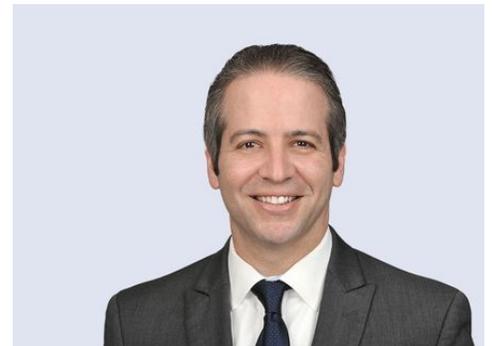
Front-Loading: Carryover Required For City Sick Leave

Front-loading has been a popular method for California employers to provide paid sick leave. Front-loading refers to the practice of providing the minimum amount of paid sick leave benefits to an employee at the beginning of the year, rather than having this time gradually accrue based on the employee's hours worked, or some periodic basis.

Many California employers that utilize the front-load method appreciate the administrative ease of simply providing paid sick leave benefits without being concerned about managing maximum usage and accrual limits, and carrying over this benefit from year-to-year.

The regulations highlight a notable distinction between the statewide paid sick leave law and the City of Los Angeles' paid sick leave requirements. Under the Ordinance, an employee's unused paid sick leave time must be carried over to the following year, up to the minimum cap of 72 hours, regardless of the employer's method of providing paid sick leave.

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For example, assume John Doe's employer utilizes the front-load method, and John receives 48 hours of paid sick leave on January 1, 2017. If John only uses 40 hours in 2017, he does not forfeit the remaining eight hours of his sick leave balance on December 31, 2017. This time is carried over to 2018. Additionally, John Doe is still entitled to the 48 hours he is scheduled to receive on January 1, 2018; consequently, his sick leave balance on January 1, 2018 would be 56 hours (eight hours from his 2017 balance plus the front-loaded 48 hours for 2018).

If he did not use any paid sick leave in 2017, he would have his entire balance carried over into 2018 and he would be entitled to his 2018 allotment of paid sick leave. While this would bring his overall balance to 96 hours, John's employer has the option of implementing the Ordinance's minimum accrual cap and reducing his available sick leave balance to 72 hours.

If you utilize the front-load method, you must revisit your paid sick leave policies and practices to ensure compliance with the Ordinance's carryover requirement.

Telecommuting And Transitory Employees

The Ordinance is clear: even employers based outside of the City must adhere to its requirements if any of its employees work at least two hours in a workweek within the City's geographical boundaries. Telecommuting employees are covered under the Ordinance provided that the place where they perform work, whether at home or in a shared workspace, is within the City.

Conversely, if the employer is based in the City, and the telecommuting employee's workspace is not within the geographical limits, the employee's time spent working outside of the City does not count towards the City minimum wage or the accrual of City paid sick leave.

A common question about the Ordinance is how it applies to employees whose duties require them to travel through the City. According to the regulations, a transitory employee will be subject to the Ordinance only if the employee's duties require that the employee make any employment-related or commercial stops in the City. In that instance, the clock begins to run from the time the employee enters the City until the employee leaves the City.

However, if the employee's purpose in the City is solely to travel, and the employee's point of origin and destination occur outside of the City, the employee's travel time in the City will not count towards the two-hour requirement. In this scenario, time spent refueling, and time spent on personal meal periods or running personal errands, will not count as an employment-related stop.

Given the difficulty of properly tracking all time worked in the City for transitory employees, the regulations provide suggested methods of tracking hours for transitory employees. They include GPS devices, time sheets, and real-time logs. Regardless of your company's preferred tracking method, it is a good practice to require employees to review and verify their hours worked, and any nonworking time spent on meal breaks, prior to the time being submitted to payroll.

"Small" Employer Deferral: Minimum Wage And Paid Sick Leave

Since the Ordinance's passage there was some uncertainty regarding "small" employers' obligations to provide paid sick leave benefits. Under the Ordinance, a "small" employer has 25 or fewer employees. The Ordinance provides a minimum wage schedule for small employers that allows delays the increase in the minimum wage until July 1, 2017.

Based upon the Ordinance's language, it was unclear whether small employers' obligation to provide increased paid sick leave benefits was also subject to the one-year deferral. The regulations state that both the OWS and the Office of the City Attorney interpret the Ordinance as providing "small" employers a one-year deferral on their obligations to provide paid sick leave benefits under the Ordinance.

While the regulations reflect the OWS' guidance on interpreting the Ordinance, employers should bear in mind that courts consider regulatory guidance to be persuasive if it were to be challenged. However, courts will ultimately regard the Ordinance as controlling authority and apply the law based upon its terms.

If you have any questions about these regulations or how they may affect your business, please contact your Fisher Phillips attorney or one of the attorneys in our Los Angeles office at 213.330.4500.

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