



Washington Employers: Prepare To Face New Workplace Laws

Insights

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The past year has brought multiple new workplace laws that will require employers in Washington to change several key policies and procedures. Below is an update that provides a general overview to help you prepare for these new laws, in the order of the effective dates of each law.

Seattle Secured Scheduling Ordinance

For covered retail and food service employees, Seattle's Secured Scheduling Ordinance went into effect July 1, 2017, and the city has already commenced compliance inspections and enforcement actions. It applies to all employees who work, or report to work, at a fixed point of sale location in Seattle for 50% of the services provided to the employer. At this point, it only applies to retail and food services establishments with 500 or more employees worldwide, and full-service restaurants with 500 or more employees and 40 or more full-service restaurant locations worldwide.

The ordinance created multiple new rights: a right to good faith estimate of hours at time of hire and at least annually, a right to 14-day advance notice of schedules, a right to premium pay for employer-initiated schedule changes, a right to give input into schedules and receive scheduling preferences for certain "major life events," and a right to obtain additional hours before the employer can hire new workers. The ordinance also has specific recordkeeping requirements, and failing to meet many of them result in a presumption against the employer. The law also creates a rebuttable presumption that any employee termination that occurs within 90 days of an employee's request for a schedule change is retaliatory.

Takeaway: *If you have not yet combed over the details of this law, we recommend you consult with your legal counsel immediately to ensure you are meeting all compliance requirements. Failure to train your frontline managers and put adequate compliance and documentation procedures in place will almost certainly cost you money. The recently created Seattle Office of Labor Standards continues to take on a more active enforcement role in all new Seattle laws, including Secure Scheduling, Paid Sick and Safe Time, Minimum Wage, Wage Theft, and Fair Chance Employment, and employers with Seattle operations should take time now to ensure they meet all local requirements.*

Pregnancy Accommodation

Signed into law May 16, 2017, Washington's new pregnancy accommodation bill aims to provide healthy outcomes for pregnant employees and infants. As of July 23, 2017, all employers with 15 or more employees must provide all pregnant employees with the following accommodations:

1. Frequent, longer, or flexible bathroom breaks;
2. Modification of a no food or no drink policy;
3. Allowing employee to sit more frequently; and
4. Limiting any lifting of objects greater than seventeen pounds.

And in the absence of significant difficulty or expense to an employer, a pregnant employee is also be entitled to:

5. Job modification such as changing a work schedule, assignment to a different position, changing a workstation, or providing equipment;
6. A transfer to a less hazardous or less strenuous position;
7. The right to maintain a flexible schedule for prenatal medical appointments; and
8. Additional accommodations as needed.

If you believe you will suffer undue hardship by accommodating the pregnant employee as outlined in items 5 through 8 above, you may petition the Washington State Department of Labor and Industries (L&I) for “undue hardship” and receive guidance on how to proceed. Meanwhile, while you may not ask for medical documentation to substantiate the need for the accommodations listed in items 1 through 4, you may request medical documentation to substantiate the need for the accommodations listed in items 5 through 8.

This law does not require you to create additional employment that you would not otherwise have created, or to discharge any employee, transfer any employee with more seniority, or promote any employee who is not qualified to perform the job.

The Washington State Attorney General will investigate complaints and enforce the law through conference and conciliation. Additionally, any person who believes they are injured by a violation of this law may bring a civil cause of action in court to enjoin further violations and to recover the actual damages sustained, the cost of bringing the lawsuit, and attorneys’ fees.

Takeaway: *You should consider whether your business needs a new policy and training on pregnancy accommodation to ensure compliance with the law that is already in place. Consider updating your reasonable accommodation policies at a minimum. You should also review the guidance provided on [L&I’s website](#).*

Washington Paid Sick Leave

Starting January 1, 2018, employers will need to comply with Washington’s new statewide paid sick and safe leave law. The highlights of the law include:

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- Employers must provide at least 1 hour of paid sick and safe leave for every 40 hours worked;
- Paid sick leave must be paid to employees at their “normal rate of pay,” which is different than an employee’s regular rate of pay and may include commissions;
- Employees must be permitted to use their sick and safe leave after their 90th day of employment;
- Employees may carry over up to 40 hours of paid sick leave at the end of the year;
- Employees are permitted to use their sick and safe leave to care for themselves or a family member or for any reason that would qualify the employee under Washington’s Domestic Violence Leave Act; and
- Employers may not require the employee using paid sick and safe leave to find a replacement worker to cover for the employee using the leave.

The new law does not preempt, or overrule, various Washington cities’ paid sick and safe laws, such as Seattle’s. The statewide law also differs in many aspects from local laws, which means that employers may need to make adjustments (for example, if you currently have a frontloaded or universal PTO policy).

Takeaway: *Employers operating in Washington will have to make some decisions about how to comply with this patchwork of laws. You should review and analyze your sick leave policy to ensure it complies with the new law. You should also monitor the L&I website for the publication of the final administrative rules. Our firm will be hosting a complimentary webinar on November 10, 2017 to discuss the law in more detail and provide specific compliance steps. [Click here](#) to learn more and register.*

Statewide Minimum Wage Increase

Effective the turn of the year, Washington’s minimum wage will increase to \$11.50. On January 1, 2019, it will once again bump to \$12.00, and then to \$13.50 on January 1, 2020. Some important things to keep in mind:

- Employers must still pay all tips, gratuities, and service charges (except those that are itemized as not being payable to the employee or employees servicing the customer) to the employees or risk a wage claim;
- Tips and service charges paid to an employee may not offset Washington’s minimum wage requirement; and
- The new law does not preempt, or overrule, higher local minimum wages such as Seattle’s.

Takeaway: *You should review and analyze your pay scales to ensure it complies with the new law. You should also monitor the L&I website for the publication of the final administrative rules.*

Paid Family And Medical Leave

This past summer, Governor Jay Inslee signed the Paid Family and Medical Leave legislation into law. Beginning in 2020, all employees who have worked at least 820 hours in the previous year will be eligible for up to 12 weeks of paid family leave (1) to care for a family member with a serious health condition; (2) to care for a new child after birth, adoption, or foster placement; and (3) for a qualifying military exigency.

Employees may also take up to 12 weeks of paid medical leave for an employee's own serious health condition, or up to 14 weeks for a pregnancy-related disability. Employees may only take 16 weeks of paid family and medical leave in total, or 18 weeks total if the employee suffered from a pregnancy-related disability.

The new law is funded by both employers and employees. Starting January 1, 2019, employees will pay 100% of the premiums for family leave and 45% of the premiums for medical leave. Employers with 50 or more employees will pay none of the premiums for family leave and 55% of the premiums for medical leave. This equates to the employee paying about 63% of the overall premiums and the employer paying about 37%. Premiums are expected to be around .5% of an employee's total wages. Under the law, employees can receive up to \$1,000 per week.

Employers with 50 or fewer employees are exempt from paying the employer premiums under the law, but their employees will still pay into the Paid Family and Medical Leave program and receive the corresponding benefits. Employers with under 150 employees are eligible for a \$3,000 grant for the employer to hire a temporary worker, or a \$1,000 grant to pay the additional wages for another employee to work more hours to cover for the employee out on leave. It is important to note that for employers to be eligible for these grants, they must opt-in to the Paid Family and Medical Leave program and pay the premiums.

The law requires that employees' state Paid Family and Medical Leave and federal Family Medical Leave (FMLA) run concurrently. Additionally, employers that offer a comparable or better paid family and medical leave policy or program will have the option of opting out of the Washington's Paid Family and Medical Leave program.

Takeaway: *You will want to begin to analyze current leave policies to determine which parts of your policy need to be amended or whether your business plans to offer a comparable or better plan.*

For more information about any of these new laws, please contact any member of [our Seattle office](#) at 206.682.2308, or your regular Fisher Phillips attorney.

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

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Catharine Morisset

Partner

206.693.5076

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