

Connecticut Becomes First State to Mandate Paid Sick Leave for Service Workers

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Connecticut became the first state in the nation to mandate a paid sick leave policy for service workers. An Act Mandating Employers Provide Paid Sick Leave to Employees ("Paid Sick Leave Act") goes into effect on January 1, 2012 and requires employers with fifty or more employees to pay service workers for sick leave, "accruing at a rate of one hour per 40 hours worked." To whom does the Paid Sick Leave Act Apply?

The Paid Sick Leave Act only applies to employers with fifty or more employees within Connecticut "in any one quarter in the previous year." Manufacturers and certain tax exempt organizations are excluded from coverage, however. Additionally, employers with pre-existing policies that allow at least as much coverage as that prescribed by the Act are deemed to be in compliance with the Act.

Eligible employees include service workers who primarily work in one of 68 Standard Occupational Classifications. The following workers, however, are not eligible under this Act: (1) day or temporary workers; (2) non-hourly workers; and (3) salaried employees. The Act defines "day or temporary worker" as an individual who works on a per diem basis or who works on "an occasional or temporary basis for only the time required to complete such work."

How Does Paid Sick Leave Accrue Under the Act?

Service workers begin accruing paid sick leave on January 1, 2012. If a service worker is hired after January 1, 2012, accrual begins on the first date of employment. Service workers accrue one hour of paid sick leave for every forty hours worked, but cannot accrue over forty hours of sick leave, or five sick days, per calendar year. Additionally, service workers must meet the following conditions before they are able to use accrued sick leave: (1) they must have worked for the employer for at least 680 hours since the date of hire; (2) they must have worked "an average of ten or more hours a week for the employer in the most recent complete calendar quarter." A service worker can carry up to forty hours of unused sick leave to the next calendar year. But, even with hours from the previous calendar year, a service worker is limited to using only forty hours of leave within any calendar year.

At What Rate Must Sick Leave Be Paid?

Employers must pay service workers the greater of the following rates for sick leave: (1) the worker's normal hourly wage rate; or (2) the statutory minimum wage required for leave time. If a worker's wage varies depending on work performed, the worker's normal hourly wage rate is the worker's average hourly wage from the pay period prior to the leave time.

Upon termination, service workers are not entitled to payment for unused accrued sick leave, unless an employee policy or collective bargaining agreement provides otherwise. Additionally, any termination constitutes a break in service. A worker who is rehired after a break in service begins to accrue sick leave, but is not entitled to use sick leave that he had accrued before the break in service.

For What Purposes Can a Service Worker Take Paid Leave?

A service worker can use paid sick time for himself, a child, or a spouse for the following purposes: (1) preventative medical care; (2) the diagnosis, care, or treatment of mental illness, physical illness, injury, or health condition; or (3) illness, injury, or health condition. An employer can require reasonable documentation from a worker who requests more than three consecutive days of paid sick leave for these purposes. Reasonable documentation may include documentation signed by a health care provider that indicates the employee's need for the number of days of sick leave.

Additionally, a service worker who is the victim of family violence or sexual assault can use accrued time to obtain medical care, counseling, or social services. The worker can also use paid time to relocate or to participate in related criminal or civil proceedings. If a worker requests more than three consecutive days of paid sick leave for these purposes, an employer can require reasonable documentation from the worker. Reasonable documentation may include a court record or documentation signed by a service worker, an attorney, a police officer, or counselor.

Employers can also require advanced notice of up to seven days from service workers whose need to use sick leave is foreseeable. When leave is not foreseeable, employers can require that workers give notice as soon as possible. Employers can also take disciplinary action against service workers who use paid sick time for purposes other than those described in the Act.

What if My Company Already Has a Paid Leave Policy?

An employer is deemed to comply with the general provisions of Paid Sick Leave Act if the employer offers any other paid leave, or combination of paid leave, that (1) may be used for the same purposes as those under the Act and; (2) accrues at an equal or greater rate than the accrual of sick leave under the Act. Paid leave that complies with the Act includes paid vacation, personal days, or paid time off. However, employers with their own paid sick leave policies are still subject to the Paid Sick Leave Act's retaliation provision.

The Act specifies that employers can provide employees with more generous policies than those described by the Act, and can also limit their policies to meet the minimum standard prescribed by the Act. However, employers cannot limit any pre-existing policies for service workers or employees if doing so would diminish rights provided by a collective bargaining agreement. Additionally, nothing in the Act preempts any collective bargaining terms that were in effect before January 1, 2012.

What Notice Must an Employer Provide?

Each covered employer must provide service workers notice of the following at the time of hire: (1) that the employee is entitled to paid sick leave; (2) the amount of sick leave provided; (3) the purposes for which leave can be used; (4) that the employer cannot retaliate against the worker for using sick leave; and (5) that the employee can file a complaint with the Labor Commissioner. An employer can also comply with this requirement by displaying a poster in a conspicuous location that is accessible to service workers. The poster should be in English and in Spanish.

How is the Paid Sick Leave Act Enforced?

The Paid Sick Leave Act prohibits an employer from taking retaliatory action or discriminating against any employee, including those who are not service workers. Specifically, the Act prohibits employers from retaliating against any employee who (1) requests to use paid sick leave under the Act or under the employer's own sick leave policy; or (2) files a complaint with the Labor Commissioner alleging a violation of the Act. In other words, the retaliation ban is broader than other provisions of the Act; it applies to employers that are covered by the Paid Sick Leave Act and also to those that provide their own paid sick leave.

Employees who feel that their employer violated the Paid Sick Leave Act can file a complaint with the Labor Commissioner, who may then hold a hearing. Following the hearing, any employer who is found to have violated the general provisions of the Act by a preponderance of the evidence is liable for a civil penalty of up to \$100 per violation. Any employer who is found to have violated the retaliation provision of the Act by a preponderance of the evidence is subject to a civil penalty of \$500 for each violation. The Commissioner can then award the aggrieved employee "all appropriate relief," including payment for used paid sick leave, rehiring, reinstatement, back wages, and reestablishment of benefits to which the employee would have otherwise been entitled.

If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:

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