

Just Like the Flu, Paid Sick Leave Laws Don't Seem to Want to Go Away

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Just Like the Flu, Paid Sick Leave Laws Don't Seem to Want to Go Away

by Erin Denniston Leach

The momentum on paid sick leave laws has not slowed down and states, counties and cities across the United States – and even the federal government – are continuing to propose and implement mandatory paid sick leave laws. So far approximately 40 states, cities and counties have implemented mandatory paid sick leave laws. These states include Arizona, California, Connecticut, Massachusetts, Oregon, Vermont and Washington, as well as Washington D.C. For those employers with employees in California, eight different cities in the state also currently have their own paid sick leave laws that in some instances provide even more protection than that provided by state law. In addition, many states, including Maryland, Michigan, Nevada and New Jersey, are currently considering proposed paid sick leave laws.

Earlier this month, the Nevada Senate approved a bill for three paid sick days yearly. That bill is now before the Nevada Assembly for approval. Similarly, in the last month the Maryland House of Delegates approved a sick leave bill previously passed by the Maryland Senate which has now been sent to the governor for approval.

Some of the recently passed paid sick leave laws that will go into effect in the near future include the following:

- Arizona, St. Paul (Minnesota), Minneapolis (Minnesota), Cook County (Illinois) and Chicago (Illinois) have paid sick leave laws scheduled to go into effect on July 1, 2017.
- Los Angeles, California's paid sick leave law went into effect last year for larger employers but smaller employers received a delay to comply until July 1, 2017.
- Berkeley, California's paid sick time leave accrual provisions go into effect on October 1, 2017.
- Washington state's paid sick leave accrual and entitlement provisions begin on January 1, 2018.

This list is by no means exhaustive, and new sick leave laws are constantly being proposed and implemented, so employers should be on the lookout for the proposal or implementation of any paid sick leave laws in states, counties and cities where they have employees working. In addition to the above, Executive Order 13706 imposes paid sick leave requirements for federal contractors with certain covered contracts. Specifically, parties that enter into covered contracts with the federal government after January 1, 2017 are required to provide employees with up to seven days of paid sick leave annually, including paid leave allowing for family care.

Given this patchwork of local, state and federal paid sick leave laws, an employer should consider what law applies, and to what extent. Employers should consider that those aspects of each applicable law that are the most generous to the employee prevail. An employer is tasked with picking and choosing those portions of both the state and local laws that are most generous to the employees and patching them together to craft a compliant

paid sick leave policy. This becomes more difficult when employers have employees across numerous cities and states. Accordingly, a “one size fits all” paid sick leave policy will not necessarily cover all of the permutations of the paid sick leave laws applicable to different employees in different states, counties and cities. While an employer may voluntarily implement a single policy for all employees across jurisdictions that seeks to comply with the most generous of any applicable laws, this is difficult to do, and as more laws are passed, it will become increasingly difficult to create such a uniform policy.

Some of the key issues to keep in mind in reviewing any applicable paid sick leave law and confirming that the company’s paid sick leave policy complies with the law are:

- What are the permissible uses for paid sick time?
- Who is considered a “family member” under the law?
- What is the minimum amount of permissible paid sick time accrual?
- Is the employer permitted to award the paid sick time in a lump sum, instead of on an accrual basis?
- When is an employee eligible to start accruing paid sick time?
- Can an employer require that an employee work for a set period of time before becoming eligible to use paid sick time?
- Must any unused paid sick time carry over at the end of the year and, if so, how much?

- Can an employer cap paid sick time accrual on a yearly or cumulative basis?
- Can an employer limit the amount of paid sick time an employee can use within a year?
- Can an employer require an employee provide medical documentation supporting the need for leave?
- Can an employer require employees to comply with specific notification and reporting requirements?
- Are there any notice, posting or recordkeeping requirements?
- Must accrued but unused paid sick time be paid out at the time of termination?
- Are there any provisions prohibiting retaliation against an employee for taking paid sick leave and, if so, is there any presumption of retaliation in favor of the employee for adverse employment actions taken within a specified time period of protected activity?

As with illness, prevention is often the best remedy for a positive prognosis. To prevent future problems with paid sick leave, employers may wish to look into the individual requirements in any state, county or city where their employees perform work and confirm whether or not they fall within the definition of federal contractor with a covered contract under Executive Order 13706. Employers may further wish to confirm that they have a policy in place and that their policy complies with all applicable requirements.

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