

## Pittsburgh Paid Sick Days Act Going Into Effect Amidst Uncertainty

On March 15, 2020, the long-awaited Paid Sick Days Act of the City of Pittsburgh (the Act) will go into effect. Originally enacted by the city in 2015, it took a 2019 decision of the state Supreme Court to re-define the authority of a home-rule municipality to create regulations binding private employers before the Act was allowed to go forward. Guidelines were then drafted, and an effective date set. However, with uncertainty regarding the details of the Act and its enforcement remaining, the city has announced that it will not enforce the penalty provisions of the Act for at least one year.

In providing for paid sick days, the Act includes many unique and technical details. Such details follow.

Covered “employer” is broadly defined to include any entity or person that employs one or more employees who perform at least 35 hours of work within the city. By definition, the federal and state government are excluded, including their judiciaries. Religious institutions, however, are not excluded.

Covered “employee” includes both full-time and part-time employees of an employer, and both exempt and non-exempt employees. It does not include independent contractors, bargaining unit members of a construction union, or seasonal employees (defined as individuals hired for a period not to exceed 16 weeks in a calendar year and who are notified of such at the time of employment with a firm end date). The term employee relates to an individual working in the city, regardless where the employer is based or even where the employee is based. A delivery driver, for example, spending at least 35 hours in the city of Pittsburgh in a calendar year, could be eligible for sick time accrual.

Accrual is the normal, anticipated format for an employee to gain a bank of sick time. Accrual is made in full hour increments, and exempt employees are assumed to work 40 hours each workweek:

- If the employer has 15 or more employees, then all employees (full-time and part-time) must be able to accrue at least one hour of paid sick time for every 35 hours worked in a calendar year, unless the employer has a policy providing a more generous rate of accrual.
- If the employer has fewer than 15 employees, employees accrue sick time at the same rate. However, for the first year following the effective date, the employee accrues unpaid sick time and only thereafter is the accrued sick time required to be paid.

The maximum accrual or cap and the number of hours that can be used per year also differs based on the size of the workforce:

- If the employer has 15 or more employees, then employees may accrue up to a cap of 40 hours of paid sick time in a calendar year. Thereafter, while paid sick time can be carried over from year to year (with some exception discussed below), the cap and use need not be increased.
- If the employer has less than 15 employees, then the hours may accrue to a cap of 24 hours of sick time, which can be unpaid sick time in the first year after the Act is enforced and must be paid sick time thereafter.

For purposes of accrual rate and caps, the number of employees includes all employees of an employer (except owners), even if working outside the city. However, only employees working in



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the city would be covered under the Act.

If an employer policy or collective bargaining agreement provides the allowable number of hours of mandated paid sick time, it can choose to “front load” sick time rather than accrue it. In such case, it need not carry over any sick time.

If an employer has a policy or collective bargaining agreement which provides paid leave sufficient to meet the accrual requirements of the Act, and that leave can be used for the same purposes and under the same conditions, then the employer is not required to provide additional sick time. The Act does not address the question of federal preemption.

Use of sick time is a widely untested and undefined area that is likely open to confusion; if not abuse. By Act, the employee may use accrued sick time for the employee’s “mental or physical illness, injury or health condition,” the need for diagnosis, care, or treatment of such, or the need for preventative medical care. Additionally, the employee may use accrued sick time to care for a family member with a similar condition (family member being defined much more broadly than the FMLA). The scope of “mental or physical illness, injury or health condition” is not defined, and unless the employee uses three or more sick days, the employer cannot require certification.

Accrued sick time need not be considered vested for purposes of payout upon separation from employment for any reason. However, if a business changes owners and employees remain, that is not considered a separation from employment for purposes of the Act, and accrued time must remain available for use.

A waiting period may be put in place for new employees not to exceed 90 calendar days. There is no waiting period, however, at the time of the effective date.

Advance notice of sick time use cannot be required to be in writing; oral notice is sufficient. Employers can maintain policies on the timing of advance notice (not to exceed seven days), where it is possible for the employee to do so. Absent such policy, the employee is required to provide one hour notice, where possible.

Accrued sick time can be used in hourly increments or in the smallest increment that the employer’s payroll system utilizes to account for other leave time.

Certification or documentation justifying use of sick time can only be required for the use of sick time that lasts three full, consecutive days or more, and the employer cannot require that the documentation specify the nature of the condition. It is sufficient for the documentation to provide “Sick time is necessary.” However, when an employee’s absence from work is covered by FMLA, the employer may demand the more specific certification outlined by that statute.

Notice of employee rights under the Act is required to be given by employers via a sign at each worksite that employees are entitled to sick time, the amount of time, and the terms of its use. It is also required to provide notice that retaliation against employees who request or use sick time is prohibited, and that employees have a right to file a complaint with the Mayor’s Office of Equity if sick time is denied or retaliatory action is taken.

Enforcement actions may be pursued with the Mayor’s Office of Equity, and will have a statute of limitations of six months. The Office of Equity has fact-finding authority, with appeal rights to the Court of Common Pleas.

Records related to hours worked and sick time taken must be preserved by employers for at least two years and made accessible to the Mayor’s Office of Equity upon request.

The city of Pittsburgh’s Paid Sick Day Act leaves a number of unanswered issues to be clarified in the coming months. In the meantime, its many unique and technical details warrant an audit and implementation plan by Human Resource representatives who have employees working in the city.

A copy of the Act, the guidelines, and the required notice can be found [here](#).

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