

Paid Sick Leave in Washington State



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January 2018

Disclaimer

- The intention of this presentation is to help provide the public with guidance on the application of the Washington State Paid Sick Leave law, effective January 1, 2018.
- This presentation is strictly for educational purposes and is not intended to substitute or replace professional legal counsel. The answers provided during this presentation are based on the facts provided and subject to change with the inclusion of other variables.
- Employers with employees who work in cities that have a minimum wage and paid sick leave ordinance (Seattle, Tacoma, and the City of SeaTac) will need to apply the standards of such ordinances that are more favorable to employees.

Initiative 1433 – History

- On November 8, 2016, voters in WA State approved Initiative Measure No. 1433 (I-1433).
- I-1433 increased the state minimum wage, required employers to pay all tips & gratuities to employees, introduces **paid sick leave**, and provides the department with the authority to enforce & investigate retaliation claims.
- The provisions of I-1433 were codified into RCW Chapter 49.46 – historically known as the Minimum Wage Act (now “Minimum Wage Requirements and Labor Standards”).

Initiative 1433 – L&I Rulemaking Mandate

- L&I “must adopt and implement rules to carry out and enforce [I-1433], including but not limited to procedures for notification to employees and reporting regarding sick leave, and protecting employees from retaliation for the lawful use of sick leave and exercising other rights under this chapter.”
- L&I’s “rules for enforcement of rights under [I-1433] shall be at least equal to enforcement of the minimum wage.”

Initiative 1433 – Rulemaking Process

■ Rule Filings

- Employer requirements/employee rights rules were finalized on October 17, 2017.
- Enforcement rules were filed with the Office of the Code Reviser on December 19, 2017.

■ Administrative Policies

- The department is currently working to develop administrative policies, which will provide additional interpretive guidance.

■ Model Policies and FAQs

- The department has finalized a number of model policies to assist employers in being compliant with the paid sick leave requirements. There are also FAQs available via the [Employer Resource Center](#) website.

Initiative 1433 – Paid Sick Leave

- Starting January 1, 2018, employers in Washington are required to provide their employees with paid sick leave.
- “Employee” and “Employer” have the same meaning as the definitions that exist in the Minimum Wage Act.
 - As a result, those who are exempt from minimum wage and overtime* are also exempt from paid sick leave.
 - *Keep in mind that there are categories of workers exempt from overtime but **NOT** from minimum wage – these employees will get paid sick leave (i.e. agricultural employees).

Paid Sick Leave – Recordkeeping

- To meet the requirements for recordkeeping, WAC 296-128-010 was amended to include requirements for employers to track:
 - Paid sick leave accruals each month, and any unused paid sick leave available for use by an employee;
 - Paid sick leave reductions each month; and
 - The date of commencement of employment for each employee.

Paid Sick Leave – Accrual

- Paid sick leave shall accrue at a minimum rate of one hour of paid sick leave for every 40 hours worked as an employee.
- An employer may provide paid sick leave in advance of accrual provided that such front-loading meets or exceeds the requirements for accrual, use, and carryover of paid sick leave.
- Unused paid sick leave carries over to the following year, except that an employer is not required to allow an employee to carry over paid sick leave in excess of 40 hours.

Paid Sick Leave – Usage

- An employee is authorized to use paid sick leave for the following reasons:
 - Care for self or a family member due to:
 - mental/physical illness, injury, or health condition;
 - to accommodate a need for medical diagnosis, care, or treatment of a mental/physical illness, injury, or health condition; or
 - to accommodate the need for preventive medical care.
 - Closure of the employee’s place of business or the employee’s child’s school or place of care due to an “order of a public official for any health-related reason.”
 - Absences that qualify for leave under Washington’s Domestic Violence Leave Act (at RCW 49.76).

Paid Sick Leave – Usage

- Family member, defined
 - (a) A child;
 - Including a biological, adopted, or foster child, stepchild, or a child to whom the employee stands in loco parentis, is a legal guardian, or is a de facto parent, regardless of age or dependency status;
 - (b) A parent;
 - Including a biological, adoptive, de facto, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child;
 - (c) A spouse;
 - (d) A registered domestic partner;
 - (e) A grandparent;
 - (f) A grandchild; or
 - (g) A sibling.

Paid Sick Leave – Usage

- 90 Days
 - An employee is entitled to use accrued paid sick leave beginning on the ninetieth calendar day after the commencement of his or her employment.
- Increments for Use
 - Employers must allow employees to use paid sick leave in increments consistent with the employer's payroll system and practices, not to exceed one hour. For example, if an employer's normal practice is to track increments of work for the purposes of compensation in 15-minute increments, then an employer must allow employees to use paid sick leave in 15-minute increments.

Paid Sick Leave – Variance from Required Increments of Paid Sick Leave Usage

- The department may grant a variance from the requirements for increments of use for “good cause.”
- Good cause means situations where an employer can establish that compliance with the requirements for increments of use are infeasible, and that granting a variance does not have a significant harmful effect on the health, safety, and welfare of the involved employees.
- An employer may seek a variance by submitting a written application to the department (variance application available [online](#)).

Paid Sick Leave – Reasonable Notice

- An employer may require employees to give reasonable notice of an absence from work for the use of paid sick leave for an authorized purpose.
- Foreseeable leave vs. unforeseeable leave
- Requirements for a written policy or collective bargaining agreement

Paid Sick Leave – Verification

- Reasonable Employee Notice
 - An employer may require employees to give reasonable notice of an absence from work, so long as such notice does not interfere with an employee's lawful use of paid sick leave
- Three Day Verification
 - For absences exceeding three days, an employer may require verification that the use of paid sick leave is for an authorized purpose.
 - An employer's requirements for verification may not result in an unreasonable burden or expense on the employee and may not exceed privacy or verification requirements otherwise established by law.

Paid Sick Leave – Rate of Pay

- For each hour of paid sick leave used, an employee must be paid the greater of the minimum hourly wage rate or their “normal hourly compensation”.
- “Normal hourly compensation” is defined as “the hourly rate that an employee would have earned for the time during which the employee used paid sick leave.”
- For employees paid other than an hourly rate, employers must calculate the employees’ hourly rate that they would have earned for the time during which they used paid sick leave.

Paid Sick Leave – Rate of Pay

- For example:
 - For an employee paid partially or wholly on a piece rate basis, the employer would want to divide the total earnings by the total hours worked in the most recent workweek in which the employee performed identical or substantially similar work to the work they would have performed had they not used paid sick leave.

Paid Sick Leave – Payment of Paid Sick Leave

- Unless verification for absences exceeding three days is required by an employer, the employer must pay paid sick leave to an employee no later than the payday for the pay period in which the paid sick leave was used by the employee.
- If verification is required by the employer, paid sick leave must be paid to the employee no later than the payday for the pay period during which verification is provided to the employer by the employee.

Paid Sick Leave – Separation from Employment

- Separation from Employment
 - When there is a separation from employment and the employee is rehired within 12 months of separation, at the same or different business location of the employer, previously accrued unused paid sick leave shall be reinstated and the previous period of employment shall be counted for purposes of determining the employee's eligibility to use paid sick leave.
- Financial Reimbursement not Required
 - Employers are not required to provide financial or other reimbursement for accrued and unused paid sick leave to any employee upon the employee's termination, resignation, retirement, or other separation from employment.

Paid Sick Leave – Paid Time Off (PTO) Programs

- A PTO program (e.g., a program that combines vacation leave, sick leave, or other forms of leave into one pool), created by a written policy or a collective bargaining agreement, satisfies the requirement to provide paid sick leave if the PTO program meets or exceeds the provisions of I-1433 and all applicable rules.

Paid Sick Leave – Shared Leave

- An employer may establish a shared paid sick leave program where an employee may choose to donate paid sick leave to a coworker.
- Requirements for a written policy or collective bargaining agreement.

Paid Sick Leave – Shift Swapping

- Replacement Workers
 - An employer may not require, as a condition of an employee taking paid sick leave, that the employee search for or find a replacement worker to cover the hours during which the employee is on paid sick leave.
- Shift Swapping
 - Upon mutual agreement by the employer and employee(s) involved, an employee may work additional hours or shifts, or trade shifts with another employee, in lieu of using available paid sick leave for missed hours or shifts that qualify for the use of paid sick leave.

Paid Sick Leave – Frontloading

- An employer may, but is not required to, frontload paid sick leave to an employee in advance of accrual.
- If an employer frontloads paid sick leave, the employer must ensure that such frontloaded paid sick leave complies with I-1433 and all applicable rules.
- Reasonable calculation for frontloading paid sick leave.
- Requirements for a written policy or collective bargaining agreement.

Paid Sick Leave – Third Party Administrators

- Employers may contract with a third-party administrator in order to administer the paid sick leave requirements under I-1433 and all applicable rules.
- Employers are not relieved of their obligations under I-1433 and all applicable rules, if they elect to contract with a third-party administrator to administer paid sick leave requirements.

Paid Sick Leave – Unauthorized Use

- If an employer can demonstrate that an employee's use of paid sick leave was for an unauthorized purpose, the employer may withhold payment for such hours, but may not subsequently deduct those hours from an employee's paid sick leave bank.
- If an employee maintains that the use of paid sick leave was for an authorized purpose, the employee may file a complaint with the department.

Paid Sick Leave – Notification

- Employers must notify each employee:
 - of their entitlement to paid sick leave;
 - the rate at which the employee will accrue paid sick leave;
 - the authorized purposes under which paid sick leave may be used; and
 - that retaliation by the employer is unlawful.

Paid Sick Leave – Notification

- Monthly Notification

- Not less than monthly, employers must provide each employee with written or electronic notification detailing the amount of paid sick leave accrued and the paid sick leave reductions since the last notification and any unused paid sick leave available for use by the employee.

- Poster Requirement

- Poster titled “Your Rights as a Worker in Washington State” will need to be positioned in a readily accessible location, within plain sight, at each workplace.

Initiative 1433 – Retaliation

- It is unlawful for an employer to interfere with, restrain, or deny the exercise of any employee right provided under or in connection with chapter 49.46 RCW.
- It is unlawful for an employer to adopt or enforce any policy that counts the use of paid sick leave for an authorized purpose under RCW as an absence that may lead to or result in discipline by the employer against the employee.
- It is unlawful for an employer to take any adverse action against an employee because the employee has exercised their rights provided under chapter 49.46 RCW.

Initiative 1433 – Retaliation

- Examples but not limited to:
 - Denying use of, or delaying payment for, paid sick leave, minimum wages, overtime wages, all tips and gratuities, and all service charges, except those service charges itemized as not being payable to the employee or employees servicing the customer;
 - Terminating, suspending, demoting, or denying a promotion;
 - Threatening to take, or taking action, based upon the immigration status of an employee or an employee's family member.

Questions?

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