

Philadelphia Mandates Paid Sick Leave for Employees

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On February 12, Philadelphia Mayor Michael Nutter signed into law the Promoting Healthy Families and Workplaces Act (the Act), which requires most employers to provide paid sick leave to their employees. The law takes effect on May 15, 2015.

OVERVIEW OF THE ACT

The Act requires employers that employ 10 or more employees (defined as individuals who perform work “within the geographic boundaries of the City of Philadelphia for at least 40 hours in a year”) to provide up to one hour of paid sick leave for every 40 hours worked. Employers with fewer than 10 employees must provide unpaid sick leave under the same terms as the paid sick leave requirements. Chain establishments (defined as entities doing business under the same trade name used by 15 or more establishments) must provide paid sick leave, regardless of the number of employees in each establishment. Employees will begin accruing sick leave on either May 15 or their date of hire, whichever comes first, and may begin using the leave on the 90th calendar day after hire.

Paid sick leave may be used for an employee’s mental or physical illness, care of a family member’s illness, preventive medical care for an employee or his or her family member, or absence due to domestic abuse, sexual assault or stalking. Employees are expected to provide notice in advance of the leave where practicable and to make a reasonable effort not to unduly disrupt an employer’s business operations. After more than two consecutive days of leave, an employer may require a doctor’s note, but the employer may not require documentation of the nature of the illness. An employer may not require an employee to find his or her own replacement and may not discipline an employee for absences taken under the Act.

Excluded from the definition of “employees” are independent contractors, seasonal workers, adjunct professors, employees hired for a term of less than six months, interns, pool employees,

state and federal employees and employees covered by a bona fide collective bargaining agreement. Pool employees are health care professionals hired on a per diem basis to work only when available to work.

Employees may carry over their accrued sick leave, but an employer may limit the number of hours used in a calendar year to 40. Employers are not required to pay out sick leave upon termination.

CURRENT LEAVE POLICIES MAY SUFFICE

Significantly, an employer does not have to provide additional leave under the Act if its existing paid leave policy is sufficient to meet or exceed the accrual requirements and the leave may be used for the same purposes, and under the same conditions, as sick time under the Act. Leave offered under an employer’s policy may include vacation days, sick days, short-term disability benefits, floating holidays, parental leave, personal days and paid time off. Because of several intricacies of the Act, however, employers should not assume that their current policies meet the terms of the Act without analysis.

ACTIONS TO TAKE NOW

Employers should review their current paid leave policies to ensure that they are compliant with the Act’s requirements. The Act also mandates employers to post notices regarding employees’ rights to paid sick leave and to add paid sick leave policies to their employee handbooks. The City of Philadelphia should post a model notice soon. Employers must also ensure that their payroll systems properly track and record the accrual and use of sick time. Finally, as Philadelphia now joins numerous other cities in mandating paid sick leave, employers with employees in multiple locations should consider developing a multistate compliance plan. Pepper Hamilton’s Labor & Employment Practice Group is available to assist in analyzing your current policies for compliance with the Act and in drafting new paid sick leave policies as necessary.

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