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Connecticut Employers Prepare Now to Comply With Nation's First Paid Sick Leave Law

Connecticut recently became the first state in the nation to enact a law requiring paid sick leave for certain employees. Public Act 11-52 takes effect on January 1, 2012, and requires employers with 50 or more employees to provide service workers with five paid sick days per year. Over the next few months, all Connecticut employers should determine if the new law affects them and, if so, review their leave policies for compliance. Even if an employer offers at least five paid sick days to all employees, it must meet additional requirements in the law.

THE DEFINITION OF EMPLOYER

"Employer" means any person, firm, business, educational institution, nonprofit agency, corporation, limited liability company, or other entity, including the state and its municipalities, that employs 50 or more individuals in Connecticut during any one quarter of the previous year. Employer does not include certain manufacturing businesses or any nationally chartered tax-exempt organization providing recreation, child care, and educational services (for example, the YMCA). A list of exempt manufacturing employers can be found on the [North American Industry Classification System site here](#).

Employers must determine if they are subject to the law on January 1 of each year based on wage reports the employer is required to submit to the state. The threshold is satisfied if the employer has 50 employees in Connecticut during any one quarter of the previous year regardless of how many are service workers who are actually entitled to sick leave benefits under the law.

THE DEFINITION OF SERVICE WORKER

"Service workers" are defined as hourly, nonexempt employees who work in an occupation covered by one of 68 specified [federal Standard Occupational Classification System titles](#), which includes secretaries, computer operators, retail sales persons, and food preparation workers, among others. Each employer is required to determine whether employees are service workers for purposes of paid sick leave, particularly if they perform hybrid tasks or otherwise do

not perform duties that fall precisely within the relevant occupational classifications. Employers may choose to be more inclusive because of the potential penalties for noncompliance under the new legislation.

The law excludes day or temporary service workers who perform work for employers on a per diem, occasional, or irregular basis.

ACCRUAL OF PAID SICK LEAVE

Under the new law, service workers start accruing leave time as of January 1, 2012. Each covered service worker accrues one hour of paid sick leave for each 40 hours worked, up to a maximum of 40 hours of sick leave per calendar year. Employees can carry over up to 40 unused accrued hours of paid sick leave from one year to the next, but can use only 40 hours of paid sick leave in any one year.

Those eligible workers hired before January 1, 2012, start accruing on that date, and those hired after that date start accruing on their date of employment. The sick leave benefits cannot be used until an eligible worker has worked at least 680 hours after the time benefits begin to accrue. In addition, workers who have not worked an average of 10 hours a week for the employer during the most recently completed calendar quarter are not entitled to use accrued sick leave.

Any termination of a service worker's employment, whether voluntary or not, is considered as a break in service. If service workers are rehired after such a break in service, they are not entitled to use any sick leave that was accrued before being separated from the job. The accrual of paid sick leave under these circumstances starts anew for each break in service.

SICK LEAVE PAY

Sick leave under the law must be paid at a rate that is the greater of (1) the worker's normal hourly wage or (2) the applicable statutory minimum wage required while the worker is on leave. If the worker's hourly wage varies, the "normal hourly wage" is the average hourly wage paid in the pay period prior to the one in which the sick leave is used.

Significantly, the law does not modify current Connecticut law regarding the payout of sick leave upon termination. An employer does not have to pay a service worker for accrued, but unused, sick leave upon termination unless otherwise provided by an employer policy or collective bargaining agreement.

WHEN PAID SICK LEAVE MAY BE USED

An employer is required to allow service workers to use paid sick leave for the following situations that apply to them, their spouse, or their children:

1. Illness, injury, or health condition
2. Medical diagnosis, care, or treatment of mental illness or physical illness, injury, or health condition
3. Preventive medical care

Further, a service worker who is a victim of family violence or sexual assault may use leave to obtain medical care or psychological or other counseling for physical or psychological injury or disability, to obtain services from a victim services organization, to relocate due to such family violence or sexual assault, or to participate in any civil or criminal proceedings related to or resulting from such family violence or sexual assault.

Employers can require advance notice of up to seven days if the sick leave is foreseeable or as soon as practicable if the leave is not foreseeable. If paid sick leave is requested for three or more consecutive days, they can require "reasonable documentation" that such leave is being taken for a permitted purpose.

Employers do not have to provide paid sick leave for any reasons not specified in the new law, and they may discipline service workers who take leave for a purpose other than those specified above.

The new law does not specify in what increments an employee can use paid sick leave. Because sick leave accrues in hourly increments, it is probable that the Commissioner of the Department of Labor will require employers to permit paid sick leave to be used in hourly increments.

OTHER COMPLYING LEAVE

Employers who already provide paid sick leave to eligible employees may be considered to be in compliance with the new law if they provide other paid leave that (1) accrues at least as quickly as the new law's sick leave and (2) can be used for the same purposes. Such "other paid leave" includes paid vacation, personal days, or paid time off.

The law does not address whether an employer can require that paid sick leave run concurrently with leave under the federal and/or state Family and Medical Leave Act.

ENFORCEMENT

Employers are prohibited from taking any adverse employment action against employees who request or use paid sick leave, or file a complaint with the Labor Commissioner alleging violation of the law's provisions.

Significantly, because this provision of the law uses the term "employee" rather than "service worker," these anti-retaliation provisions apply to a broader group of workers than the "service worker" category described above.

In adjudicating complaints, the Labor Commissioner may award payment for used sick leave or order rehiring or reinstatement to the employee's previous position, and/or payment of back wages and benefits. An appeal of the Labor Commissioner's decision may be taken to the Superior Court.

Any employer found to have violated the general provisions of the law is subject to a civil penalty of up to \$100 for each violation and \$500 for each violation of the anti-retaliation provision.

EMPLOYEE NOTICE

The law requires covered employers to provide the following notice to each employee at the time of hiring:

1. The employee is entitled to paid sick leave, the amount of sick leave provided, and the terms under which it can be used.
2. The employer cannot retaliate against the employee for requesting or using sick leave.
3. The employee can file a complaint with the Labor Commissioner for any violation.

An employer may display a poster, written in both English and Spanish, in a conspicuous place to satisfy these obligations.

WHAT EMPLOYERS SHOULD DO NOW

All employers with a total of 50 or more employees may want to review their employee classifications to determine whether they are obligated to comply with the new law.

Employers that are not required to comply with the paid sick leave provisions of the new legislation might wish to review the anti-retaliation provisions and consider whether current policies and practices for determining employee sick leave should be modified.

Employers subject to the paid sick leave provisions may want to consider doing a comprehensive review of current policies to determine whether they comply with the new law and/or whether such policies may need to be developed or revised. Policy considerations may include the following:

- Eliminating substantial waiting periods for employees to be eligible for paid sick leave (for example, a six-month waiting period before time off accrues or may be used)
- Expanding the permitted reasons for use of paid sick leave
- Ensuring that allowances for paid vacation, personal days, or other paid time off satisfy minimum hour and accrual thresholds
- Modifying prohibitions against yearly carry-over of accrued time off
- Amending employee offer letters and/or handbooks to meet employee notification requirements by January 2012

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