

WASHINGTON PAID SICK LEAVE

EFFECTIVE: JANUARY 1, 2018

EMPLOYER REQUIREMENTS

TOPIC	REQUIREMENT
Definition of “Employees”	<p>All Washington employers, regardless of size, are required to provide paid sick leave for <u>all</u> non-exempt employees, including full-time, part-time, temporary, and seasonal.</p> <p>RCW 49.46.010 identifies the categories of those groups that fall outside the definition of employees including those in an exempt status including bona fide executive, administrative, or professional capacity or in the capacity of outside salesperson.</p>
Collective Bargaining Agreement (“CBA”)	Union workers are not exempt from paid sick time, and the CBA cannot waive the paid sick time requirements.
Use of Paid Sick Time	<p>Employees may use paid sick leave:</p> <ul style="list-style-type: none">• To care for themselves or a family member.• When the employees’ workplace or their child's school or place of care has been closed by a public official for any health-related reason.• For absences that qualify for leave under the state's Domestic Violence Leave Act. <p>“Family Member” includes child (biological, adopted, step, foster, de facto parent, or loco parentis), parent, spouse, registered domestic partner, grandparent, grandchild, or sibling.</p>
Accrual Rate	Paid sick leave must accrue at a minimum rate

	<p>of one hour of paid sick leave for every 40 hours worked. Hours must be worked so employees do not accrue while on paid sick leave, vacation, or medical leave.</p> <p>All employees employed as of January 1, 2018, will begin to accrue paid sick leave on their first day at work after the beginning of the year. Employees hired <u>after</u> January 1, 2018, begin accruing paid sick leave upon the commencement of his or her employment.</p>
Accrual Cap	Accrual caps are prohibited.
Waiting Period	An employer may have an employee wait a maximum of 90 days from beginning of employment to start to use paid sick time.
Payment of Paid Sick Time	<p>Must be paid at the employee's normal hourly compensation. Employers must pay the accrued sick leave pay consistent with the employer's established payment interval or leave records management system. Employers must also allow employees to use paid sick leave in increments consistent with the employer's payroll system and practices (e.g. 15 minutes).</p> <p>Employers may request a variance for good cause from the required increments of paid sick leave usage under WAC 296-128-640.</p>
Carry-over Paid Sick Time	Employees can carry over at least 40 hours of sick leave each year, and then continue to accrue additional hours of leave in that subsequent year.

<p>Front-loading</p>	<p>An employer may advance paid sick leave so long as the front-loading meets or exceeds the accrual, usage, and carry-over requirements. The employer must provide notice of the front-loading to the employee prior to advancing the paid sick leave.</p>
<p>Employer Notice</p>	<p>Employers must provide all employees written notice of the paid sick leave policy including, accrual rate, when paid sick leave may be used, and prohibition of retaliation. Notice must be provided to employees at the commencement of their employment. This requirement must be met by March 1, 2018.</p>
<p>Monthly Notice</p>	<p>Employers must provide monthly notice to employees of their sick leave status including, accrual amount; any unused paid sick leave available for use; and paid sick leave reductions.</p>
<p>Reasonable Notice</p>	<p>Employees must provide at least 10 days of notice, or as early as practicable, to the employer when use of the paid sick leave is foreseeable. The notification should include the expected duration of the absence.</p> <p>When use of the paid sick leave is not foreseeable the employee must provide notice to the employer as soon as practical <u>before</u> the required start of their shift. In the event it is not practicable to provide notice of an unforeseeable absence, the employee may have a designee provide such notice to the employer.</p> <p><i>Any notice requirement must be in a written policy.</i></p>

<p>Verification</p>	<p>When an employee’s absence is for more than three consecutive days the employee will be required to submit a verification that an employee’s use of paid sick leave is for one of the stated purposes. Verifications can be in the form of a medical note, school district communication, or a statement from the employee explaining caretaking responsibilities for an immediate family member. Should the verification process be an unreasonable burden or expense on the employee, the employee must provide the reasons. Within 10 days of receiving this notice the employer will take reasonable efforts to provide alternatives so the employee can meet the verification requirement.</p> <p><i>Any verification requirement must be in a written policy.</i></p>
<p>Employee Termination</p>	<p>Employers are not required to pay out unused, accrued sick time at termination.</p>
<p>Re-Hire and Reinstatement of Paid Sick Leave</p>	<p>If within 12 months from separation the employee is re-hired, the employee is entitled to receive the return of the balance of the paid sick leave at the time of separation. If prior to separation the employee reached the 90th day then the employee may use the paid sick leave upon re-hire. If prior to separation the employee did not reach the 90th day the previous period of employment will be counted to determine when the employee can begin to use the paid sick leave.</p>
<p>Paid Time Off (“PTO”) Programs</p>	<p>Employees may use a PTO program in lieu of a separate paid sick leave policy. The PTO program must meet or exceed all requirements of the sick leave policy.</p>

<p>Misuse of Paid Sick Leave</p>	<p>If the employer determines that the employee has used the paid sick leave for an unauthorized purpose the employer must provide notice of the unauthorized use to the employee and may withhold payment of the sick leave. However, the unauthorized hours will not be deducted from the employees accrued but unused hours. <i>Employee may challenge decision to L&I.</i></p>
<p>Retaliation</p>	<p>Employers may not retaliate against employees for using accrued, paid sick leave. Use of such leave cannot be used as a negative factor in any employment action such as evaluation, promotion, or termination, or subject the employee to discipline. An employer may not take any adverse action against an employee for using paid sick leave, including delaying payment for sick leave or wages, denying a promotion, altering a work schedule, reducing the employee's rate of pay, or threaten to take action based on the immigration status of the employee or the employee's family.</p>
<p>Forms</p>	<p>L&I will have many sample forms available to employers including:</p> <ul style="list-style-type: none"> • Paid Sick Leave Policy • Verification Policy • Reasonable Notice Policy • Shared Leave Policy • Frontloading Policy

ENFORCEMENT

Retaliation Complaints	<p>Employees may file a complaint with L&I within 180 days of the alleged retaliatory act, and L&I may extend that period at its discretion. L&I will investigate and issue a citation and notice of assessment or a determination of compliance within 90 days.</p> <p>The citation and notice of assessment may order the employer to pay any earnings not paid due to the retaliatory action, including interest of one percent per month, order the employer to restore the employee to his or her prior position, or order the employer to use any policy that counts the use of a paid sick leave as an absence that may lead to discipline.</p> <p>The civil penalty for retaliatory actions must be \$1,000 or an amount equal to 10% of the total amount of unpaid earnings. The maximum civil penalty shall be \$20,000 for the first violation and \$40,000 for each repeat violation. The department may waive any penalties.</p> <p>A request for reconsideration may be filed within 30 days after the date of the decision, and then may be appealed to the director within 30 days from decision. The matter will then be assigned to an administrative law judge for a hearing.</p>
Paid Sick Leave	<p>If the investigation finds that the employer failed to provide the employee with paid sick leave, the employee may elect to receive the full access to the balance of accrued paid sick</p>

	<p>leave, or receive payment from the employer at their normal hourly compensation for each hour of paid sick leave the employee would have used. If the employee is no longer employed, the employee may receive the payment at their normal hourly compensation, receive reinstatement of the balance of paid sick leave hours, or receive a combination of payment and reinstatement.</p>
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