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# Mandatory Paid Sick Leave in Philadelphia

By Stephanie K. Rawitt / Feb 18, 2015

Philadelphia is the latest city to enact mandatory sick leave legislation. On February 12, 2015, the Promoting Healthy Families and Workplace Ordinance was signed into law. Effective May 13, 2015, this new Philadelphia law requires that employers with 10 or more employees provide up to one hour of paid sick time for every 40 hours worked, approximately five days a year, by an employee in the City. Certain chain establishments also fall under the definition of "covered employer" under the new law and will be obligated to provide sick leave, regardless of the number of employees they have at a particular location. Employers with fewer than 10 employees will be required to provide unpaid sick leave under the same terms.

The Ordinance applies to all full-time, part-time and temporary employees. Independent contractors, seasonal workers, adjunct professors, interns, health care professional pool employees, state and federal employees, employees hired for a period of less than six months and employees covered by a "bona fide" collective bargaining agreement are not covered by the Ordinance.

Commencing May 13, 2015, employees will accrue one hour of sick time for every 40 hours worked (including overtime). Exempt employees will accrue sick time based upon their normal work week, or a 40 hour work week, whichever is less. Unless the employer allows more, employees can accrue a maximum of 40 hours of sick time in a calendar year.

While May 13, 2015 is the accrual "start date," an employee's right to use accrued leave is measured by their date of employment. Under the Ordinance, an employee must be employed for at least 90 days before they are able to use any accrued paid sick leave.

Once an employee makes either an oral or written request, covered employers must allow the employee to use their accrued paid sick time for their own qualifying need or that of a family member for diagnosis, care or treatment of an existing health condition, preventative care or issues relating to an employee being a victim of domestic violence, sexual assault or stalking. Employers are permitted to require that the employee use the leave in "reasonable minimum" increments. However, employers may not require documentation from the employee unless the employee uses paid sick time for more than two consecutive days. In instances where it is appropriate to ask for documentation, the employer cannot require documentation of the nature of the illness or details of the violence.

Employers who do not abide by the terms of the Ordinance will be exposed to liability. The Ordinance also includes a retaliation provision similar to those found in other employee rights statutes. Penalties for violating the law include up to a \$100 fine for posted violations. Where paid sick time is withheld, the employee is entitled not only to the dollar amount of the withheld paid sick time, but also liquidated damages up to \$2,000 and attorney's fees.

Employers will be required to provide employees with notice of this new right. The City will likely prepare a notice poster for employers to display. Employers will also be required to maintain accurate records documenting hours worked, sick time taken and payments made to employees for sick time.

If a covered employer has a sick leave or paid time off policy that provides an amount of paid time off sufficient to meet the law's requirements and may be used for the same purposes and under the same conditions as paid sick leave under the law, the employer need not provide additional sick time.

However, employers should not assume that an existing PTO policy is compliant. Instead, employers should carefully review their policies with counsel to make certain that they fully comply with the Ordinance's accrual, cap and limited documentation rules.

Philadelphia employers are advised to review and potentially revise their paid sick leave policies and procedures as well as their retaliation policies to make certain that they meet the Ordinance's requirements. Employee handbooks should also be evaluated to make sure that they are compliant.

If you have any questions about the Philadelphia Paid Sick Leave Ordinance, you may contact Stephanie K. Rawitt at [srawitt@clarkhill.com](mailto:srawitt@clarkhill.com) | (215) 640-8515 or another member of Clark Hill's Labor and Employment Practice Group.