

What Arizona Employers Need to Know About Proposition 206's Minimum Wage Increases and Paid Sick Time Requirements

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OVERVIEW OF PROPOSITION 206

- On November 8, 2016, Arizona voters enacted the Fair Wages and Healthy Families Act (Proposition 206) which amends the Arizona Minimum Wage Act to provide:
 - Annual, incremental increases to the minimum wage for Arizona workers beginning on January 1, 2017
 - The right for Arizona employees to accrue and use a minimum amount of Paid Sick Time benefits each year, beginning on July 1, 2017

MINIMUM WAGE INCREASES

Before Proposition 206 passed, the minimum wage in Arizona was \$8.05/hour

Under the new law, there are incremental, annual increases to the minimum wage starting January 1, 2017:

- As of January 1, 2017: \$10.00/hour
- As of January 1, 2018: \$10.50/hour
- As of January 1, 2019: \$11.00/hour
- As of January 1, 2020 : \$12.00/hour
- As of January 1, 2021 and successive years: Increased by the Consumer Price Index percentage increases as of August of the previous year over August of the prior year

PAID SICK TIME

- Earned Paid Sick Time (PST) is defined as: time that is compensated at the same hourly rate and with the same benefits, including healthcare benefits, as the employee normally earns during hours worked
- An employee accrues one hour of PST for every 30 hours worked
- Maximum annual accrual based on employer size:
 - 15 or more employees – maximum accrual or use of 40 hrs PST per year
 - Less than 15 employees – maximum accrual or use of 24 hrs PST per year

PAID SICK TIME

- Accrual Options:
 - Have employees accrue PST as they work; or
 - Provide them their expected PST in a lump sum at the beginning of the year
- Rollover Options:
 - Allow employees to roll over unused PST from one year to the next; or
 - Pay employees for unused PST at the end of the year AND provide the employee with the expected lump sum of PST available for immediate use at the beginning of the year
- Breaks in Service:
 - Where there is a separation of employment and the employee is re-hired within nine months of separation, previously accrued unused PST must be reinstated

PAID SICK TIME

- Waiting Period?
 - An employee may use PST as it is accrued
 - An employer may require an employee hired after July 1, 2017 to wait until the 90th calendar day after commencing employment before using accrued PST

PAID SICK TIME USES

- PST can be used for diagnosis, care, or treatment of an employee's own, or an employee's family member's:
 - Mental or physical illness
 - Injury
 - Preventative care

PAID SICK TIME USES (CONT.)

- Closure of employer's business due to public health concerns
- To provide child care for a child whose school or place of care has been closed due to a public health concern
- Care for self or family member when a public health official has determined that the employee's or family member's presence in the community may jeopardize the health of others because of his or her exposure to a communicable disease

PAID SICK TIME USES (CONT.)

- Absence due to domestic violence, sexual violence, abuse or stalking, but only where leave is to allow employee to obtain, for employee or employee's family member:
 - Medical attention to recover from physical/psychological injury/disability
 - Services from domestic violence or sexual violence services organization
 - Counseling
 - Relocation or taking steps to secure existing home against these harms
 - Legal services related or resulting from these harms

PAID SICK TIME – DEFINITION OF FAMILY MEMBER

- “Family Member” is broadly defined, and includes:
 - A biological, adopted or foster child of the employee or an employee’s spouse or domestic partner, regardless of the child’s age
 - A child to whom the employee or employee’s spouse or domestic partner stands in loco parentis
 - An adult to whom the employee or employee’s spouse or domestic partner stood in loco parentis when the adult was a child
 - A domestic partner or spouse
 - A grandparent, grandchild, or sibling of the employee or employee’s domestic partner or spouse
 - “Any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship”

EMPLOYEE NOTICE REQUIREMENTS

- PST shall be provided upon request “orally, in writing, by electronic means or by any other means acceptable to the employer”
 - Does not specify who has to receive the request
- For foreseeable use of PST, employee shall make good faith effort to provide notice to employer in advance of use and schedule use in manner that does not disrupt operations of the employer
- For unforeseeable circumstances, employees are only required to provide notice pursuant to a written policy that was provided to the employee
- Cannot require an employee to search for and find a replacement employee as a condition of using PST

DOCUMENTATION TO SUPPORT PAID SICK TIME

- If absence lasts three or more consecutive work days, employer may require reasonable documentation that the PST has been used for a proper purpose
- Even under the three-day notice requirement, an employer cannot require an employee to explain the health condition or the details of the domestic violence, sexual violence, abuse, or stalking
 - If details are provided, they must remain confidential

DOCUMENTATION TO SUPPORT PAID SICK TIME

- For sickness: documentation signed by health care professional indicating earned sick time is necessary
- For domestic violence, sexual violence, abuse or stalking: documentation showing the employee or family member is a victim, such as:
 - Police report
 - Court paperwork
 - Signed statement from victim services organization
 - Signed statement from witness advocate
 - Signed statement of attorney, clergy, or other professional
 - Employee's written statement, indicating the employee or family member is a victim of covered act and clearly indicating the employee's identity and, if applicable, relation to the family member

EMPLOYER NOTICE REQUIREMENTS

- Employers must provide notice to employees of enumerated items on July 1, 2017 and at commencement of employment thereafter
 - The Commission will create model notices for employer's use in complying with this requirement
- Paystubs must show:
 - PST available
 - PST used year-to-date
 - Amount paid as PST

INTERFERENCE AND RETALIATION PROHIBITED

- Unlawful to interfere with, restrain, or deny the exercise of, or the attempt to exercise, the right to:
 - Use Paid Sick Time
 - File a Complaint with the Industrial Commission
 - File lawsuit
 - Inform others about violations of Act
 - Participate in investigation, hearing or proceeding
 - Inform others of potential rights of the Act

RETALIATION (CONT.)

- Retaliation includes any threat, discharge, suspension, demotion, reduction of hours, or any other adverse action against an employee for the exercise of rights provided by the Act
- Creates a rebuttable presumption of retaliation if an adverse action is taken against a person within 90 days of exercising a right, unless rebutted by clear and convincing evidence that the action was taken for a permissible purpose
- Two year statute of limitations, three years where the allegations are that the conduct was willful

PENALTIES

- Can be enforced by civil lawsuit filed by the AZ attorney general, county attorney, city attorney, town attorney, or by an affected individual employee or group of employees
- Civil penalties of at least \$250 for a first violation, at least \$1,000 for each subsequent or willful violation, and additional monitoring and inspections
- Such employers must also pay affected employees the balance of any PST owed, including interest, and an amount equal to twice the amount of previously unpaid PST (i.e., liquidated damages)
- If an employer is found to have retaliated against an individual for exercising his or her rights under the Act, the employer “shall be required to pay the employee” at least \$150 for each day that the violation continued or until legal judgment is final
- A prevailing plaintiff is entitled to reasonable attorneys’ fees and costs

FREQUENTLY ASKED QUESTIONS

1. If we already have a PTO policy, do we need to add a separate Sick Leave Policy?

Probably not. If your existing policy satisfies the accrual requirements of the Act, and leave under your policy can be used for the same purposes as provided in the Act, no additional Sick Time is required.

2. Are we required to pay out accrued unused Paid Sick Time at termination?

No., the Act states that payout at termination is not required

FREQUENTLY ASKED QUESTIONS (CONT.)

3. Can we still require employees to follow our normal call-in procedures?

Generally, yes. The Act states that an employer that requires notice of the need to use earned Paid Sick Time where the need is not foreseeable can enforce this policy, so long as it is written and provided to the employee.

4. Are there minimum increments in which Paid Sick Leave must be taken?

Paid Sick Time may be taken in the smallest increment that the employer's payroll system uses to account for absences or use of other time

QUESTIONS?



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THANK YOU

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