

Philadelphia Mandates Paid Sick Leave

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Employers should act to ensure compliance before the law takes effect on May 13.

On February 12, the City of Philadelphia joined the nationwide paid sick leave trend when Mayor Michael Nutter signed the Promoting Healthy Families and Workplaces Ordinance (the Ordinance) into law. The Ordinance requires employers with 10 or more employees in the City of Philadelphia to provide paid and unpaid sick leave to eligible employees and is effective May 13.

Under the Ordinance, full- and part-time employees who work at least 40 hours per year within the City of Philadelphia will accrue paid sick leave at the rate of one hour for every 40 hours worked, up to a maximum of 40 hours per year. Employees who work less than 40 hours per year within the City of Philadelphia will accrue unpaid sick leave at the same rate.^[2] Employees may use covered leave (1) for their own illnesses; (2) to address a family member's mental or physical illness, injury, or health condition; or (3) to obtain medical attention to recover from an injury or disability caused by domestic or sexual violence (including stalking) or for related legal services or remedies.

The Ordinance also includes the following:

- *Employer Coverage:* Employers that employ fewer than 10 full-time, part-time, or temporary employees for at least 40 weeks in a calendar year are not required to comply with the Ordinance. However, certain chain establishments, as defined under the Ordinance, are required to provide paid sick leave regardless of the number of employees at the chain's Philadelphia location.
- *Excluded Employees:* Independent contractors, seasonal employees, adjunct professors, employees hired for a term of less than six months, interns, pool employees in the healthcare industry, state and federal employees, and employees covered by a bona fide collective bargaining agreement are not covered by the Ordinance.
- *Accrual of Paid Sick Time:* Paid sick time begins to accrue on the effective date of the Ordinance (May 13) for any then-current employee and begins to accrue on the date of hire for any employees hired after the effective date. Recently hired employees can use accrued sick time 90 days after their hire date. Employers must allow employees to carry over accrued sick time to the following calendar year, unless the employer chooses to provide at least 40 hours of sick time at the beginning of the following calendar year. Employers that already provide employees with paid leave (including, for example, vacation days, sick days, floating holidays, parental leave, personal leave, or paid time off) that may be used as sick leave and that meets or exceeds the amount mandated by the Ordinance are not required to provide additional sick leave.
- *Use of Paid Sick Time:* Employees are generally required to provide advanced notice of the need for sick leave and may use accrued sick time in hourly increments (or any smaller increment) that the employer uses to account for absences or use of other time. If an employee takes two or more sick days, the employer may require documentation to verify that the sick time is covered by the Ordinance.
- *Notice:* Covered employers must distribute individual written notices to all eligible employees regarding their rights under the Ordinance or display a poster regarding the Ordinance in a conspicuous and accessible location in the workplace. If an employer has employees who do not speak English as a first

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language, the employer must post or provide individual notice of the Ordinance and its requirements in any other language that is the first language spoken by at least 5% of its workforce.

- *Anti-Discrimination and Anti-Retaliation Provisions:* The Ordinance prohibits discrimination and retaliation against any employees who exercise their rights under the Ordinance or who inform other employees about the right to paid sick time under the Ordinance. The Ordinance also creates a rebuttable presumption of retaliation against any employer that takes an adverse action against an employee within 90 days of the employee engaging in protected activity under the Ordinance.
- *Enforcement:* Mayor Nutter will designate an agency responsible for implementing, administering, and enforcing the Ordinance, and the agency will have the authority to issue guidelines and regulations to carry out and enforce the Ordinance. Employees may pursue claims against an employer for violations of the Ordinance by filing a complaint with the agency or in court (after first filing a complaint with the agency). The agency or the city solicitor may also pursue claims in court against employers to enforce the Ordinance.
- *Record Keeping:* Employers must keep records that document the hours worked by employees and sick time accrued by and taken by the employees. Employers must retain the required records for a two-year period and allow the agency reasonable access to such records with appropriate notice.

Recommendations

To ensure compliance, employers should take the following actions on or before May 13:

- Supply each employee with an individual written notice that contains the information required by the Ordinance or display a poster with the same information where employees can easily read it. The Ordinance mandates that this same information should also be included in any employee handbook distributed to employees. (The city has yet to issue a model poster. Employers should continue to visit the city's website because the agency responsible for enforcing the Ordinance is required to create and make available a poster that contains the mandated paid sick leave information.)
- Review, create, or modify existing vacation, paid time off, and sick leave policies to ensure compliance with the Ordinance. Employers must ensure that they are not only providing sufficient sick leave to employees but also that employees are permitted to take leave under the Ordinance's terms.
- Train human resources and supervisory personnel on the Ordinance's new sick leave requirements, including, for example, the reasons that employees may use sick time, how much sick time they may use, and the documentation that employers may request when employees use accrued sick time. Employers should also train human resources and supervisory personnel on the anti-discrimination and anti-retaliation provisions under the Ordinance and update related policies accordingly.
- Ensure that time and payroll records are sufficiently detailed to reflect the hours that employees worked and the amount of sick leave covered employees accrued and used to comply with the Ordinance's record-keeping provisions.

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