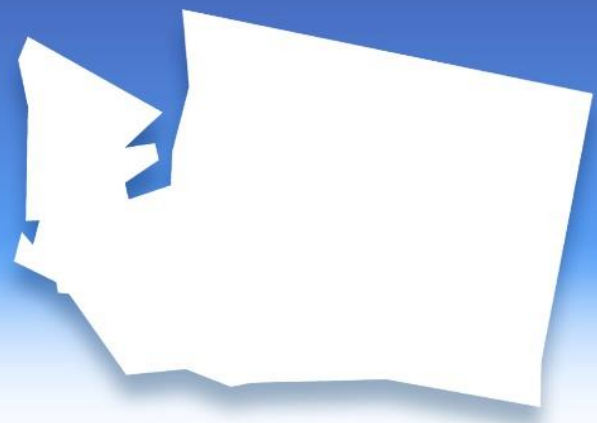


WASHINGTON

EMPLOYMENT LAW

Paid Sick Leave



On Nov. 8, 2016, Washington voters approved Initiative Measure No. 1433, a ballot measure that increases Washington's minimum wage and requires employers to provide employees with paid sick leave, effective Jan. 1, 2018. Under Washington's paid sick leave law, employees will accrue a minimum of **one hour** of paid sick leave for every **40 hours worked**. Virtually all Washington employers are covered by the paid sick leave requirements.

[Final regulations](#) regarding Washington's paid sick leave law were issued on Oct. 17, 2017. The [Washington State Department of Labor & Industries](#) will also be issuing final rules on enforcement of the law in the future. This Employment Law Summary provides an overview of Washington's paid sick leave requirements.

STATE RESOURCES

Washington State Department of Labor and Industries (Department)
<http://www.lni.wa.gov/>

Employer Resource Center

The Department has established an [Employer Resource Center for Paid Sick Leave](#).

Final Regulations

The Department issued [final regulations](#) on the paid sick leave law on Oct. 17, 2017.

COVERED EMPLOYERS

Under the law, virtually **all Washington employers** are required to provide paid sick leave to their employees. Covered employers are those subject to Washington's Minimum Wage Act, which defines an employer as "any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee."

ELIGIBLE EMPLOYEES

In general, **all employees** working for a Washington employer are eligible for the accrual and use of paid sick leave. This generally includes, for example, part-time and full-time employees, hourly and salaried employees, and employees hired on a seasonal or temporary basis. However, employees that are exempt from Washington's Minimum Wage Act are not entitled to paid sick leave.

ACCRUAL OF PAID SICK LEAVE

Under the paid sick leave law, employees must begin accruing paid sick leave as follows:

- Current employees must have begun accruing paid sick leave on **Jan. 1, 2018**.
- Employees who are hired after Jan. 1, 2018, must begin accruing paid sick leave **upon hire**.

Employees must accrue at least **one hour** of paid sick leave for **every 40 hours worked**. The law provides **no limit** on the amount of paid sick leave an employee may use or



accrue each year. However, the [final regulations](#) clarify that employees are not entitled to accrue paid sick leave based on paid hours that were not worked (for example, vacation, paid time off or paid sick leave hours).

FRONT-LOADING PAID SICK LEAVE

Employers may choose to “**front-load**” an amount of paid sick leave to employees each year that meets or exceeds the law’s accrual, use and carry-over requirements. To comply with the front-loading method, an employer would need a reliable way to forecast the number of paid sick leave hours any employee would accrue during the year, based on hours actually worked. Therefore, front-loading paid sick leave could prove to be difficult for employers that have many variable hour employees.

The final regulations provide that if an employer front-loads paid sick leave, the employer must reconcile front-loaded amounts with the amount of paid sick leave an employee would actually accrue based on hours worked.

- If an employer front-loads **more paid sick leave** than an employee would have otherwise accrued, the employer may not seek reimbursement from the employee for paid sick leave use beyond what he or she would have accrued, based on actual hours worked.
- If an employer front-loads **an amount of paid sick leave that is less than** the amount the employee would have accrued, the employer must provide the employee with the additional amount of paid sick leave as soon as practicable, but no later than 30 days after the employer discovers the discrepancy.

If an employer chooses to front-load paid sick leave, it must maintain a written policy that outlines the requirements for use of front-loaded paid sick leave. The employer must also notify employees of the policy prior to front-loading paid sick leave, and must make this information readily available to all employees.

USE OF EARNED PAID SICK LEAVE

Paid sick leave is compensated at the employee’s normal rate of compensation. The final regulations provide further information on calculating an employee’s normal hourly rate for this purpose. Eligible employees must be able to use accrued paid sick leave for any of the following reasons:

1	An employee’s own mental or physical illness, injury or health condition, including the need for medical diagnosis, care or treatment, and preventive medical care
2	To care for the employee’s family member with a mental or physical illness, injury or health condition, including the family member’s need for medical diagnosis, care or treatment, and preventive care
3	Closure of the employee’s place of business by order of a public official due to any health-related reason or closure of an employee’s child’s school or place of care by order of a public official due to any health-related reason
4	Employees who are victims of domestic violence, sexual assault or stalking (or who are family members of a victim) in order to: <ul style="list-style-type: none">• Seek or obtain legal, law enforcement or social services assistance;• Seek or obtain medical treatment or counseling; or• Participate in safety planning or take other actions to increase safety.

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In general, employees must be able to use paid sick leave in increments that are consistent with the employer's payroll system and practices, not to exceed one hour. The final regulations provide information for employers to request an exception from these increment requirements, if compliance is infeasible.

FAMILY MEMBER

Under the law, "**family member**" is broadly defined. For purposes of using paid sick leave, a family member includes:

- Children (biological, adopted or foster) of **any age**, including a stepchild or a child to whom the employee stands in loco parentis, is a legal guardian or is a de facto parent;
- Parents (biological, adoptive or foster), including a stepparent, legal guardian of the employee or person who stood in loco parentis when the employee was a minor;
- The employee's spouse or registered domestic partner; and
- Grandparents, grandchildren or siblings of the employee.

PERMITTED WAITING PERIOD

An employer may require employees to wait **90 days after hire** prior to using any accrued paid sick leave.

EMPLOYEE NOTICE AND DOCUMENTATION REQUIREMENTS

Under the law, an employer may require reasonable notice from employees of the need to be absent. However, the notice requirements may not interfere with the employee's lawful use of paid sick leave and notice requirements must be included in a written employer policy.

The final regulations permit an employer to require **at least 10 days' advance notice** for situations where the need for paid sick leave is foreseeable. If the need for paid sick leave is unforeseeable, the employee must notify the employer as soon as possible, before the start of the employee's scheduled shift, unless it is not practicable to do so.

For paid sick leave absences **exceeding three days**, an employer may require reasonable documentation to verify that use of paid sick leave was for a permitted reason. Documentation must be provided to the employer within a reasonable period of time after the leave. However, an employer's verification requirements may not result in an unreasonable burden or expense on the employee or violate privacy requirements, and must be outlined in a written policy.

CARRY-OVER, TERMINATION AND REHIRE REQUIREMENTS

Carryover

Employees must be permitted to carry over **up to 40 hours** of unused paid sick leave to the following year. This carry-over requirement also applies to employers that front-load paid sick leave.

Termination

Employers are **not** required to pay out an employee's accrued, but unused paid sick leave upon termination, resignation, retirement or other separation of employment.

Rehire

An employee who is **rehired within 12 months** of separation by the same employer (or a different location of the same employer) is entitled to have his or her paid sick leave reinstated. In addition, the employee's previous period of employment counts toward any applicable waiting period for using paid sick leave. If the employee is



rehired in the following year, the employer must only reinstate up to 40 hours of accrued, but unused paid sick leave. Employers must provide rehired employees with written notice of available paid sick leave.

Under the final regulations, if an employer chooses to reimburse an employee for any portion of their unused paid sick leave at the time the employee separates from employment, any terms for reimbursement must be mutually agreed upon in writing by the employer and the employee. If the employee is rehired by the same employer within 12 months, the employer does not need to reinstate any hours of paid sick leave that were reimbursed at the time of separation. However, the value of the paid sick leave must have been established and paid at a rate that was at least equal to the employee's normal hourly compensation.

EMPLOYEE PROTECTIONS

Under the paid sick leave law, an employer is prohibited from:

- Interfering with or denying an employee his or her rights to paid sick leave under the law
- Retaliating or discriminating against an employee for exercising his or her paid sick leave rights
- Requiring an employee to find a replacement worker to cover for the employee's paid sick leave absence
- Counting paid sick leave absences against an employee under the employer's attendance policy that could lead to discipline

EMPLOYER NOTIFICATION REQUIREMENTS

Employers must **regularly notify employees** of their available paid sick leave. The final regulations clarify this regular notification requirement. On at least a **monthly basis**, employers must provide employees with a written or electronic notice that details the employee's accrued paid sick leave, the amount of paid sick leave used since the last notification and the amount of paid sick leave that is available for the employee to use. An employer may satisfy this notification requirement by including this information on employees' pay statements.

For employers that choose to front-load employees' paid sick leave, the employer is required to notify employees (in writing or electronically) by the end of the period that the front-loaded paid sick leave was intended to cover. The notification must establish that the front-loaded paid sick leave was at least equal to the accrual rate under the law (that is, one hour of paid sick leave for every 40 hours worked). Employers that front-load paid sick leave are **not exempt** from the regular (at least monthly) notification requirement.

RECORDKEEPING

The final regulations include specific recordkeeping requirements for employers. Employers must maintain records of paid sick leave accruals each month and the amount of paid sick leave that is available for an employee to use. Employers must also keep track of paid sick leave reductions each month, including, but not limited to, paid sick leave used by an employee, paid sick leave donated to co-workers under an optional shared leave program and paid sick leave not carried over to the following year.



EMPLOYER PAID TIME OFF (PTO) POLICIES

Under the final regulations, an employer that maintains a written PTO program that combines vacation, sick leave and other paid time, will satisfy the requirement to provide employees with paid sick leave if the PTO policy meets or exceeds the law's requirements. The PTO program must, for example, provide at least the same amount of leave that may be used for the same purposes as provided under the paid sick leave law, and must permit carryover of at least 40 hours unused PTO into the next year.

EXISTING PAID SICK LEAVE LAWS AND ORDINANCES

The law does **not** pre-empt any existing federal, state, or local laws and ordinances relating to paid sick leave. The law also specifically does not prevent any localities from enacting additional labor standards, including paid sick leave and minimum wage standards that are more generous or favorable to employees.

Employers must comply with the new statewide paid sick leave requirements **and** the requirements under any local paid sick leave ordinance it may be subject to (for example, paid sick leave mandates are, or will be, effective in Seattle, Tacoma, Spokane and SeaTac). Where state and local paid sick leave provisions conflict, the employer should apply the provision that is most generous to the employee.

MORE INFORMATION

The [Washington State Department of Labor & Industries](#) (Department) has established an [Employer Resource Center for Paid Sick Leave](#) that includes sample policies that will satisfy the requirements of a written paid sick leave policy that employers are required to maintain under the final regulations. A sample employee notification form is also provided.