

# EMPLOYMENT LAW SUMMARY

## Arizona: Earned Paid Sick Time



Arizona's [Fair Wages and Healthy Families Act](#) (Act) requires employers in Arizona to provide employees with earned paid sick time. The Industrial Commission of Arizona (Commission) has published [final rules](#) implementing the law.

This Employment Law Summary provides an overview of Arizona's earned paid sick time requirements.

### Overview of Earned Paid Sick Time

The major provisions of Arizona's earned paid sick time law include the following:

- Virtually all Arizona employers are required to provide earned paid sick time to employees;
- In general, all employees working for an Arizona employer are eligible for the accrual and use of earned paid sick time;
- Employees must accrue at least one hour of earned paid sick time for every 30 hours worked;
- Employers with **15 or more employees** may limit employees' total paid sick time accrual to 40 hours per year;
- Employers with **fewer than 15 employees** may limit employees' total paid sick time accrual to 24 hours per year;
- An employee's earned paid sick time begins to accrue on the first day of employment;
- Employers may restrict employees' use of accrued earned paid sick time until the employee has completed 90 days of employment;
- Employees are entitled to carry over all unused earned sick time, unless the employer chooses to pay out unused sick time;
- Employers may provide employees with the full amount of earned paid sick time or equivalent paid time off they are expected to accrue at the beginning of each year to avoid tracking accruals and complying with carry-over requirements; and
- The law imposes specific employer notice and recordkeeping requirements.

### Covered Employers

Virtually all private employers in Arizona are covered by the Act. There is no exception for small businesses. Even small businesses that are exempt from the state's minimum wage requirements are required to comply with the earned paid sick time law.

### Existing Paid Leave Policies

An employer that offers "equivalent paid time off" under a paid leave policy—such as a paid time off policy—that provides at least the same amount of leave as, and allows employees to use leave for the purposes required by, the law is not required to provide additional paid sick time. An employee who exhausts his or her equivalent paid time off for vacation or other nonqualifying reasons does not need to be provided additional paid sick time, provided the employer's equivalent paid time off policy meets all other minimum requirements under the law.

### Eligible Employees

In general, **all employees** working for an Arizona employer are eligible for the accrual and use of earned paid sick time. Employees must generally be allowed to use earned paid sick time as it is accrued. However, an employer may require newly hired employees to wait **90 days** before using any accrued paid sick time. Under the law, there is no distinction between seasonal and year-round employees for purposes of sick time accrual and usage.

In its FAQs, the Commission states that it does not intend to enforce the state's paid sick leave law against employers whose employees work outside of Arizona. However, neither the Act nor the final rules address this topic.

## Accrual of Earned Paid Sick Time

Employees must begin accruing earned paid sick time upon hire. Employees must accrue **at least one hour of earned paid sick time for every 30 hours worked**. For employees who are considered exempt under the federal Fair Labor Standards Act, the employer may assume the employee works 40 hours per week for purposes of earned paid sick time accrual.

Employers may limit the accrual of earned paid sick time based on their employer size as follows:

- **Employers with 15 or more employees** may limit employee earned paid sick time accrual and use to no more than **40 hours per year**; and
- **Employers with fewer than 15 employees** may limit employee earned paid sick time accrual and use to no more than 24 hours per year.

For this purpose, a "year" is any consecutive 12-month period (for example, calendar year, fiscal year or year from employee's hire date), as chosen by the employer.

An employer has 15 or more employees if it maintained 15 or more employees on the payroll for some portion of a day in each of 20 different calendar weeks (the weeks do not have to be consecutive) in the current or preceding year. In determining the employer's size for earned paid sick time compliance, the Commission's FAQs provide that employees who work outside of Arizona are not included in an employer's total employee count. However, the Commission has indicated that it will treat businesses under common control or ownership as a single employer in applying the law, including for purposes of determining the total number of employees.

### **Front-loading Earned Paid Sick Time**

Under the final rules, an employer may front-load sick time or equivalent paid time off for employees' immediate use and avoid having to comply with the accrual and carry-over requirements. For example, an employer with 15 or more employees that provides its employees with 40 or more hours of paid sick time (or 40 or more hours of equivalent paid time off) for immediate use at the beginning of each year is not required to provide additional accrual or carryovers.

In addition, when front-loading paid sick time, the final rules allow an employer to prorate the amount of sick time or equivalent paid time off provided to employees **hired in the middle of the employer's year**. An employer may provide a newly hired employee with an amount of paid sick time or equivalent paid time off available for immediate use on the employee's 90th day of employment that equals or exceeds the employer's reasonable projection of the amount of time the employee would accrue from his or her date of hire to the end of the year (based on one hour of paid time for every 30 hours worked).

In addition, when front-loading paid sick time, the final rules allow an employer to prorate the amount of sick time or equivalent paid time off provided to employees hired in the middle of the employer's year. An employer may provide a newly hired employee with an amount of paid sick time or equivalent paid time off available for immediate use on the employee's 90th day of employment that equals or exceeds the employer's reasonable projection of the amount of time the employee would accrue from his or her date of hire to the end of the year (based on one hour of paid time for every 30 hours worked).

## Use of Earned Paid Sick Time

Eligible employees must be able to use their accrued paid sick time (or equivalent paid time off) 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 a public health emergency or an employee's need to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency; or Care for oneself or a family member when it has been determined by the health authorities having jurisdiction or by a health care provider 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, whether or not the employee or family member has actually contracted the communicable disease
4. Time off due to domestic violence, sexual violence, abuse or stalking to allow the employee to obtain for himself or herself or the employee's family member:
  - Medical attention, including psychological or other counseling, for physical or psychological injury caused by domestic violence, sexual violence, abuse or stalking;
  - Services from a domestic violence program, sexual violence program or victim services organization; or
  - Legal services or to relocate (or take steps to relocate).

The Commission indicated that it will not pursue enforcement when an employer designates an employee's time off as earned paid sick time, even when the employee has not requested to use accrued sick time for the absence, provided that the employer has a good faith belief that the absence meets the earned paid sick time usage requirements.

In addition, when an eligible employee takes leave under the federal Family and Medical Leave Act (FMLA) for a reason that aligns with the earned paid sick time use requirements, an employer may require an employee to use available earned paid sick time during the FMLA leave.

### **On-call Employees**

Absent additional guidance, the Commission intends to allow employers to restrict **on-call employees'** earned paid sick time use to periods of time that the on-call employee is scheduled to work, or periods of time that the on-call employee would be scheduled to work, but for circumstances justifying the use of earned paid sick time.

### **Family Members**

The Act defines "family member" very broadly. For purposes of using earned paid sick time, a family member includes:

- Children of any age, including a biological child or adopted child, stepchild, legal ward, child of a domestic partner or child to whom the employee stands in loco parentis (whether now or in the past);
- Parents, including a biological or adoptive parent, stepparent, legal guardian of the employee, employee's spouse or domestic partner, or person who stood in loco parentis when the employee or the employee's spouse or domestic partner was a minor;
- The employee's spouse or domestic partner;
- Grandparents, grandchildren or siblings (biological, foster, adoptive or step relationship) of the employee or the employee's spouse or domestic partner; and
- Any other individual related by blood or affinity whose close association with the employee is equivalent of a family relationship.

### **Leave Increments**

Employers may require paid sick time to be used in the smaller of hourly increments or the smallest increment that the employer uses, by policy or practice, to account for other types of absences or paid time off in the employer's payroll system. For example, where an employer's practice is to account for absences or use of other paid leave in six-minute increments (a tenth of an hour), an employee may use earned paid sick time in this same increment.

### **Payment of Earned Paid Sick Time**

Earned paid sick time (or equivalent paid time off) is compensated at the same hourly rate as the employee would earn for hours actually worked. In no case may the same hourly rate be less than the minimum wage. The final rules include the following methods for determining an employee's same hourly rate:

**Employee's  
Payment  
Method**

**Determination of Same Hourly Rate**

## Employee's Payment Method

## Determination of Same Hourly Rate

<b>Single Hourly Rate</b>	Sick time is paid at the same hourly rate that the employee would have earned for the period of time that sick time is used.
<b>Multiple Hourly Rates</b>	<p>The same hourly rate is determined in the following order of priority:</p> <ul style="list-style-type: none"><li>• If known, the employee is paid the actual hourly wages that the employee would have been paid for the period of time that sick time used.</li><li>• If unknown, the employee is paid an hourly rate equivalent to the weighted average of all hourly rates of pay during the prior pay period.</li></ul>
<b>Salary Basis</b>	<p>No additional pay is due when the employee's use of earned paid sick time results in no reduction in his or her regular salary during the pay period that earned paid sick time is used. The same hourly rate for salaried employees is determined in the following order of priority:</p> <ul style="list-style-type: none"><li>• The employee's wages earned during the pay period covered by the salary, divided by the number of hours agreed to be worked in the pay period the salary is compensating, if established; or</li><li>• The wages the employee earns during each workweek covered by the salary in the current year divided by 40 hours.</li></ul>
<b>Commission, Piece-rate or Fee-for-service</b>	<p>Hourly rates for sick time are determined in the following order of priority:</p> <ul style="list-style-type: none"><li>• The hourly rate of pay previously agreed on by the employer and the employee as: (1) a minimum hourly rate for work performed; or (2) an hourly rate for payment of earned paid sick time or equivalent paid time off;</li><li>• The wages that the employee would have been paid, if known, for the period of time in which earned paid sick time or equivalent paid time off is used, divided by the number of hours of earned paid sick time or equivalent paid time off used;</li><li>• A reasonable estimation of the commission, piece-rate or fee-for-service compensation that the employee would have been paid for the period of time in which the earned paid sick time or equivalent paid time off is used, divided by the number of hours of earned paid sick time or equivalent paid time off used;</li><li>• The hourly average of all commission, piece-rate or fee-for-service compensation that the employee earned during the previous 90 days, if the employee worked regularly during the previous 90-day period, based on: (1) hours that the employee actually worked; or (2) a 40-hour workweek; or</li><li>• The hourly average of all commission, piece-rate or fee-for-service compensation that the employee earned during the previous 365 days, based on: (1) hours that the employee actually worked; or (2) a 40-hour workweek.</li></ul>

Shift differentials and premiums meant to compensate an employee for work performed under differing conditions (such as hazard pay or a shift differential for working at night) must be included when determining an employee's hourly rate, if the employee would have been entitled to the shift differential or premium for the period paid sick time or equivalent paid time off is used. However, overtime, holiday pay, bonuses, other types of incentive pay, tips and gifts do not need to be included in an hourly wage rate determination.

## Employee Notice Requirements

Under the law, earned paid sick time is to be provided upon an employee's request. When the need for sick time is foreseeable, employees are expected to make a good faith effort to provide the employer with advance notice of the need for leave (including expected duration, if possible) and schedule the time off in a way that avoids disrupting the employer's operations. If an employer requires notice of the need to use earned paid sick time when it is not foreseeable, it must establish a written policy that includes procedures for employees to provide the notice.

## Compliance Tip

Employers must allow employees to request paid sick leave by using any available means (orally, in writing, electronically or by any other means acceptable to the employer). In its FAQs, the Commission specifically states that an employer is not allowed to interfere with an employee's right to use any of the available options for providing this notice.

## Documentation of Earned Paid Sick Time Use

An employer may require reasonable documentation to verify that earned paid sick time was used for a permitted reason only when an employee uses paid sick leave for **three or more consecutive days**. Documentation that is signed by a health care professional and indicates sick time is necessary is considered reasonable. An employer may **not** require that the documentation explain the nature of the health condition or the details of domestic violence, sexual violence, abuse or stalking.

If earned paid sick time is used due to domestic violence, sexual violence, abuse or stalking, the law specifies various forms of acceptable documentation, including a police report, protective order, a signed statement from an attorney or advocacy organization, or a signed statement by the employee.

## Carry-over, Termination and Rehire Requirements

With respect to unused earned paid sick time, employers that do not front-load sick time (or equivalent paid time off) must either: (1) allow employees to carry over unused earned paid sick time into the following year; or (2) pay out unused paid sick time to employees at the end of the year.

**Carryover:** If an employer allows employees to carry over unused earned paid sick time, the employee may still be subject to limits implemented by the employer, depending on its size, for use of earned paid sick time each year.

**Pay Out:** If an employer chooses to pay out unused paid sick time at the end of the year, the employer must then provide employees with at least the minimum amount of earned paid sick time required (that is, at least 40 hours for employers with 15 or more employees and at least 24 hours for employers with fewer than 15 employees) for immediate use at the beginning of the subsequent year.

Employers are not required to pay out unused earned paid sick time when an employee terminates employment. However, individuals rehired **within nine months** of their separation are entitled to all previously accrued, unused paid sick time, which may be used upon the recommencement of employment. However, according to the Commission's FAQs, if an employer pays out an employee's unused earned paid sick time upon separation of employment and the employee is rehired, the rehired employee is **not** entitled to reinstatement of the paid sick time. This is true even if the employee is rehired within nine months.

### Carry-over Rules

Employees are entitled to carry over all unused earned sick time (unless the employer chooses to pay out unused sick time or front-loads earned sick time). However, employees may be limited to using no more than 24 or 40 hours per year, based on the employer's size. The final rules limit an employee's sick time carry-over entitlement to the annual maximum for accrual and usage, based on the employer's size, unless the employer chooses to allow a greater carryover. The Commission's FAQs provide the following example for an employer with 15 or more employees:

### Example

An employee accrues 40 hours of earned paid sick time in year one and does not use any of the accrued time. The employee may carry forward the 40 hours of accrued but unused earned paid sick time to year two (unless the employer exercises its payout option). Assuming the employer did not pay out hours, the employee remains entitled to accrue another 40 hours of earned paid sick time in year two (for a maximum of 80 hours). If, at the end of year two, the employee has 80 hours of unused earned paid sick time and the employer does not exercise its payout option, the employee may only carry forward 40 hours of earned paid sick time into year three (though the employee may accrue another 40 hours in the course of year three). NOTE: The employee may only use 40 hours of earned paid sick time in any given year.

Under the final rule, employees of large employers cannot accrue more than 80 hours of earned paid sick time (by carrying over up to 40 hours, and accruing an additional 40 hours during the year). Regardless of an employee's ability to accrue up to 80 hours of earned paid sick time, a large employer may limit sick time use to 40 hours per year.

## Employee Protections

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

- Interfering with or denying an employee his or her rights to earned paid sick time;
- Retaliating or discriminating against an employee or former employee for using earned paid sick time or exercising any of his or her rights under the Act;
- Requiring an employee to find a replacement to cover for the employee's earned sick time absence; and
- Counting earned sick time absences against an employee under the employer's attendance policy.

Employers must keep all the details they obtain regarding an employee's (or family member's) health condition or use of earned paid sick time due to domestic violence, sexual violence, abuse or stalking completely confidential. Information may not be disclosed to any individual other than the affected employee, unless the employer has permission from the affected employee to disclose the information.

## Employer Notification Requirements

Employers must provide written notice of earned paid sick time rights to all new employees upon hire. Employers may satisfy the notice requirement by posting a notice in the workplace. The Commission has provided a [model notice](#) for employers to use. This notice must also be posted conspicuously in the workplace in [English](#) and [Spanish](#).

The final rules exempt small employers from the posting requirement. For this exemption, a small employer means a corporation, proprietorship, partnership, joint venture, limited liability company, trust or association that has less than \$500,000 in gross annual revenue.

Employers are also required to notify employees each pay period of:

- The employee's amount of available earned paid sick time or equivalent paid time off;
- The amount of earned paid sick time or equivalent paid time off used by the employee to date in the year; and
- The amount of earned sick time or equivalent paid time off paid to the employee to date in the year.

This information must be included either on the employee's regular paycheck or in an attachment to the employee's paycheck. This may include a physical paycheck or an electronic paycheck or paystub.

Under the Commission's FAQs, if an employer complies with earned paid sick time requirements with an equivalent paid time off program, the employer is not required to separately track or record sick time. That is, when an employee uses equivalent paid time off, the employer may count that time as taken and received on the employee's regular paycheck.

## Recordkeeping Requirements

Employers must maintain records of earned paid sick time compliance for four years. Failing to maintain these records will create a presumption that the employer did not pay earned paid sick time, unless the employer can prove otherwise.

## Enforcement

An employer that violates the law's recordkeeping, posting or other requirements is subject to a civil penalty of at least \$250 for the first violation and at least \$1,000 for each subsequent or willful violation. Special monitoring and inspections may also be imposed.

## STATE RESOURCES

**Industrial Commission of Arizona:** <https://www.azica.gov/>

**FAQs:** The Industrial Commission published [answers](#) to frequently asked questions about earned paid sick time.

**Poster:** Employers can use this model [poster](#) from the Industrial Commission to satisfy their employee notice and workplace posting requirements.

This guide is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. It is provided for general informational purposes only. Readers should contact legal counsel for legal advice. © 2022 Zywave, Inc. All rights reserved.