

LABOR AND EMPLOYMENT LAW ALERT

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What Connecticut's New Paid Sick Leave Law Means for Employers

Connecticut recently enacted first-of-its-kind legislation that provides that certain employees are entitled to paid sick leave. The law adds a new layer of complexity for human resources professionals and office personnel.

We have little doubt that questions will continue to arise about this legislation as it is implemented. But as it stands now, there's a lot that we do know. Here are the answers to some questions we anticipate you might have about the new law. Employers will want to consult with appropriate legal counsel to determine the law's specific application to their company.

When Will It Be Effective?

The law is effective January 1, 2012.

What "Employers" Are Covered?

The definition of an employer is a company that employs 50 or more people in Connecticut in any one quarter of the prior year.

Notably, the definition of "employer" excludes manufacturing enterprises classified in sectors 31, 32, and 33 of the North American Industrial Classification System, which appears to include nearly all manufacturers. It also does not include "any nationally chartered organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986...that provides all of the following services: Recreation, child care and education." That exception is understood to include only the YMCA (though there may be a few out there that might fall within that limited exception).

In other words, many manufacturers and the YMCA are probably not covered at all under the Act, even if they have workers who would otherwise qualify.

What Employees Will Be Covered?

Only "service workers" will be covered. Moreover, those service workers must be paid on an hourly basis and be viewed as "non-exempt" from overtime rules. "Day and temporary workers" are also specifically excluded from coverage.

Who Is a “Service Worker”?

The Act defines “service worker” as an employee classified by the federal Bureau of Labor Statistics in any of a long list of occupation code numbers and titles, which includes among others: social workers, librarians, pharmacists, physician assistants, home health aides, security guards, food service managers, secretaries and administrative assistants, waiters and waitresses, and office clerks.

How Does Paid Sick Leave Accrue?

Service workers get one hour of paid sick leave for every 40 hours worked, up to a maximum of 40 hours (five business days). It appears that overtime hours worked also must be included in the “time worked” calculation. Employees can carry over up to five days of paid sick leave each year.

When Can Service Workers Begin to Take Paid Sick Leave?

After the service worker has worked 680 hours (about four months, absent any overtime), though the employer can agree to move up that date.

For What Reasons Can the Service Worker Take Paid Time Off?

The service worker can take paid time off for the following:

For the worker’s own: 1) illness, injury or health condition, 2) medical diagnosis, care or treatment of a service worker’s mental illness or physical illness, injury or health condition, or 3) preventative medical care for a service worker;

For all of the above for the worker’s own child or spouse.

The service worker can also take paid time off if that worker is a victim of family violence or sexual assault. In such cases, the worker can seek time off 1) for medical care or psychological or other counseling for physical or psychological injury or disability, 2) to obtain services from a victim services organization, 3) to relocate due to such family violence or sexual assault, or 4) to participate in any civil or criminal proceedings related to or resulting from such family violence or sexual assault.

How is an Employer “Deemed” to be in Compliance Without Formally Implementing this New Law?

An employer is deemed in compliance if it offers “any other paid leave” (i.e., paid time off (PTO), vacation time, etc.) that is at least equal to the benefit offered by the statute (in other words, five days off at full pay). The PTO that the employer has must be usable by the service worker for one of the reasons outlined above (i.e., for their own illness or that of their spouse, etc.).

Can the Employer Require Notice?

Yes, the employer can require advance notice of up to seven days, if the leave is foreseeable. If it is not foreseeable, the employer can require the service worker to give notice as soon as practicable.

If paid sick leave is for three or more consecutive days, the employer can require “reasonable documentation” that such leave is being taken for a permitted purpose. Documentation signed by a health care provider who is treating the service worker or the service worker’s child or spouse indicating the need for the number of days of such leave shall be considered “reasonable documentation.”

Can an Employer Discipline a Service Worker Who Takes Sick Leave for a Non-Permitted Purpose?

Yes. The law specifically provides that employers can discipline service workers who take leave for a purpose other than one specified under the law.

Can Employees Sue if They are Not Permitted to Take Sick Leave?

No, at least not yet. Service workers who believe their rights have been violated may raise a complaint to the Department of Labor. Ultimately the employee may appeal the decision to Connecticut Superior Court, but cannot bring a claim there directly.

What About the Anti-Retaliation Provisions?

Importantly, they apply to all employees who take leave pursuant to an employer's "Paid Sick Leave policy" or to employees who take leave pursuant to the law (presumably, service workers).

Do Employers Have to Provide Any Notices to Service Workers?

Absolutely.

At the time of hire, the employer must notify each service worker that he or she has a right to sick leave. Employers must also specify the amount of sick leave provided and the terms under which sick leave may be used. The employer must also inform the worker that retaliation by the employer for using sick leave is prohibited by law and the service worker may file a complaint with the Department of Labor for any violation.

In order to meet this requirement, employers may simply display a poster in a conspicuous place that has all the information specified above in both English and Spanish.

What Should Employers Do Now?

- Understand the provisions and whether you are covered.
- Assess your job descriptions and determine what jobs are covered.
- Review any existing policies that you have and modify them so eligible service workers who request leave for the permitted purposes will be allowed to take it.
- Revise any offer letters or, in the alternative, create a poster that meets the requirements and have that poster up by January 1, 2012.

This law promises to be quite a headache in terms of implementation. Take the time now to understand its application so that when January 1, 2012 hits, you are prepared.

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