

Pittsburgh's Paid Sick Days Act Is Now on Course to Take Effect

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After a lengthy journey through the Pennsylvania legal system, the [City of Pittsburgh's Paid Sick Days Act](#) is now on course to go into effect. The Act was signed by the Pittsburgh mayor in 2015, but its implementation was delayed due to legal challenges. On July 17, 2019, after lower courts had previously found the law invalid, the [highest court in Pennsylvania concluded](#) that the City was within its authority in enacting the ordinance. As a result, absent other legal or legislative changes, the Paid Sick Days Act will soon go into effect for Pittsburgh employers.

The Paid Sick Days Act was originally intended to go into effect on January 11, 2016. Now that the legal challenges appear to be resolved, it is unclear what the Act's new effective date will be, although the mayor is expected to provide guidance on timing in the coming days.

Employers with employees working in Pittsburgh should consider reviewing and, if necessary, preparing revisions to their leave and paid time-off policies and procedures in light of the Act's requirements (described below) and be prepared to comply with the Act when it becomes effective.

Key Features of Pittsburgh's Paid Sick Days Act

Which Employers and Employees Are Covered?

Any employer that does business within the geographic boundaries of the City of Pittsburgh and employs one or more individuals in exchange for compensation is covered by the Act and required to provide paid sick time. In terms of employee coverage, the Act applies to all full- and part-time employees working within the geographic boundaries of the city. Seasonal employees (defined as those who are notified in writing upon hire that they will work no more than 16 weeks in a calendar year) and independent contractors are excluded from the Act's coverage.

How Do Employees Accrue Sick Time?

The Act provides that employees accrue 1 hour of paid sick time for every 35 hours worked in Pittsburgh. Exempt employees are presumed to work 40 hours in each workweek for sick-time accrual, unless their normal workweek is less than 40 hours, in which case sick time accrues based on the normal workweek.

If an employer has 15 or more employees: Employees are entitled to accrue up to 40 hours (e.g., 5 days) of paid sick time per calendar year.

If an employer has fewer than 15 employees: Employees are entitled to accrue up to 24 hours (e.g., 3 days) of unpaid sick time for the first calendar year after the Act's effective date. After this period, these employees are entitled to accrue up to 24 hours (e.g., three days) of paid sick time per calendar year.

The definition of a calendar year can be set by the employer, so long as it is a regular 12-month period and the period is communicated to employees. Employers can allow employees to accrue paid sick time at more generous rates than the established statutory minimums.

Rollover: Employees must be allowed to roll over accrued, unused sick time from year to year. As an alternative to rollover of accrued, but unused paid sick time, an employer may frontload the accrual amount to the beginning of the calendar year. In other words, an employer with more than 15 employees may grant employees the full 40 hours of paid sick time at the start of the calendar year rather than waiting for it to accrue. In either case (rollover or frontloading), an employer need not provide an employee with more than the statutorily required paid sick time (e.g., 40 or 24 hours) in a calendar year.

Notably, if an employer has a paid leave policy, such as a paid time-off policy, that is more generous than the Act's requirements, it need not offer additional paid time off if the paid time provided for in the employer's policy can be used for the same purposes and under the same circumstances as sick time provided for in the Act. Additionally, the Act provides that employers need not pay employees for accrued, unused sick time at the end of employment, a point employers may want to clarify in their policies.

What Are the Employer's Notification Requirements?

Employers must notify employees of the rights provided to them under the Act, including their right to sick time, the amount of sick time available to them, and the terms surrounding permissible sick-time use. Employees must also be notified of their right to be free from retaliation for requesting sick time, taking sick leave, or filing a complaint with the City. (It might make sense to review and revise handbook or policy antiretaliation provisions to include this prohibition.) Employers are also obliged to post notices provided by the City's controller relating to the Act, and are subject to fines for failing to post the notices. Two notices were issued by the controller in 2015 before the Act was originally slated to go into effect; it is unclear if these notices will be revised or if the same notices will have to be posted.

What Are the Employee's Notification Requirements?

Paid sick time must be provided upon an employee's oral request. When making a request, the employee must provide the anticipated duration of the absence, if possible. Employers may establish reasonable policies relating to the timing and circumstances of employees' requests for use of sick time. For example, employers can require, in the case of foreseeable paid sick time use (such as for a scheduled doctor's appointment), that employees provide "reasonable advance notice" of up to seven days. For unforeseeable sick-time use, an employer's policy can require an employee to make a "good faith effort" to provide notice as soon as possible. Employers may also ask employees to try to schedule their routine medical appointments to minimize interference with business operations.

An employer may only require an employee to submit documentation of the reason for using sick time if the employee uses three or more consecutive days of paid sick time. Even when requiring documentation is permissible, employers cannot require the documentation to identify the specific nature of the illness.

Employers may discipline employees who fail to follow an employer's notification requirements, but may not prevent employees from using accrued leave.

When and How Can an Employee Use the Sick Time?

Employees begin to accrue sick time as of the effective date of the Act; employees who are hired after the effective date begin to accrue sick time at the commencement of their employment. Employees may use accrued sick time after they have been employed for 90 days. Employees can use paid sick time for their own or family members' illnesses, injuries, or medical treatment, including preventive and mental health care. The Act broadly defines covered family members to include grandchildren, domestic partners, foster children, children of a domestic partner, and any individual for whom an employee has received oral permission from the employer to care for.

Employees can use paid sick time in one-hour increments or the smallest increment the employer uses for other absences. Sick-time pay is to be commensurate with the employee's rate of pay and with the same benefits, including health-care benefits, that the employee would have earned at the time of the use of paid sick time.

What Kinds of Recordkeeping Are Required?

For a period of at least two years, employers must retain records showing hours worked by employees and sick time taken by employees. These records are subject to review by the Pittsburgh's Office of the City Controller. Failure to maintain the records may result in fines as well as a rebuttable presumption that the Act was not followed.

What Are the Penalties for Noncompliance?

The Act makes it unlawful to, among other things:

- require an employee, as a condition of taking sick time, to find a replacement worker to cover the hours during which the employee is absent;
- interfere with, restrain, or deny an employee's right to use accrued sick time;
- discriminate or retaliate against an employee for exercising or attempting to exercise the right to use accrued sick time; or
- count any accrued and used sick time as an absence under any absence control policy that could lead to discipline or other adverse action unless the employee does not provide proper notice to use the sick time.

Pittsburgh's Paid Sick Days Act also creates a rebuttable presumption of unlawful retaliation when an employer takes adverse action against an employee within 90 days of when the employee has

exercised rights provided for in the Act by, for example, filing a complaint alleging a violation of the Act, opposing any policy or practice that is unlawful under the Act, informing “any person” about an employer’s alleged violation of the Act, or informing any person of his or her rights under the Act.

The Act allows employees to file complaints with the Office of the City Controller or a court within six months of the date the employee knew or should have known of a potential violation. The City’s controller may impose penalties and fines for violations of the Act, and provide all appropriate relief, including, but not limited to, lost wages and benefits and reinstatement.

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National Law Review, Volume IX, Number 200

Source URL: <https://natlawreview.com/article/pittsburgh-s-paid-sick-days-act-now-course-to-take-effect>