

Two New Employment Ordinances Go into Effect in Philadelphia

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Covered employers must provide paid sick leave to employees and equal health benefits to employees' life partners.

On July 1, two new ordinances went into effect in Philadelphia; both will affect employers that contract with the City of Philadelphia (the City). **Amendments to Chapter 17-1300 of the Philadelphia Code, the Philadelphia 21st Century Minimum Wage and Benefits Standard**, mandate paid sick leave for covered employees.^[1] In addition, **Chapter 17-1900, Equal Benefits**, requires covered employers to offer health benefits to the life partners of their employees.

The City's Managing Director's Office recently issued [new guidance](#) regarding both ordinances. We highlight below the most frequent questions we have received related to these new laws and our views regarding these questions based on the newly released guidance.

1. What employers are covered by the Paid Sick Leave Ordinance?

The following employers are covered by the ordinance:

1. The City and its agencies, departments, and offices
2. For-profit service contractors who have City contracts for \$10,000 or more in a 12-month period, and annual gross receipts of more than \$1 million
3. Nonprofit service contractors who have City contracts for more than \$100,000 in total in a 12-month period
4. Recipients of City leases, concessions, or franchises that employ more than 25 employees
5. City financial aid recipients (as defined in Chapter 17-1302(2)), for a period of five years following the receipt of aid
6. Public agencies that receive contracts for \$10,000 or more from the City in a 12-month period

Subcontractors^[2] and employers with fewer than five employees are not subject to the law.

2. What do covered employers have to provide?

Under the ordinance, employers are required to provide the following:

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1. Minimum wages: 150% of the federal minimum wage, which would equal \$10.88 an hour at the current federal minimum wage rate.
 2. Minimum benefits: Health benefits equal to the least valuable health benefits provided to any other full-time employee. This includes benefits to life partners under Chapter 17-1900, if applicable.
 3. Paid sick leave: At least one hour of paid sick leave for every 40 hours worked, up to a maximum of 32 hours per year for businesses with more than five but fewer than 11 employees and up to 56 hours per year for employers with 11 employees or more.

3. Do the requirements apply only to individuals working on the service contracts that form the basis for coverage under the ordinance or to all individuals employed by a covered employer?

Only employees who work on projects arising directly from a "service contract (including all non-competitively bid contracts and some competitively bid service contracts), financial aid receipt, or City lease, concession, or franchise" are covered by the law. Further, only full-time, nontemporary, nonseasonal workers are eligible for minimum health benefits and sick leave. Therefore, within the group of employees who work on city contracts as defined above, only the following are covered under the provisions detailed below:

1. Minimum wages:
 - a. Full-time employees
 - b. Part-time employees
 - c. Temporary or seasonal employees, including workers from employment agencies
2. Minimum benefits:
 - a. Full-time permanent employees
3. Paid sick leave:
 - a. Full-time permanent employees

Also exempt from coverage are employees on a construction project covered by federal, state, or local prevailing wage requirements; student interns; summer youth employees; and trainees who are participating in a bona fide training program of less than 60 days that will allow them to advance to permanent employment.

4. Do I need to make any changes if I executed a contract before July 1, 2012?

No. Neither the Paid Sick Leave Ordinance nor the Equal Benefits Ordinance affects contracts that are already in place, even if they extend beyond July 1. However, the City may insert the new provisions if a contract is amended after that date. And all new contracts entered into after July 1 will be subject to the ordinances. The City's new guidance states that it plans to update its General Provisions and Terms and Conditions to include the provisions by next spring.

5. How do covered employers administer paid sick leave?

Covered employers should administer paid sick leave in the following fashion:

1. Paid sick leave begins to accrue at the start of employment and vests after the 90th day.
2. Employees may use accrued paid sick time for their own mental or physical illness or injury or for preventative care, or for the care of a family member (as that term is defined by the

employer's personnel policies).

3. Employers should require notice of the need to take sick time on a good-faith basis, consistent with the notice requirements they impose for other leaves as defined in their personnel policies.
4. If an employee uses paid sick leave for two or more days in a row, the employer should request reasonable documentation consistent with the documentation the employer requires in its personnel policies.
5. Employers may follow their current policies with respect to increments of time off.
6. If an employer has a paid leave policy in place that allows for paid leave that can be used at the employee's discretion for vacation, personal, and sick days, that policy will meet the requirements of the Paid Sick Leave Ordinance, as long as the policy provides the minimum required amount of days.

6. What postings are required?

Employers must provide notice and posting of covered employees' rights under the chapter. The City has yet to issue a model poster. Until one is issued, and after discussion with a representative from the City's Managing Director's Office, we recommend employers post the portion of the guidelines contained under the heading "[Chapter 17?1300 Requirements](#)."

7. What is the Equal Benefits Ordinance?

Employees who work on service contracts with the City that are valued at \$250,000 or more are eligible for benefits for their life partners unless (a) the service contract is with a governmental agency, (b) the employer does not provide benefits to the spouses of heterosexual employees, or (c) the employees are subcontractors.

If an employer has eligible employees, it must do the following:

1. Offer the same employment benefits the contractor extends to spouses of its employees to the life partners of its employees.
2. If not compliant at the time of the service contract's execution, amend its existing benefits agreement as soon as practicable but in no more than one year after the date of execution of the contract.
3. Include a certification in all bids or proposals that shows it will comply with Chapter 17?1900 if awarded the contract.
4. Provide notice to covered employees that the benefit is available.

8. Can a covered employer get a waiver of the ordinances' requirements?

Exemptions or waivers to the requirements of the Paid Sick Leave Ordinance are available in the following four circumstances:

1. The requirements of the chapter would be prohibited under state or federal law.
2. The covered employer can demonstrate that implementing the requirements would pose an economic hardship *and* the waiver will further the interests of the City in creating training positions that enable employees to advance to permanent jobs paying the Chapter 17?1300 wages.
3. The requirements of the chapter are waived by a collective bargaining agreement.[\[3\]](#)
4. It is in the best interests of the City to waive the requirements of the chapter.

Exemptions or waivers to the requirements of the Equal Benefits Ordinance are available in the following four circumstances:

1. The requirements of the chapter would result in the loss of federal, state, or similar grant funds or violate federal or state law.
2. The requirements of the chapter would interfere with a collective bargaining agreement.
3. The contractor is operated, supervised, or controlled by a bona fide religious institution or organization for charitable purposes and compliance would conflict with the contractor's religious beliefs.
4. Waiving the requirements is in the best interests of the City.

9. How do I apply for a waiver?

For either the Paid Sick Leave Ordinance or the Equal Benefits Ordinance, the covered employer must apply for a waiver directly from the contracting department. The waiver request must meet the following criteria:

1. The request must be on letterhead detailing what requirements the contractor wants to waive.
2. The request must include a rationale that comports with the available reasons for waiver.
3. The request must include the following supporting documentation: (a) a summary of the budget for the proposed work to be performed under the contract, (b) detailed wages and benefit information to be paid to all employees working under the City contract, (c) detail on the wages and benefits paid to the five highest-paid individuals employed by the contractor, and (d) demonstration that the waiver will further the interests of the City in creating training (or pipeline) positions that will enable employees to advance into future permanent positions paying the new wage standard or better.

The City will either approve or reject the request for waiver and notify the contractor. Each new contract, contract renewal, or amendment requires a new waiver application.

Implications

Employers that have not already determined their coverage under these ordinances should do so now and consider repeating that process annually. In addition, affected employers should assess how to comply with the new law under their existing leave policies, which may need to be amended, and consider whether to seek an amendment to collective bargaining agreements or a waiver from the City.

[1]. See our previous LawFlash on the subject, "Paid Sick Leave Mandated for Many Employers in Philadelphia" (Nov. 1, 2011), available at http://www.morganlewis.com/pubs/LEPG_LF_PhillyPaidSickLeave_01nov11.pdf.

[2]. The actual text of Chapter 17-1303 includes subcontractors. However, as made clear by the City in its new guidelines, Charter Sec. 2?309(5) permits Council to impose minimum wage and benefit requirements only to "those who contract with the City." Therefore, the law does not cover subcontractors.

[3]. The City's guidance does not reference this basis for exemption, but it is enumerated in the City Code, Chapter 17-1304.

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