

Philadelphia Expands Paid Sick Leave During COVID-19

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On September 17, 2020, Philadelphia Mayor Jim Kenney signed the Public Health Emergency Leave (PHEL) bill. The PHEL amends Chapter 9-4100 of the Philadelphia Code to create additional sick leave protections for Philadelphia employees during a public health emergency — specifically COVID-19.

WHICH EMPLOYEES BENEFIT FROM PHEL?

PHEL is designed to “fill gaps left by the federal leave laws in the midst of COVID-19,” and targets those individuals who were exempt from the paid leave provisions of the federal Families First Coronavirus Response Act (FFCRA). Under PHEL, gig economy workers, workers who physically report to jobs in health care, contract workers, nannies and employees of businesses with more than 500 employees are now eligible for up to two weeks of paid sick leave during any city-wide, state-wide or national health emergency.

Similar to the FFCRA, covered individuals may use PHEL leave only if:

- They get sick with a disease related to the health emergency (in this case COVID-19)
- They are advised to self-quarantine by a health care professional due to concerns related to the public health emergency
- They experience symptoms related to the public health emergency and are seeking a medical diagnosis
- They are caring for an individual with a disease related to the health emergency
- They are caring for their child when the child’s school or childcare provider has been closed due to the public health emergency

A worker is considered a “covered individual” under PHEL if he or she has worked for at least 40 hours within the geographic boundary of Philadelphia in a given year. Covered individuals who work

40 hours or more in a week are entitled to the greater of (1) 80 hours of leave or (2) their average hours worked over a two-week period, whichever is greater (up to a maximum of 112 hours). Covered individuals who work fewer than 40 hours a week can take an amount of leave equal to the number of hours they work in an average 14-day period. Individuals who are eligible for paid leave under the FFCRA are not eligible for paid leave under PHEL.

WHICH EMPLOYERS ARE REQUIRED TO PROVIDE PHEL LEAVE?

To reach both regular employees and gig workers, the PHEL applies to “employers” as well “hiring entities.” Hiring entities are defined as “any individual, partnership, association, corporation, business trust or combination thereof, that pays a wage or wages for the services of a covered individual,” and thus picks up businesses that engage independent contractors.

The PHEL has developed a special system for paid sick leave for gig economy workers who work for multiple hiring entities (e.g., a driver who works for both Uber and Lyft). Eventually, the city will establish a “centralized portable benefits system” for calculating public health emergency leave attributed to each hiring entity and will collect and distribute funds from the hiring entities to pay for a covered individual’s leave. Until that system is established, the covered individual is entitled to paid sick leave from each hiring entity for whom the covered individual worked.

PHEL’S PROCEDURAL PROVISIONS

The PHEL also has several important procedural provisions:

- Employers and hiring entities are required to provide notice to all covered individuals they employ or engage
- Employers and hiring entities are required to keep records documenting hours worked by employees, sick time taken by employees, and payment made to employees for sick time under PHEL for two years
- PHEL allows covered individuals to pursue a private right of action without first filing an administrative complaint
- Employers and hiring entities are prohibited from retaliating against a covered individual exercising his or her rights under the PHEL
- PHEL provisions can be waived in a bona fide collective bargaining agreement
- PHEL does not require employers and hiring entities to reimburse covered individuals for unused PHEL leave
- PHEL will sunset on December 31, 2020, if not renewed, and no employers or hiring entities will be required to provide PHEL leave after December 31, 2020, unless the law is renewed

WHAT SHOULD EMPLOYERS DO NOW?

The PHEL went into effect on September 17, 2020. Employers should therefore take the following steps now to make sure they are in compliance with the new law:

- Determine if any of their employees or other workers are covered by PHEL. If the workers are covered by the FFCRA, the employer need only comply with the FFCRA. If any workers are not covered by the FFCRA, it is likely that those workers will be entitled to paid leave under the PHEL. Note: only workers who have worked more than 40 hours within the boundaries of Philadelphia are eligible for PHEL leave.
- Develop and provide notice to covered individuals of their rights under the PHEL.
- Watch for promised guidance from the City regarding the implementation and enforcement of the new provisions.

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