

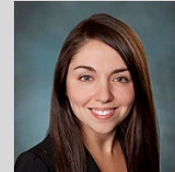
Client Alert

Ten Days Left to Comply with New Paid Sick Leave Law Affecting All Arizona Employers

6/21/2017

If you have not yet put a plan in place to comply with Arizona's new paid sick leave law, you only have a few days remaining to do so, and the consequences for not doing so can be steep. The potential penalties for failing to comply with the law include:

- Three times the value of any paid sick time that was not provided to the employee, plus interest;
- Minimum civil penalties of **\$250** for a first violation, and **\$1000 for each subsequent or willful violation** of recordkeeping requirements (including pay stub notices)
- A minimum penalty of **\$150 per day** for practices that retaliate against or deter employees from exercising their rights to request or use sick leave or report or participate in investigations related to sick leave; and
- An award of **attorneys' fees and costs** incurred by employees who successfully sue employers under the Act.



Laura Pasqualone
Associate
602.262.5362 direct
lpasqualone@lrrc.com

Laura Pasqualone is an attorney in the litigation group where she practices primarily in the areas of employment law and business litigation. She regularly advises employers on compliance with a wide variety of federal, state and local employment laws, in addition to her diverse litigation experience.

Because the statute imposes penalties that are mandatory and cumulative, with attorneys' fees also available, plaintiff attorneys will be on the lookout to bring lawsuits against employers who are not in compliance. Employers who have not yet done so must take immediate steps to augment their payroll practices to ensure complete and accurate reporting of accrued sick leave on pay stubs, preparation of required notices to employees, and updating of policies and procedures.

With the passage of Arizona's Proposition 206 last year, Arizona joined a handful of other states to implement a mandatory sick leave law. Employers with employees in Arizona will be required to offer their employees mandatory "paid sick time" (PST) by July 1, 2017. Whereas small businesses are exempt from coverage under Arizona's minimum wage law, the PST requirements of Arizona's Fair Wages and Healthy Families Act (the Act) apply to all businesses, regardless of size.

The amount of required PST accrual varies depending on the number of employees in the employer's workforce. For employers with 15 or more employees, employees must accrue a minimum of one hour of earned PST for every 30 hours worked, but employees are not entitled to accrue or use more than 40 hours of earned PST per year. For employers with fewer than 15 employees, employees still earn one hour of earned PST for every 30 hours worked, but employers can cap the accrual and use of PST at 24 hours per year.

Part-time and temporary workers are also covered by the Act and are entitled to accrue and use PST. Salaried employees who are exempt from the Fair Labor Standards Act's minimum wage and overtime requirements are presumed to work 40 hours in each work week for purposes of

calculating PST accrual, unless their normal work week is less than 40 hours, in which case their earned PST will accrue based on actual hours worked.

Generally, unused earned PST must be carried forward to the following year consistent with the accrual limits of the Act. The Industrial Commission has issued a proposed rule that caps the carry forward amount at 40 or 24 hours (depending on the size of the employer), but the rule has not yet been finalized. Employers may forego this requirement by following a procedure specified in the Act, which includes paying out any unused PST. The Act, however, does not require that accrued PST be paid out upon termination of employment. Under Arizona law, employers may maintain policies requiring employees to forfeit accrued and unused paid leave if the employees have the “reasonable expectation” that they will lose the accrued and unused leave upon termination of employment. Therefore, employers should maintain clear written policies informing employees about whether or not the employer pays out accrued and unused PST upon termination of employment.

Employees can use their PST hours for a variety of reasons, including: their own mental or physical illness, injury, or health condition; the mental or physical illness, injury, or health condition of a family member; absences related to abuse, stalking, sexual violence, or domestic violence of either the employee or the employee’s family member; and/or when a public health emergency causes the employee’s workplace to close, or the employee’s child’s school or daycare to close.

Critically, employers can only require reasonable documentation in support of an absence if an employee has used PST for three or more consecutive days. Under no circumstances may an employer require that an employee specify the relevant health condition or the details of domestic violence, sexual violence, abuse or stalking necessitating the use of PST.

Employers should also note that the new law includes specific employee protections that make it unlawful for an employer to retaliate or discriminate against an employee for using accrued PST or exercising his or her rights under the Act. Notably, if an employer takes any adverse action against an employee within 90 days of a person’s use of PST, the Act provides a rebuttable presumption that the action was retaliatory.

Employers should promptly take the following steps:

- **Update Policies.** Arizona employers should consult counsel to ensure their policies are updated to comply with the Act. Many existing policies, including “use it or lose it” policies, will likely not be compliant.
- **Notice Requirements.** Employers must be sure to follow the Act’s specific notice requirements. This includes displaying the Industrial Commission of Arizona’s model workplace poster addressing PST, a copy of which is available [here](#).
- **Recordkeeping Requirements.** Employers should coordinate with their internal payroll personnel or outside payroll administrators to ensure PST will be tracked and reported consistent with the Act.

The Industrial Commission of Arizona’s long-awaited proposed rulemaking regarding PST is available to read [here](#).