

## Philadelphia Adopts Paid Sick Leave Law

On February 12, Philadelphia Mayor Michael Nutter signed into law a bill that will require most employers to provide paid sick leave to employees who work at least 40 hours annually in the city. Under the Promoting Healthy Families and Workplaces Ordinance, employers with at least 10 employees will have to provide paid sick leave while smaller employers will have to provide unpaid leave. When the ordinance takes effect on May 13, Philadelphia will join a growing number of major cities with similar mandates. Employers should review their current leave policies and procedures to determine what, if any, changes may be needed to ensure compliance.

### Background

Philadelphia already requires certain private-sector employers that do business with the city, hold city leases, or receive city subsidies to provide a minimum amount of sick time. Since 2012, Philadelphia's 21<sup>st</sup> Century Minimum Wage Act has required covered businesses with 11 or more employees to provide a minimum of 56 hours of sick leave per year and covered businesses with more than five but fewer than 11 employees to provide 32 hours of sick leave per year. (See our [August 3, 2012 For Your Information](#).)



### The New Employer Mandate

On February 12, 2015, Mayor Nutter signed into law the [Promoting Healthy Families and Workplaces Ordinance](#). Beginning May 13, certain employers within the city limits will be required to offer eligible employees paid or unpaid leave, depending on the employers' size.

**Comment.** More than a dozen cities — including New York, Portland, and Seattle — and three states — California, Connecticut and Massachusetts — have enacted paid sick leave laws while similar federal legislation has failed to advance. (See our [November 13, 2014 For Your Information](#).)

### Existing Paid Leave Policies

Covered employers that already offer up to 40 hours of paid leave per year will not have to offer additional leave to meet the new requirements. Paid leave could include vacation, short-term disability benefits, floating holidays, parental leave, personal days, or PTO that may be used as sick time.

### Covered Employers and Employees

The new paid sick leave requirement generally applies to employers that employ 10 or more employees for at least 40 weeks in a calendar year, but does contain some exclusions. All full-time, part-time, and temporary workers are counted to determine whether an employer meets the 10-employee threshold. Regardless of the number of employees, certain “chain establishments” (those with at least 15 establishments doing business under the same trade name regardless of location and type of ownership) will be required to provide paid sick leave.

With limited exceptions, full- and part-time employees who work within the city limits for at least 40 hours in a year are covered by the new law.

Employees who are not entitled to paid leave under the new law will be entitled to unpaid time. Notably, the ordinance does not cover independent contractors, seasonal workers, adjunct professors, interns in educational institutions, certain healthcare professionals who work based on their availability, state and federal employees, employees covered by a *bona fide* collective bargaining agreement, and employees hired for a term of less than six months. Employers that already provide paid sick leave will not be required to provide additional leave as long as the ordinance’s accrual requirements are met and the sick time can be used for the same purposes and under the same conditions.

### Accrual and Usage

Under the new law, employees will accrue a minimum of one hour of sick time for every 40 hours worked in Philadelphia, up to a maximum of 40 hours per calendar year. Employees who work for employers with 10 or more employees will accrue paid sick time while employees who work for smaller employers will accrue unpaid sick time under the same schedule. Employees who are exempt under the Fair Labor Standards Act will accrue sick time based on a 40 hour workweek or their normal workweek, if shorter.

Employees will begin to accrue paid sick time on the later of May 13, 2015 (the effective date of the ordinance) or first day of employment. Employees may start using any earned paid sick time 90 days after accrual begins. Unused paid sick time must be carried over to the following year, unless the employer provides at least 40 hours of paid sick time at the beginning of the calendar year. Employees may not, however, use more than 40 hours of paid sick time in a calendar year, unless the employer agrees otherwise. Employers have no obligation to pay employees for accrued, unused sick time on termination.

**Comment.** Although paid sick leave laws in other cities (such as New York City) require an employee’s previously accrued, unused sick time to be reinstated upon rehire within a stipulated timeframe, Philadelphia’s ordinance has no such requirement. (See our [March 27, 2014 For Your Information](#).)

Employees may use their paid sick time for specified reasons, including for their own or a family member’s (broadly defined): mental or physical illness, injury, or health condition; preventive medical care; or medical diagnosis, care, or treatment. Paid sick time may also be used for absences due to the employee’s or family member’s domestic abuse, sexual assault, or stalking.

Employees will be allowed to take accrued sick time in hourly increments or the smallest increment of time the employer’s payroll system uses to account for absences. Employers may require employees to provide reasonable

documentation to support the need for more than two consecutive days' leave, but cannot require employees to find a replacement as a condition for using sick time. Under certain circumstances, employees who have exhausted their paid sick time may take unpaid leave for qualifying reasons.

### **Notice, Posting, and Recordkeeping**

The new law also requires employers to keep records related to sick time earned and used, and to provide notice to employees of their rights under the new law. Employers must maintain records of hours worked, sick time taken, and payments made to employees for paid sick time for two years. Employers that fail to do so, or to allow access by the city's enforcement agency, will be presumed to be in violation of the law.

Notice may be provided in the form of workplace posters or individual written employee notices. Both the posters and the notices must be in English and any other primary language spoken by at least 5% of the employer's workforce. The ordinance directs the city to make model posters/notices available. Employers will also need to include the same required information in any employee handbooks. Noncompliance with the notice and posting requirements may result in a civil fine of up to \$100 for each separate offense.

### **Anti-retaliation and Nondiscrimination Provisions**

Retaliation against employees or interference with their rights under the law is broadly prohibited. The ordinance protects any employee who alleges that his or her rights have been violated, opposes unlawful policies or practices, or participates in the investigation or prosecution of alleged violations. The ordinance presumes unlawful retaliation whenever an employer takes an adverse action against an employee within 90 days of the protected activity, and expressly prohibits employers from counting sick time taken as an absence for disciplinary purposes.

### **Penalties for Noncompliance**

Employees can seek administrative, and in some circumstances judicial, relief for an employer's noncompliance with the new law. Employees claiming a violation of the ordinance must first file a complaint with an agency to be designated by the mayor. After receiving notice of the agency's final decision (or 180 days after filing the complaint if no final agency decision has been made), aggrieved individuals may file a civil action. Damages for violation may include unpaid sick time, lost wages and benefits, liquidated damages up to \$2,000, equitable relief (including reinstatement), and attorneys' fees. The city may also bring a civil action to enforce the provisions of the ordinance.

### **In Closing**

Employers should review and update their sick leave policies and practices as needed to ensure that they will be in compliance when the ordinance takes effect on May 13, 2015. Employers that currently provide sick time should make sure that their current protocols provide sufficient leave that can be used for the same purposes and under the same conditions as the new law requires.

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