



For your information

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## Philadelphia Paid Sick Leave Mandate Now in Effect

On July 1, 2012, Philadelphia's Paid Sick Leave Ordinance went into effect. It will require certain employers doing business with the City of Philadelphia to provide a minimum amount of paid sick leave to eligible full-time employees. The new law generally applies to the City of Philadelphia, businesses that amend or enter into service contracts with the City on or after July 1, and other entities that receive City subsidies. Although many businesses that contract with or receive financial assistance from the City already offer some form of sick leave, their personnel policies and benefit programs may apply eligibility criteria, accrual rates, or use restrictions other than those required under the new law. Employers must carefully determine whether they are covered by the new law and, if they are, whether they will have to implement a new paid sick leave policy or make changes to their leave policies to ensure compliance with Philadelphia's new mandate.

### Background

In October 2011, Philadelphia's City Council approved a paid sick leave ordinance ([Bill No. 110557](#)) affecting certain businesses that contract with the City and other entities that receive City subsidies. The bill became law without Mayor Nutter's signature. The mayor previously vetoed a [bill](#) that would have required all businesses in Philadelphia with more than five employees to provide paid sick leave.

### The New Mandate

The new law amends Philadelphia's 21<sup>st</sup> Century Minimum Wage and Benefits Ordinance, [Chapter 17-1300](#) of the Philadelphia Code, to require certain employers with more than five employees to provide a minimum amount of paid sick leave to eligible full-time employees.

### Covered Employers

Employers subject to the new mandate include:

- (1) The City of Philadelphia, including all its agencies, departments, and offices
- (2) For-profit service contractors that have City contract(s) for \$10,000 or more in a 12-month period, and annual gross receipts of more than \$1 million

- (3) Nonprofit service contractors that have City contract(s) that total more than \$100,000 in a 12-month period
- (4) Recipients of City leases, concessions, or franchises that have more than 25 employees
- (5) City financial aid recipients, for a period of five years following receipt of aid
- (6) Public agencies that receive contract(s) for \$10,000 or more from the City in a 12-month period.

Although the ordinance appears to extend the new mandate to service contractors and subcontractors, City guidelines provide that the mandate does not apply to subcontractors.

#### INSIGHT

Although federal law does not require businesses to provide paid sick leave, some state and local governments do. San Francisco and Washington, DC have mandates in place, and Seattle's paid sick leave law takes effect in September 2012. Although Connecticut is the only state with a statewide mandate, efforts are underway in other states to add the benefit.

#### *Covered Employees*

With certain limited exceptions, employees eligible for paid sick leave are full-time, non-temporary, non-seasonal employees who work on projects for their employer that arise directly from a service contract, financial aid receipt, or lease, concession, or franchise with the City. The law expressly exempts individuals employed on construction projects that are covered by federal, state, or local prevailing wage requirements.

#### *Accrual and Use of Sick Leave*

Eligible employees accrue benefits at a rate of one hour of paid sick leave for every 40 hours worked in Philadelphia. The mandate establishes minimum accrual and use standards based on the employer's size. Employers with more than five but fewer than 11 employees can cap the accrual for each employee at 32 hours per calendar year. Employers with 11 employees or more can cap the per employee annual accrual at 56 hours of paid sick leave.

Employees generally may use their paid sick time, in hourly increments, to care for themselves or a family member (as defined by the employer's personnel policies). Employers that already have policies regarding increments of time off may continue to follow those policies.

#### INSIGHT

As an alternative to paid sick days, many companies give employees a certain number of paid days off without categorizing the time as sick time or vacation.

Generally, this “paid time off (PTO)” model offers more flexibility to the employee and simplifies leave administration. Employers that already provide sufficient PTO to meet or exceed the new law’s requirements will not be required to provide additional paid sick time.

### *Waiver*

The Office of Labor Standards may grant a partial or total waiver of Philadelphia’s new paid sick leave requirements in certain limited circumstances. These requirements also can be waived by a *bona fide* collective bargaining agreement.

### *Enforcement*

The new law prohibits an employer from retaliating against an employee for taking paid sick leave, and provides a private right of action against noncompliant employers. An employer that fails to comply with Philadelphia’s paid sick leave requirement may, after notice and hearing, be suspended from receiving financial assistance from the City or from bidding on or participating in City contracts for up to three years.

### *Conclusion*

Affected employers need to carefully consider the requirements of this law to ensure compliance. Covered employers will have to implement a paid sick leave policy for eligible full-time employees if none is in place, make changes to existing policies if needed, or secure a waiver from the new requirements.