

Voters Approve Paid Sick Leave Initiatives

On November 8, voters in Arizona and Washington passed ballot initiatives that mandate a new employee benefit — paid sick leave. Employers in Arizona will be required to begin providing paid leave on July 1, 2017, and Washington employers will have to start on January 1, 2018. Employers will want to familiarize themselves with the new laws and take all necessary steps to ensure compliance.

Background

Over the past few years, bills that would require employers to provide paid sick leave have been introduced at both the federal and state levels, but have met with limited success. While Congress has not yet passed a federal paid sick leave law, several states have. At the beginning of 2014, only one state — Connecticut — and six major cities had paid sick leave laws on the books. Since then, paid sick leave ordinances have gone into effect in major metropolitan areas such as New York City, Portland (OR), and Newark (NJ), and paid sick leave laws were adopted by four states — California, Massachusetts, Oregon and Vermont. (See, for example, our [July 1, 2015 FYI In-Depth](#) and [March 18, 2016 For Your Information](#).)

New Paid Sick Leave Mandates

On November 8, voters in Arizona and Washington passed ballot initiatives that raise their state minimum wage rates. As part of those measures, voters also approved a new employee benefit — paid sick leave for workers in those states. (See our [November 9, 2016 FYI Alert](#).)

Arizona

[Proposition 206](#) requires employers with 15 or more employees to allow workers to accrue paid sick time at a rate of one hour for every 30 hours worked beginning on July 1, 2017, with accrual and usage capped at 40 hours of earned paid sick leave per year. Smaller employers would have to allow workers to accrue paid sick time at the same rate, with both accrual and usage capped at 24 hours of earned paid sick leave per year. The law covers all private employers and political subdivisions of the state, and applies to full-time, part-time and temporary employees.



Workers generally would be able to use leave as it accrues for their own or a family member's injury, illness or medical care, a public health emergency or issues relating to domestic violence, sexual violence, abuse or stalking. However, an employer may require employees hired after July 1, 2017 to wait until the 90th day after commencing employment before using accrued time. Unused accrued time must be carried over to the following year, but the carryover may be limited to the accrual caps (24 or 40 hours per year, depending on the employer's size). In lieu of carryover, an employer may pay out the earned sick time at year end and front-load the employee's full amount of annual sick leave for immediate use at the beginning of the following year. Although the law does not require payout at separation, it would require reinstatement of accrued but unused sick leave for rehires within nine months, with reinstated leave available for use at the recommencement of employment.

Arizona's law would prohibit disciplining or retaliating against employees for taking qualifying sick leave. While the new law provides minimum paid sick leave requirements, it does not preempt or limit other federal, state or local laws that provide for greater accrual, use or employee protections. Where the laws differ, employers will have to comply with whichever one provides greater rights to paid sick time.

Washington

[Initiative 1433](#) establishes minimum standards for accrual, use and carryover of paid sick time for employees, starting in 2018. Where they differ from requirements under other applicable federal, state or local laws, employers will have to provide the benefit that is most generous to the employee. While the statewide initiative is largely modeled after Seattle's Paid Sick and Safe Time Ordinance that took effect in 2012 for employees working within Seattle city limits, it has some notable differences.

Both the Seattle and Washington state laws provide paid leave for the same reasons — an employee's own or a family member's illness, injury or medical care, a public health emergency, or issues relating to domestic violence — and offer basic job protections for employees who use it. While Seattle's accrual rates, usage caps and carryover limits vary by employer size, the state law applies the same rates and restrictions to all employees, regardless of their employer's size. Under the state law, employees will accrue an hour of paid sick leave for every 40 hours they work, and will be able to carry over up to 40 hours of unused leave to the following year. Unlike Arizona's new law, it does not limit the number of hours an employee can accrue or use in a year. The law does not require payout of accrued but unused leave at separation.

While the Seattle and state measures provide similar employee protections, the state law also contains more generous use and reinstatement provisions. For example, state law will allow employees to begin using accrued time off after 90 days, rather than waiting 180 days under Seattle's law. State law would reinstate accrued but unused sick leave for rehires within 12 months, as opposed to seven under Seattle's law.

Comment. To the extent that state and local laws differ, employers in Seattle, Sea-Tac and other jurisdictions that have local sick leave ordinances will face new compliance challenges. Employers will

Family and Medical Leave Act

In contrast to the new Arizona and Washington paid sick leave laws, the federal Family and Medical Leave Act (FMLA) applies to private-sector employers with 50 or more employees, public-sector employers, and public or private elementary or secondary schools regardless of how many employees they have. Under the FMLA, employees of covered employers are eligible to take unpaid leave for certain reasons (including serious injuries and illnesses), but only if they have worked for the employer for at least 12 months and 1,250 hours during the previous year. Because Arizona's and Washington's new laws contain significantly lower thresholds, they will affect both employers and employees who have not been covered by the FMLA.

have to tackle an increasingly complex patchwork of leave laws by formulating and administering policies that satisfy both state and local laws.

Like the federal FMLA and the new Arizona law, Washington's law would similarly prohibit disciplining or retaliating against employees for exercising any rights it provides, including taking qualifying sick leave.

In Closing

New laws in Arizona and Washington add to the ever growing patchwork of state and local laws mandating paid sick leave and increase administrative burdens, particularly on employers operating in multiple jurisdictions.

Employers will need to update their leave policies and procedures to ensure compliance.

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