

# FYI<sup>®</sup>

## For Your Information<sup>®</sup>

### **Pittsburgh's Paid Sick Days Act to take effect at long last**

In August 2015, Pittsburgh passed an ordinance requiring businesses to provide paid sick leave benefits for employees working within the city. Following a nearly four-year legal battle, Pittsburgh's Paid Sick Days Act will take effect on March 15, 2020. Pittsburgh employers should evaluate whether they will need to make any changes to their current practices, policies or handbooks to ensure compliance.

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#### Background

The Pittsburgh City Council's passage of the Paid Sick Days Act ([PSDA](#)) in August 2015 touched off a nearly four-year legal battle over the council's authority to enact such an ordinance. Last July, the Pennsylvania Supreme Court [decided](#) that the PSDA was not an impermissible business regulation, clearing the way for implementation. On December 16, 2019, the Mayor's Office of Equity ([MOE](#)) issued [guidelines](#) for administering the PSDA, which will take effect on March 15, 2020.

#### PSDA

The PSDA ensures that eligible employees across the city of Pittsburgh are able to earn paid sick time.

#### Covered employers and employees

The PSDA covers any person, partnership, limited partnership, association, corporation, institution, trust, government body or unit or agency, or any other entity situated or doing business within the geographical boundaries of the city of Pittsburgh that employs at least one person. Neither the federal government nor the Commonwealth of Pennsylvania are subject to the new law.

With limited exceptions, the PSDA applies to all full- and part-time employees of a covered employer who perform at least 35 hours of work within the geographic boundaries of the city in a calendar year (any regular and consecutive 12-month period designated by the employer and communicated to all

employees). Independent contractors, state and federal employees, members of a construction union covered by a collective bargaining unit and seasonal employees are not covered by the new law.

### **Accrual of sick time**

Employees covered by the new law will accrue one hour of sick time for every 35 hours worked within the city. Existing employees will begin accruing sick time on March 15, 2020. Subsequent hires will begin to accrue sick time at the commencement of their employment.

Employers with 15 or more employees must allow eligible employees to earn up to 40 hours of paid sick time in a calendar year. Smaller employers must allow employees to earn up to 24 hours of unpaid sick time for the first year the PSDA is in effect and subsequently up to 24 hours of paid sick time per year.

### **Determining employer size**

All employees (excluding owners), regardless of whether covered by the PSDA, are counted in calculating employer size. Part-time employees are counted as one employee. Where the number of employees has fluctuated over the last 12 months, employers should use the highest number at any one time.

### **Carryover and frontloading**

Accrued but unused sick time must be carried over from one calendar year to the next — unless the employer frontloads the maximum accrual at the beginning of each calendar year. The ordinance limits the amount of leave that must be carried over to the applicable accrual cap (40 or 24 hours).

### **Using sick time**

Accrued sick time may be used for:

- An employee's or family member's mental or physical illness, injury or health condition or for preventive medical care
- Closures of the employee's place of business or child's school or daycare due to a public health emergency, or care of a family member whose exposure to a communicable disease would jeopardize the health of others

Covered employees may use accrued sick time for an absence authorized by the PSDA beginning on the 90<sup>th</sup> calendar day after commencement of employment. Such time may be used in the lesser of hourly increments or the smallest increment the employer's payroll system uses for other absences. To ensure that sick time is used for a purpose authorized by the PSDA, employers may require reasonable documentation for leave lasting three or more consecutive days.

Employers may choose — but are not required — to pay employees for unused accrued sick time at the end of their employment. Unless there has been a payout, the employer must reinstate previously accrued but unused time when a prior employee is rehired within six months of separation. In such

circumstances, the rehire is entitled to use accrued paid sick time and to begin accruing additional time at the recommencement of employment. Similarly, covered employees who transfer to an employer's worksite outside the city or continue working for a successor employer at the same location must be allowed to use previously earned sick time.

### Requesting sick time

Employees must request sick time orally or in writing, including the anticipated duration of the absence when possible. An employer may maintain its own notification policy that dictates how much advance notice must be given, provided it is reasonable. Absent such a policy, employees must request sick time at least one hour prior to the start of their shift.

When the need for sick time is foreseeable, the employer may require up to seven days advance notice. While the employee must make a reasonable effort to schedule time off in a manner that does not unduly disrupt employer operations, an employer may not condition time off on an employee's search for a replacement worker to cover his or her absence. When the need is unforeseeable, the employee must make a good faith effort to notify the employer as soon as possible.

### Notice and posting requirements

Employers must post a notice of employee rights, available limits, and terms of use under the PSDA as well as its non-retaliation and complaint provisions at each worksite. The posting must be displayed in a conspicuous and accessible location in English, Spanish, and any other primary languages of the employees at each site. Notice may be provided physically or electronically to employees who work remotely or do not have a regular workplace. A sample [notice](#) has been provided on the city's website.

### Recordkeeping

Employers must retain records documenting covered employees' hours worked and sick time taken for a minimum of two years.

### Paid leave under existing policies and CBAs

Employers that have a paid leave policy, such as a paid time off policy, that satisfies the PSDA's accrual and usage requirements are not required to provide additional sick time. Similarly, employers subject to a collective bargaining agreement that make sufficient paid leave available to meet those requirements are not required to provide additional sick time.

### In closing

Pittsburgh employers should review their leave management strategies and evaluate whether they will need to make any changes to their current practices, policies or handbooks to ensure compliance.

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