

Rhode Island Is the Latest State to Require Paid Sick Leave

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Rhode Island Governor Gina Raimondo recently signed into law the [Healthy and Safe Families and Workplaces Act](#) (“Act”), which will require Rhode Island employers with 18 or more employees to provide paid sick and safe leave beginning on July 1, 2018. Rhode Island will now join Arizona, [California](#), Connecticut, Massachusetts, [Oregon](#), [Vermont](#), and Washington in enacting statewide paid sick leave legislation.

Under the Act, employers with 18 or more employees in Rhode Island are required to allow their employees to accrue up to 24 hours (three days) of paid sick and safe leave beginning in calendar year 2018, increasing to up to 32 hours (four days) in 2019, and up to 40 hours (five days) starting in 2020.

While employers with less than 18 employees in Rhode Island are not mandated to provide paid sick and safe leave, they must provide their employees with up to 24 hours of *unpaid* sick and safe leave in 2018 (and up to 32 hours in 2019 and up to 40 thereafter).

Which Employees Are Covered?

Almost all employees working in the state are eligible to accrue paid sick time, including certain temporary and seasonal employees. Some categories of employees are not covered under the Act, including those employed by federal, state, or local governments; unpaid interns; certain employees licensed to practice nursing;¹ and some additional types of employees exempt under the Rhode Island Minimum Wage Law.² The statute also does not cover independent contractors and subcontractors.

¹ Under the Act, employees licensed to practice nursing are exempt from coverage if the employee (1) is employed by a health care facility; (2) is under no obligation to work a regular schedule; (3) has no obligation to work when he or she does not indicate availability; and (4) receives higher pay than an employee working at the same health care facility performing the same job on a regular schedule.

² Including, but not limited to, domestic workers, outside salespersons, traveling salespersons, ushers, golf caddies, shoe shiners, and certain seasonal camp and resort employees.

How Does Sick and Safe Leave Time Accrue?

Before reviewing the accrual mandates, employers should understand this important exemption: A covered employer that has a paid leave policy that provides employees an amount of paid time off (“PTO”) that is equal to, or greater than, that required by the Act is exempt from the accrual rules, as well as from the carryover/payout provisions discussed below. Moreover, an employer with such policies that “frontloads” the paid time off (see below) does not need to track accrual or allow any carryover. Nonetheless, such employers must still ensure that their exempted paid leave policy conforms to the Act’s coverage mandates, such as leave to care for a sick child or to handle a domestic violence matter, as well as its notice and documentation requirements.

Note also that an employer that provides at least 40 hours of PTO or paid vacation time that may be used as sick and safe leave need not provide additional sick leave to employees that use all of their time for purposes other than sick or safe leave and then request paid sick or safe leave later in the year, as long as the employer’s policies make clear that such additional paid leave will not be provided.

Accrual vs. Frontloading

Employers that do not currently have a paid leave policy that conforms to the new law can choose either of two ways of complying with the paid time off requirements. The first is to “frontload,” that is, provide the full amount of leave the employee is entitled to at the beginning of the year, based on the employees’ full-time schedule. For a full-time employee whose regular workday is less than 8 hours, the employer may provide 5 days of paid sick and safe time leave consisting of the number of hours that constitute that full-time employee’s workday, and provide those benefits at the beginning of the year.

As an alternative, the statute provides an accrual system under which an employee earns paid leave over the course of the year. The law mandates that employees accrue one hour of paid sick and safe leave time for every 35 hours worked, up to a maximum of: 24 hours during the 2018 calendar year; 32 hours in 2019; and 40 hours in 2020 and thereafter.

Exempt employees will be assumed to work 40 hours each workweek, for accrual purposes, unless the exempt employee’s normal workweek is less than 40 hours, in which case the employee will accrue sick and safe leave time based on his or her normal workweek hours.

Current employees will begin accruing sick and safe leave time on July 1, 2018, and employees hired after that date will begin accruing upon commencement of employment.

Allowable Sick and Safe Leave Accrual Substitutions

Employers that prefer not to track the accrual of paid sick and safe leave over the course of the calendar year may alternatively use the following monthly accrual schedules to comply with the Act:

Average Number of Hours Worked Per Week	Accrual Amount Per Month
37.5 – 40 hours	8 hours per month for a period of 5 months
30 hours	5 hours per month for a period of 8 months
24 hours	4 hours per month for a period of 10 months
20 hours	4 hours per month for a period of 9 months
16 hours	3 hours per month for a period of 10 months
10 hours	2 hours per month for a period of 10 months
5 hours	1 hour per month for a period of 10 months

Employers are permitted to require a waiting period of up to 90 days for new hires. During this period, new hires must be permitted to accrue the required time, but may not use earned sick and safe leave time until after the waiting period has ended. Employers may use longer waiting periods for temporary and seasonal employees (180 days and 150 days, respectively).³

Employers may set a minimum increment for the use of sick and safe time, not to exceed four hours per day, if it is reasonable under the circumstances. Employers, at their discretion, may loan sick and safe leave time to an employee in advance of accrual.

For What Purposes Can Employees Use Sick and Safe Leave Time?

Under the Act, sick and safe time may be taken for the following reasons:

- An employee’s mental or physical illness, injury, or health condition, including the need for medical diagnosis, care, treatment, or preventative care.
- For the same purposes when caring for a family member. A family member is a child, parent, spouse, mother-in-law, father-in-law, grandparent, grandchild,

³ A “temporary employee” is defined under the Act as “any person working for, or obtaining employment pursuant to an agreement with an employment agency, placement service, or training school or center.” A “seasonal employee” is defined in the federal Fair Labor Standards Act regulations as “an employee who is hired into a position for which the customary annual employment is six months or less.” 26 C.F.R. 54.4980H-1(a)(38).

domestic partner, sibling, care recipient, or member of the employee's household.

- To provide care for a victim of domestic violence, sexual assault, sexual contact, or stalking, whether oneself or a family member.
- To provide care for oneself or a family member because (1) the employee's place of business has been closed due to a public health emergency; (2) a child's school or place of care has been closed due to a public health emergency; or (3) the individual has a communicable disease that may jeopardize the health of others.

Employees may not use paid sick and safe leave as an excuse to be late for work without an authorized purpose.

What Are the Notice and Documentation Requirements?

Employee Notice Requirements

Employees may make a request for sick and safe leave orally, in writing, electronically, or by any other means acceptable to the employer. When possible, requests for leave should include the expected duration.

When the request for leave is foreseeable, the employee must provide notice and should make a reasonable effort to schedule the leave in a way that is as least disruptive as possible. Employers may establish a written policy indicating the procedures for providing notice when the request for leave is unforeseeable. Employers that do not provide a written policy on requests for unforeseeable leaves may not deny an employee's request for leave based on non-compliance with an oral policy.

Reasonable Documentation

Employers may require reasonable documentation of paid sick and safe leave that is more than three consecutive workdays, provided employees have been notified in writing of this requirement in advance of the request. Employers also are permitted to require written documentation for an employee's use of earned sick and safe leave when it is used within two weeks before the employee's separation from employment.

One of the following, of the employee's choosing, shall be considered reasonable documentation of the need for sick or safe leave:

- Documentation signed by a health care professional indicating that paid sick leave time is necessary; or
- An employee's written statement, police report, or court document indicating that the employee or employee's family member is a victim of or involved in legal action related to domestic violence, sexual assault, or stalking; or
- A signed statement from a victim and witness advocate affirming that the employee or employee's family member is receiving services from a victim

services organization or is involved in legal action related to domestic violence, sexual assault, or stalking.

Employers may not require documentation that explains the nature of the illness or the details of the domestic violence, sexual assault, or stalking (unless required by law), or documentation that places an unreasonable burden on the employee, financially or otherwise. Employers are responsible to treat any information related to domestic violence, sexual assault, sexual contact, or stalking as confidential. Such information may not be disclosed except to the affected employee or with permission of the affected employee.

What Are the Carryover, Frontloading, and Payout Rules?

- **Carryover.** Unless an employer “frontloads” paid sick and safe leave (see below), unused paid sick and safe leave must be carried over to the next year. However, employers are not required to allow employees to use more than 24 hours of paid sick and safe leave in 2018, 32 hours of paid sick and safe leave in 2019, or 40 hours of paid sick and safe leave in subsequent years.
- **Payout/Frontloading in Lieu of Carryover.** Alternatively, employers are permitted to pay employees for accrued unused sick and safe leave at the end of the year as long as they also provide an amount of paid sick and safe leave that meets or exceeds the required amount for the employee’s immediate use at the beginning of the subsequent year (“frontloading”).

As noted above, employers are exempt from tracking accruals and carryover requirements if they provide the required annual amount (or more) of paid time off at the beginning of each benefit year and allow employees to use it for the purposes provided under the Act.

- **Pay Upon Separation.** Upon separation of employment, employers are not required to payout accrued, unused sick time.

What Else Should Employers Know?

- **Replacement Workers.** Employers cannot require an employee to find a replacement worker to cover for the employee as a condition for providing paid sick time.
- **Comp Time.** Instead of using accrued sick and safe leave hours, employers and employees may mutually agree to allow an employee to work an equivalent number of hours during the same or next pay period for hours missed due to sick or safe leave.
- **Transfer or Rehire.** If an employee transfers to a separate division, entity, or location within Rhode Island but remains with the same employer, the employee is entitled to all paid sick and safe leave time accrued in their prior position. If an employee is rehired within 135 days of separation by the same employer, all previously accrued paid sick and safe leave time must be reinstated and available to use upon the start of employment.

- **Abuse of Leave.** Employers are permitted to discipline employees for committing fraud or abuse or for demonstrating a clear pattern of taking leave just before or after a weekend or holiday, unless the employee provides reasonable documentation that the paid leave time was indeed for a covered purpose.
- **Successor Employers.** Employees retained by a successor employer within Rhode Island retain their rights to the earned paid leave they accrued under their former employer.
- **Penalties.** Employers that violate this Act will be subject to a civil penalty of \$100 for the first violation. Subsequent violations will be subject to the penalties set forth in the Rhode Island Minimum Wage Law, which provides for penalties of up to \$500, with each day of violation constituting a separate offense.
- **Notice.** The Rhode Island Department of Labor and Training will create notices that employers may use to advise employees of the requirements under the Act.

What Should Rhode Island Employers Do Now?

The requirements of the Act for employers will take effect on July 1, 2018. In anticipation, employers operating in Rhode Island should:

- Review and, if necessary, revise and disseminate existing leave policies to ensure compliance with the Act;
- Provide notification of any notice or documentation requirements in an updated sick and safe time policy (or paid time off policy that complies with the Act); and
- Provide training to management, payroll, and human resources staff on the requirements of the Act.

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