

Prepare for Paid Sick Time in Pittsburgh: Paid Sick Days Act Upheld by Pennsylvania's Supreme Court

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After a prolonged legal battle that began in 2015, Pittsburgh's [Paid Sick Days Act](#) ("Act") will soon become effective. Opponents of the Act had successfully challenged it in the lower courts, which found that the City of Pittsburgh acted outside the scope of its powers in enacting such a measure. The Supreme Court of Pennsylvania, however, recently [upheld](#) the Act as a lawful exercise of the City's authority. Accordingly, Pittsburgh employers will now need to take action to ensure compliance.

While the Act's effective date remains unclear, Pittsburgh's mayor is expected to provide guidance on this question, so employers should monitor the City's [website](#) for information.

Covered Employers and Employees

The Act covers all full-time and part-time employees of all employers within the City of Pittsburgh, regardless of the size of the employer, but the Act does not cover:

- employees of federal and state employers,
- seasonal employees,¹
- independent contractors, or
- any member of a construction union who is covered by a collective bargaining agreement.

Covered Uses of Sick Time

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

- An employee's own:
 - mental or physical illness, injury, or health condition;
 - need for medical diagnosis or care, or treatment of a mental or physical illness, injury, or health condition; or
 - preventive medical care;

¹ A "seasonal employee" is defined as a "person who has been hired for a temporary period of not more than sixteen weeks during a calendar year and has been notified in writing at the time of hire that the individual's employment is limited to the beginning and ending dates of the employer's seasonal period, as determined by the employer."

- Care of a family member:²
 - with a mental or physical illness, injury, or health condition;
 - who needs medical diagnosis or care, or treatment of a mental or physical illness, injury, or health condition; or
 - who needs preventive medical care;
- Closure of the employee's place of business by order of a public official due to a public health emergency or an employee's need to care for a child whose school or place of care has been closed under similar circumstances; or
- Care for a family member whom the health authorities or a health care provider has determined presents a danger to the community because that person has been exposed to a communicable disease, regardless of whether the family member has actually contracted the disease.

Sick Time Accrual

Sick time accrual depends on the number of employees working for the employer. It is not clear, however, whether only those employees working within Pittsburgh should be counted, or, alternatively, whether all employees working anywhere in the United States should be counted. Notwithstanding this open question, sick time accrues as follows:

- **Employers with 15 or more employees:** Employees accrue at least one hour of paid sick time for every 35 hours worked in Pittsburgh, up to 40 hours per calendar year (which can be any 12-month period designated by the employer).
- **Employers with fewer than 15 employees:** Employees accrue at least one hour of sick time for every 35 hours worked in Pittsburgh, up to 24 hours per calendar year. *For the first year following the Act's effective date, sick time may be unpaid. Thereafter, sick time must be paid.*

At their discretion, employers may frontload or otherwise advance sick time prior to its accrual. Exempt employees will be assumed to work 40 hours per week unless they are regularly scheduled to work fewer than 40 hours. Employers may impose a 90-day waiting period, during which employees will accrue, but will be unable to use, sick time.

If an employer maintains a paid time off policy that meets or exceeds the Act's requirements (e.g., pursuant to a company policy or a collective bargaining agreement), the employer is not required to provide additional sick time.

Use of Sick Time and Employee Notification Procedures

Employees may use sick time in the smallest increments that the employer's payroll system uses for absences or other time off, or increments of one hour, whichever is less.

² A "family member" includes a child, spouse, domestic partner, parent, parent-in-law, parent of a domestic partner, grandparent, spouse or domestic partner of a grandparent, grandchild, sibling, and any individual for whom the employee has received oral permission from the employer to care for at the time of the employee's request for sick time.

If an employee takes three or more consecutive days of sick time, the employer may require the employee to submit “reasonable” documentation that the time was used for a purpose covered under the Act. However, regardless of the amount of sick time taken, the employer may not insist that the documentation explain the nature of the employee’s or family member’s illness or medical condition.

Further, if an employer does obtain health information about an employee or an employee’s family member, such information must be treated as confidential and not disclosed, except to the affected employee or with that employee’s written permission, in accordance with applicable federal and state medical privacy provisions.

The Act permits employees to request sick time orally. If the need to take sick time is foreseeable, an employer may set its own policy as to how much notice an employee must provide, as long as the policy is reasonable. If an employer does not have a notification policy, the Act mandates that employees notify their employer no later than one hour prior to the start of their shift. If the need to use sick time is unforeseeable, employees should provide notice as soon as possible.

Employers may not count sick time taken pursuant to the Act as an absence that may lead to disciplinary action unless the employee fails to follow these notification procedures. Further, an employer may not condition an employee’s use of sick time on the employee finding a replacement worker to cover the hours during which the employee is using sick time.

Carryover, Frontloading, and Payment upon Separation

Employees must be allowed to carry over earned, unused sick time to the next calendar year; however, employers are not required to allow employees to use more than the respective annual cap (40 hours for employers with 15 or more employees and 24 hours for employers with fewer than 15 employees) in any calendar year.

An employer need not allow carryover if it frontloads sick time, that is, provides the required annual allotment of sick time (either 40 hours or 24 hours depending on the employer’s size) at the beginning of the calendar year.

Upon separation, employees are not entitled to payment for accrued, unused sick time.

Notice and Recordkeeping Requirements

Employers must provide employees with written notice of the Act’s requirements, in a format to be determined by the City. The notice must state:

- that employees are entitled to sick time,
- the amount of sick time to which employees are entitled,
- the terms of use of sick time,
- that retaliation is prohibited, and
- that employees have the right to file a complaint if sick time is denied or if they are retaliated against for requesting or taking sick time.

Additionally, it appears that employers will be required to post a poster in the workplace informing employees of their rights, as a [poster](#) was released by the Office of the City Controller when the Act was first enacted in 2015. While it is likely that this poster will be

updated, as of this writing, no updated poster or other pertinent materials are as yet available on the City's [website](#).

The Prohibition on Retaliation, Recordkeeping Requirements, and Penalties for Violations

It is unlawful for an employer to interfere with or retaliate against employees who exercise or attempt to exercise their rights under the Act. Further, there is a rebuttable presumption of retaliation when an employer takes adverse action against an employee within 90 days of the employee filing a complaint or engaging in certain other protected activities.

Employers must maintain records for each employee documenting hours worked and sick time taken for a period of two years.

Employees may file a complaint under the Act within six months of the date the employee knew or should have known of a potential violation by the employer. Employers that willfully violate the Act are subject to fines of up to \$100 for each separate offense; however, such fines will not be levied during the first year that the Act is in effect.

What Pittsburgh Employers Should Do Now

In anticipation of the effective date, employers should take the following steps:

- Review existing policies to determine whether current sick leave or other paid time off policies meet or exceed *all* of the Act's requirements, including notice mandates. (For instance, a policy requiring that employees submit a written request for sick leave is contrary to the Act.) If you do not currently provide paid sick leave, promptly develop and implement a compliant paid sick leave policy.
- Monitor the City's [website](#) for updates on the notice requirements, and prepare to provide the required written notice and display the poster once it is published.
- Develop or review current recordkeeping practices to ensure that they satisfy the Act's mandates.
- Train managers on the Act's requirements regarding employee notice, the Act's anti-retaliation provisions, and other practices prohibited by the Act.

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