



## The Healthy and Safe Families and Workplaces Act: What employers need to know now

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In a rare September session, the Rhode Island General Assembly passed the Healthy and Safe Families and Workplaces Act (“Act”), joining neighboring Connecticut and Massachusetts in requiring certain employers to provide paid sick leave to their employees. Governor Gina Raimondo is expected to sign the bill into law, which will go into effect July 1, 2018. With a little less than one year to ensure compliance with this law, employers need to familiarize themselves with it and determine what, if any, steps they need to take before summer 2018.

**Q. Does this law affect all employers, regardless of size?**

A. Yes. Employers with fewer than 18 employees are not required to provide paid sick leave, but they are required to provide unpaid sick leave to their employees. Employers with 18 or more employees will have to provide paid sick leave. The Act does not apply to local, state or federal governments.

**Q. Do all employees earn sick leave, regardless of their status?**

A. Yes (for the most part). Individuals who are defined as an “employee” by law earn sick leave, regardless of their status (e.g., full-time, part-time, temporary or seasonal), but properly classified independent contractors, subcontractors, work study participants, apprentices and interns are not considered employees for purposes of the Act. Neither are certain workers who are similarly excluded from the definition of “employee” for purposes of the Rhode Island Minimum Wage Act (e.g., domestic service workers and traveling salespersons). Therefore, employers do not have to provide these individuals with sick leave.

**Q. How much sick leave are employers required to provide to their employees?**

A. Beginning in 2018, employers must provide up to 24 hours of leave (three days); in 2019, 32 hours (four days); and in 2020, 40 hours (five days).

**Q. What if the employer already provides the required amount of time off – does the employer have to change its policy currently in place?**

A. Maybe. Employers who already provide the minimum-required paid sick leave are exempt from the accrual and carryover provisions of the Act. Furthermore, employers who provide 40 or more hours of any paid time off (“PTO”) or vacation, and allow employees to discharge such time for reasons and in a manner consistent with the Act, do not have to provide any additional sick leave to their employees. Such employers will need to review their policies, however, for consistency with the law’s provisions about requiring notice and documentation from employees of the need for leave, and establishing a waiting period for new employees.

**Q. How do employees accrue this leave?**

A. There are two ways that employees accrue sick leave. Employees either accrue one hour of leave for every 35 hours worked or employers can provide a lump sum of the full amount of leave at the beginning of the year.

**Q. For what purposes are employees entitled to use this leave – can they take a vacation using earned sick time?**

A. No. The law provides for certain limited reasons that employers must allow employees to discharge their earned sick leave: (1) the employee’s own health condition; (2) to care for certain family members with a health condition; (3) because of the closure of employee’s place of business or employee’s child’s school due to a public health emergency (or certain scenarios related to communicable diseases); or (4) the employee or family member is a victim of domestic violence, sexual assault or stalking.

**Q. Are employees allowed to use the leave right away?**

A. Employers are permitted to implement a 90-day waiting period before new employees may begin using their leave. For seasonal and temporary employees (as defined by the Act), employers may institute a waiting period of 150 days and 180 days, respectively.

**Q. Are employees allowed to take time off whenever they want?**

A. No. When the use of sick leave is foreseeable (like going to a scheduled doctor’s appointment), employees are required to provide notice to their employer in advance and must make a “reasonable effort” to schedule the time off so it does not unduly disrupt the business’s operations. Employers may also require notice from employees when the need to use leave is not foreseeable (e.g., when the employee or employee’s family member is sick or injured). Employers should ensure that any such requirements are clearly set forth in a written policy that is provided to employees.

**Q. What happens if the employer suspects that the employee is abusing the law – can employers discipline an employee for abuse of leave time?**

A. Yes. Employers may discipline or fire employees who use the leave time for purposes other than those for which the leave is provided under the law. Employers may also discipline or fire employees for pattern absenteeism without documentation showing the legitimacy of the absences. Employers need not tolerate employees using paid sick leave to go to the beach or extend long weekends.

**Q. Does the law permit employers to require documentation from employees who use sick leave?**

A. Yes. Employers may require documentation for absences of more than three consecutive workdays, use of sick leave during the two weeks before an employee's scheduled last work day and pattern absenteeism. The law specifies the type of documentation employers must accept from employees. Employers generally cannot require employees to explain the nature of the illness or the details of any domestic violence.

**Q. Do employers have to pay out earned but unused sick leave?**

A. No. The Act does not require employers to pay employees for unused sick leave upon separation from employment. Unless otherwise exempt, paid sick leave, however, is carried over to the following year and employers may choose to pay out unused time rather than allow employees to carry it over. Employers can cap the carryover to 24, 32 and 40 hours (respectively).

**Q. Will there be any additional guidance on the Act?**

A. Yes. The law requires the Department of Labor and Training ("DLT") to promulgate guidelines or regulations to coordinate implementation and enforcement.

**Q. May an employee file legal action if he or she believes the employer has violated the law? Are there any other ramifications employers should be worried about?**

A. Yes. Employees and former employees may file a claim with the DLT, or file a private action, if the employer fails to provide the required earned leave or otherwise violates the law and, can seek attorney's fees. Employers who violate the law will also be subject to civil penalties by the DLT.

**Q. What should employers do now?**

A. Employers who already offer sick time or more-general PTO, should review their policies and practices to make sure that they are compliant with the law before next summer. Employers who do not currently offer any sick time — or only offer sick time to certain categories of employees — will have to make changes to comply. Employers who operate across state lines will have to ensure that their sick leave policies comply with the varying applicable state (or local) leave laws, which, although similar in many ways, each has its own nuances. Employers should also ensure that their workers are properly classified, since this new law will expose employers to additional liability for misclassification mistakes.

Regardless of their type of business, employers should reach out to counsel to ensure that they are ready for July 2018, when this law is set to go into effect.

For more information about the content of this alert, please contact your Nixon Peabody attorney or:

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