



Rhode Island's Healthy and Safe Families and Workplaces Act: what employers need to know now

By Stacie Collier, Jessica Jewell, Shelagh Michaud, Aaron Nadich, Neal McNamara and Andrew Prescott

On July 1, Rhode Island joins its neighbors, Connecticut and Massachusetts, in requiring certain employers to provide paid sick and safe time leave to their employees. As Rhode Island's Healthy and Safe Families and Workplaces Act ("Act") goes into effect, employers need to understand its requirements and determine what, if any, steps they need to take to comply with the Act.

In September 2017, Nixon Peabody issued an Employment Law alert that addressed some FAQs about the Act. In advance of the implementation of the law, the Department of Labor and Training ("DLT") recently issued regulations that shed some additional light on the Act. Based on these regulations, this alert provides updated information.

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 governments.

UPDATE: The Act applies to out-of-state employers that have employees who primarily work in Rhode Island.

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 at least 24 hours of leave (three days); in 2019, 32 hours (four days); and in 2020, 40 hours (five days) for full-time employees (those working 37.5 to 40 hours per week).

UPDATE: Employers may choose the accrual method whereby employees must earn one hour of sick time for every 35 hours worked up to the maximum required by the statute. If employers choose the accrual method, employees accrue sick time for all hours worked and all hours paid by the employer, which means that employees accrue sick time while they are on paid sick leave, holiday, vacation and/or personal time.

The Act also provides prorated amounts for employees working fewer than 37.5 hours per week.

Q: Does the Act really allow for unlimited carry-over of sick time?

- A: It depends. Yes, if an employer chooses the accrual method, then the unused hours carry-over. However, if an employer chooses to provide the statutory minimum number of sick leave hours, then the employer is exempt from the carry-over requirement. Note that although there is a potential for unlimited carry-over, there is a cap of usage of such time. And, earned but unused sick time need not be paid out upon separation from employment. An employer can also avoid the carry-over requirement by paying out earned but unused time at the end of each year.

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”) 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.

UPDATE: If the employer provides one “bucket” of paid time off, which may be used for the statutorily required sick leave time as well as vacation time, the employee may use the time for either purpose and the employer is not required to provide additional sick leave should the employee needs sick time later in the year, but, for example, took the time as vacation earlier in the year. Employers need to ensure that their employees understand this. The best way to do this is to clearly communicate this in a handbook or other written policy.

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.

UPDATE: The regulations clarify that the Act allows a third way to accrue sick leave. Employers may also provide sick leave on a monthly basis so long as they earn the minimum statutory amount of leave by the end 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 (referred to as Safe Time leave).

UPDATE: The regulations clarify that the law is not confined to traditional family members. Specifically, employees may discharge this time to care for a “member of [the] employee’s household,” which, as used in the Act, includes any person who resides at the same address as the employee, including unrelated individuals such as domestic partners and roommates, or any person that the employee claims as a dependent for federal tax purposes. Employers should review their policies to ensure compliance with this nuanced part of the law.

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

A. Employers are permitted to implement up to 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.

UPDATE: The regulations clarify that while employers may impose a waiting period on the use of sick time, sick time must accrue during the waiting period. However, if an employer rehires or reinstates a separated employee, who had a bank of accrued but unused or unpaid out sick time, there is no waiting period for that employee when he or she is reinstated.

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.

UPDATE: Foreseeable leave is defined as leave planned at least 24 hours in advance of taking the leave. Any policy requiring notice for unforeseeable leave must be reasonable given the circumstances, which may require permitting notice after the fact. This policy must be clearly communicated 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.

UPDATE: Employers must notify employees of the documentation requirement in writing in a handbook or policy. Policies that impose an undue burden on the employee will be considered unreasonable.

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.

UPDATE: If an employer offers paid time off that includes sick and vacation leave, the employer will be required to pay the employee for unused paid time off upon separation from employment because there is no way to separate out the sick leave from the earned vacation time (the latter of which, in most circumstances, must get paid out upon separation from employment). If employers choose to pay employees for unused time rather than allow employees to carry it over, employers should document the arrangement and obtain written authorization from the employee.

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.

UPDATE: The DLT issued regulations in late May 2018.

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.

UPDATE: A violation occurs when an employee requests to use sick leave. The first offense is a \$100 fine. Subsequent violations will range from \$100–\$500 per offense as determined 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, have their 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 on the content of this alert, please contact your Nixon Peabody attorney or:

- Stacie B. Collier at sbcollier@nixonpeabody.com or 401-454-1018
 - Jessica S. Jewell at jsjewell@nixonpeabody.com or 401-454-1046
 - Shelagh C. N. Michaud at smichaud@nixonpeabody.com or 401-454-1133
 - Aaron F. Nadich at anadich@nixonpeabody.com or 401-454-1044
 - Neal J. McNamara at nmcnamara@nixonpeabody.com or 401-454-1019
 - Andrew B. Prescott at aprescott@nixonpeabody.com or 401-454-1016
-