

I-1433: Paid Sick Leave—What You Need To Know

When Initiative 1433 was passed by Washington voters in 2016, it not only raised the state minimum wage to \$13.50 per hour by 2020, but it also created a mandatory paid sick and safe leave requirement for all employers effective January 1, 2018. If you have non-exempt employees, i.e., entitled to overtime under the Fair Labor Standards Act, you will need to know what to do in order to be in compliance by January 1. Note that use of a Paid Time Off (PTO) program complies with the provisions of paid sick and safe leave when meeting certain conditions.

Employers must notify employees of their paid sick and safe leave rights no later than March 1, 2018. The notification must contain the accrual rate, authorized uses of the leave and explain the no retaliation portion of the rule. Employers must also provide monthly notice of accrued leave, used leave and the employee's current balance of the leave.

Employees hired before January 1, 2018 will begin accruing one hour of sick and safe leave for each 40 hours of work when the initiative goes into effect (Jan. 1). This includes part-time and seasonal workers. New employees will start accruing leave on their first day of employment. Paid sick leave must be paid to employees at their normal rate of pay and should be paid in the pay period in which the leave was used. Employees are entitled to use accrued leave after 90 days. There are several instances in which an employee is authorized to use the leave. Employees may use paid sick leave to care for themselves or a family member, when the employee's workplace or their child's school or place of care has been closed by a public official for any health-related reason and for absences that qualify for leave under the state's Domestic Violence Leave Act.

The definition of family member is incredibly broad—which complicates an employer's ability to verify approved use of the leave. For purposes of this Act, a family member is defined as a child, including biological, adopted, foster, stepchild, or a child to whom the employee stands in loco parentis, legal guardian, or a de facto parent, regardless of age or dependency status. A biological, adoptive, de facto, foster parent, stepparent, legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child. That is a mouthful, and the reason you should take some time to review your leave structure and decide if a change in process is necessary. After you decide your course of action, you will need a written policy on your books and make sure your employees are briefed on it as well.

The employee must give at least 10 days notice of their intent to use the leave when foreseeable. Unforeseen leave should be reported to the employer as soon as possible before the start of shift, unless impracticable. In either case, the employee is authorized to allow someone else report their leave if they are not able to do it themselves. When leave is used under the Domestic Violence Leave Act, the notice rules do not apply. An employer may not adopt or enforce any policy that counts the use of paid sick leave time as an absence that may lead to, or result in, discipline against the employee. Furthermore, an employer may not discriminate or retaliate against an employee for his or her exercise of any rights contained in the initiative.

Up to 40 hours of paid sick and safe leave will be carried over to the next year. There are provisions in this rule that allow an employer to front load this leave, however, if the employer overestimates, it can't be taken back unless they meet certain requirements. The time increments the way leave could be used was a sticking point during stakeholder meetings. As it turns out, an hour is the minimum increment, unless your time-keeping method has the capability of tracking in/out in smaller increments. Recordkeeping and tracking is very important to those who will be complying with this rule. It is the only way you will avoid a fine if a compliance officer stops by.

For more information please visit the Department of Labor & Industries website at <https://lni.us.engagehq.com/PaidSickLeaveSamplePolicies>.