

## City of Seattle Sick/Safe Leave Ordinance – An Overview

On September 12, 2011, the City of Seattle adopted an ordinance concerning paid sick leave and safe leave effective September 1, 2012. The ordinance adds a new chapter 14.16 to the Seattle Municipal Code.

Beginning September 1, 2012, employees will accrue paid sick time and paid safe time according to a schedule based upon the number of workers employed (one hour per 30 or 40 hours worked). Employers of 5-49 workers must permit at least five paid sick/safe days per calendar year; employers of 50-249 workers must provide at least seven paid sick/safe days per calendar year; and employers of 250 or more workers must provide at least nine paid sick/safe days per calendar year. The Seattle Office for Civil Rights will create required notices and posters.

### Qualified Employees

The ordinance applies to workers (other than work-study workers) who perform their work in Seattle, and to those who perform at least 240 hours of occasional work in Seattle.

### Employer

An Employer is any person who has one or more employees, and anyone persons acting in the interest of such Employer. Non-City of Seattle Governments and their agencies are excluded.

Tier 1 employer: 4-49 workers.

Tier 2 employer: 50-249 workers.

Tier 3 employer: 250 or more workers.

The ordinance shall not apply to Tier 1 or Tier 2 Employers until 2 years following the hiring of their first employee.

### Family or Household Members

For purposes of **SICK** leave, Family Member carries the same definition as in the Washington Family Care Act, RCW 49.12.265 and .903, and includes children under 18 or disabled; spouses/domestic partners; grandparents; parents; and parents-in-law.

For purposes of **SAFE** leave, Family or Household Member carries the same definition as in the RCW 49.76.020, and includes spouses/domestic partners; former spouses/partners; persons with a child in common; adult persons related by blood or marriage; adult persons who have resided together; persons 16 years or older who have resided together or have had a dating relationship; and persons who have a biological or legal parent-child relationship (including stepparent and grandparent).



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### **Accrual of Paid Sick Time or Paid Safe Time**

Accrual begins on 9/1/2012, or afterward on commencement of employment.

*Use of sick/safe leave available beginning on 180<sup>th</sup> calendar day after commencement of employment.*

Tier 1 and Tier 2: One hour of paid time for every 40 hrs. worked.

Tier 3: One hour of paid time for every 30 hrs. worked.

For exempt employees, time accrues based upon hours worked in a normal work week, and need not exceed 40 hours/week.

### **Reasons for Use**

Paid Sick Time may be used for:

- (a) The employee's own mental or physical illness, injury or health condition, or to accommodate the need for diagnosis, treatment or preventative care; or
- (b) To care for a family member's mental or physical illness, injury or health condition, or to accommodate the need for diagnosis, treatment or preventative care.

Paid Safe Time may be used for:

- (c) When the work site is closed by a public official to limit exposure to an infectious agent, biological toxin or hazardous material;
- (d) To care for a child whose school has been closed for such a reason; or
- (e) For a reason related to domestic violence, sexual assault or stalking as described in RCW 49.76.030
  - a. To seek legal assistance or remedies for the employee or family member victim;
  - b. To seek treatment for the employee or family member victim;
  - c. To obtain social services for the employee or family member victim;
  - d. To obtain mental health counseling for the employee or family member victim; or
  - e. To participate in safety planning or relocation for the employee or family members.

Employees should provide at least 10 days written notice of foreseeable leaves, and other notice as soon as practicable, complying with the employer's customary requirements which do not interfere with the purposes for the leave.

Employees must make reasonable effort to schedule leave in a manner that does not unduly disrupt the employer's operations.

By mutual agreement only, an employee may work additional hours or shifts instead of using paid sick/safe time.



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## **Documentation**

The employer may require reasonable documentation for use of paid sick leave *exceeding three consecutive days*. A health care provider's note that the time off is necessary is sufficient. The employer may not require an explanation of the nature of the illness. For an employee not offered health insurance by the employer, the employer must pay half the cost of out-of-pocket expense incurred in obtaining the employer-requested documentation.

For paid safe leave, the employer may require the same documentation described in RCW 49.76.

***Each payroll date, employers must provide in writing the updated amount of paid time available to each employee. Any reasonable system is acceptable, such as a payroll statement or an online system.***

Records of hours worked, time accrued and time taken must be maintained for two years. Medical records must be kept confidential and maintained separate from usual personnel files.

## **Maximum Use in Calendar Year**

Tier 1: need not allow use of combined sick/safe leave exceeding 40 hours in a calendar year.

Tier 2: need not allow use of combined sick/safe leave exceeding 56 hours in a calendar year.

Tier 3: need not allow use of combined sick/safe leave exceeding 72 hours in a calendar year.

## **Carryover**

Some Sick/safe time carries over to next calendar year in the following minimum amounts: Tier 1 40 hrs.; Tier 2 56 hrs.; Tier 3 72 hrs.

## **PTO (Paid Time Off) Policies**

Tier 1 and Tier 2 employers are not required to provide any additional sick/safe leave, provided their policies comply with the purposes, conditions, accrual, amounts and carryover provisions of the ordinance applicable to employers of their size.

Likewise, Tier 3 employers are not required to provide any additional sick/safe leave, provided their policies comply with the purposes, conditions, accrual, amounts and carryover provisions of the ordinance applicable to employers of their size; with the additional requirement that they allow calendar year carryover of at least 108 hours.

## **Termination of Employment**

The ordinance does not require any compensation for accrued but unused sick/safe time upon termination of the employment relationship. An employee rehired within 7 months is entitled to reinstatement of past accrued time.

## **Interference and Retaliation Prohibited**

Employers are prohibited from denying or interfering with the exercise of rights under the ordinance, and from taking retaliatory adverse action against an employee who has exercised such rights.

Employers may not count paid sick/safe leave as an absence that may lead to adverse action.



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### **Notice and Posting**

Employers are required to give employees notice of their rights to paid sick/safe leave; the amount and terms of use; that retaliation is prohibited; and the right to file a complaint or civil action if rights are denied or there is retaliation.

The Seattle Office for Civil Rights will create a poster and model notice. Display of the poster in a conspicuous place, or including the notice in an employee handbook, will satisfy the notice requirement.

Willful violation of notice and posting requirements subjects employers to a \$125 fine for the first violation and \$250 for subsequent violations.

### **Enforcement**

The ordinance is enforced by the Seattle Office for Civil Rights. Charges must be filed within 180 days of the violation. A detailed investigation and determination process is delineated. Appeals are taken to a Hearing Examiner or panel, which may include members of the Seattle Human Rights Commission. Remedies may include hiring, reinstatement, upgrading with or without back pay, lost benefits, attorneys' fees, admittance or restoration to union membership, and such action as could be ordered by a court, except that damages for humiliation and mental suffering shall not exceed \$10,000. Back pay shall not accrue before 2 years prior to the filing of a charge. A civil fine of up to \$500 may be imposed.

### **Confidentiality and Nondisclosure**

Information provided by employees in support of a request for leave shall be held confidential and only disclosed as requested or consented to by the employee; as ordered by a court or agency; or as otherwise required by federal or state law.

### **Waiver**

Individual employees may not waive any provisions of this ordinance. A union collective bargaining agreement may expressly waive any provisions.

*Rick Lentini is the Chair of Ryan Swanson's Employment, Rights & Benefits Group. For more information, please contact Rick at [lentini@ryanlaw.com](mailto:lentini@ryanlaw.com) or 206.654.2231.*