

Labor and Employment Alert: Two More Locales Enact Paid Sick Leave Laws

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UPDATE: COURT INVALIDATES PITTSBURGH PAID SICK LEAVE LAW

On January 14, 2016, a client alert was published that explains that the Allegheny County Court of Common Pleas found the ordinance to be “invalid and unenforceable.” For more information, [click here](#).

ORIGINAL ALERT:

Following Oregon’s recently enacted state-wide paid sick leave law, Montgomery County, Maryland, and Pittsburgh, Pennsylvania, are the latest locales to require that employers provide paid sick leave to their employees. This further complicates the growing patchwork quilt of federal, state and local leave laws that employers have to contend with.

Montgomery County, MD

Beginning on October 1, 2016, all employers in Montgomery County will be required to provide paid “sick and safe leave” to their employees. Employers with five or more employees must provide employees with one hour of leave for every 30 hours worked, up to 56 hours of paid leave annually. Employers with less than five employees must provide one hour of leave for every 30 hours worked, up to 32 hours of paid leave and an additional 24 hours of unpaid leave annually. For accrual purposes, exempt employees are deemed to have worked the number of hours in a “normal workweek,” up to 40 hours each week.

Employers can prohibit employees from using more than 80 hours of earned leave in a calendar year and can require that leave be taken in four-hour increments. The law allows two options of granting leave. The employer can provide employees with all of their leave at the beginning of each calendar year, in which case the employee does not carry over any unused leave to the following year. Alternatively, the employer can allow the employee to accrue leave throughout the year, in which case the employee is permitted to carry over up to 56 hours of unused leave.

Regardless of the method of granting leave, unused leave does not have to be paid out when an employee separates from employment.

Employees are permitted to use leave (1) to care for an employee's or a family member's illness or injury or for preventative care; (2) if the employer's place of business or the school or child care center of an employee's family member has been closed due to a public health emergency; (3) to care for a family member who has a communicable disease; or (4) if the absence is due to domestic violence, sexual assault, or stalking and the leave is used to obtain medical or legal services. Employers are prohibited from retaliating against employees who use leave.

Employers must provide employees with a written statement of available leave each time wages are paid and must post a notice of the law's requirements and include a similar notice in an employee handbook "or other written guidance distributed to all employees."

Pittsburgh, PA

On August 3, 2015, the Pittsburgh City Council passed its paid sick days law, which the Mayor is expected to sign. The law will become effective 90 days after the city publishes regulations and model notices.

The law applies to all employers. If an employer has 15 or more employees, the employer must provide the employees with one hour of paid sick leave for every 35 hours worked, up to 40 hours of paid sick leave annually. If the employer has less than 15 employees, the employer must provide one hour of unpaid sick leave for every 35 hours worked, up to 24 hours annually. However, beginning one year after the law's effective date, employers with less than 15 employees will have to provide one hour of **paid** sick leave for every 35 hours worked, up to 24 hours annually. Exempt employees are assumed to work 40 hours in a week for purposes of sick leave accrual.

Like the Montgomery County law, the Pittsburgh sick leave law allows two options of granting leave. The employer can provide employees with all of their leave at the beginning of each calendar year (either 40 or 24 hours depending on the employer's size), in which case the employee does not carry over any unused leave to the following year. Alternatively, the employer can allow the employee to accrue leave throughout the year, in which case the employee is permitted to carry over unused leave. Unused leave does not have to be paid out when an employee separates from employment.

Employees are permitted to use leave (1) to care for an employee's or a family member's illness or injury or for preventative care; (2) if the employer's place of business or the school or child care center of an employee's family member has been closed due to a public health emergency; or (3) to care for a family member who has a communicable disease.

Employers are prohibited from retaliating against employees who use leave. In fact, the law creates a rebuttable presumption of retaliation if the employer takes adverse action against an employee within 90 days after the employee files a complaint about an alleged violation of the law, informs others of an alleged violation of the sick leave law, cooperates in an agency proceeding, opposes an unlawful practice or policy, or informs another of his or her rights under the law.

Finally, employers must provide employees with written notice that employees are entitled to sick leave, the amount of leave, their rights under the law, that retaliation is prohibited, and that they have a right to file a complaint with the appropriate agency.

The future of Pittsburgh's sick leave law is uncertain. While the Mayor is expected to sign the legislation, business groups have indicated that a legal challenge is possible. At this point, however, employers with operations in Pittsburgh should prepare to comply with the new law.

Employers doing business in Montgomery County or Pittsburgh, or in other locales where mandatory sick leave laws are in effect, should consult with their Vorys attorney to review their current leave policies to ensure that they comply with the laws' requirements.