Arizona Paid Sick Leave Law

Incremental increases to Arizona’s hourly wage effective as of January 1, 2017 – January 1, 2020

Proposition 206 or The Fair Wages and Healthy Families Act (The Act)

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Overview
On November 8, 2016, Arizona voters passed Proposition 206 or The Fair Wages and Healthy Families Act (The Act).

Proposition 206 contains two main components:
- Incremental increases to Arizona’s hourly wage effective as of January 1, 2017 – January 1, 2020
- Private sector part-time, temporary, and full-time employees in Arizona are entitled to earn one hour of Paid Sick Leave (PSL) for every 30 hours worked

In accordance with the Act, employees may use PSL for the following reasons:
- The employee’s own physical or mental illness (including diagnosis and treatment)
- To care for the employee’s family member who has a physical or mental illness
- A public health emergency
- Matters relating to domestic violence, sexual violence or stalking of the employee or employee’s family member; and
- Preventive care
- Employers may request documentation relating to the leave if the employee is absent from work three (3) or more consecutive days – such as documentation signed by a health care professional indicating that earned paid sick time is necessary or in cases of domestic violence, sexual violence, abuse or stalking. All information obtained by the employer related to PSL must be treated as confidential.
- Employees may carry over earned sick leave to the next year, depending on the employer’s limits on how the employees use accrued PSL. Employers can avoid the rollover, but only if they pay out the earned sick leave at the end of the year and grant the full amount of sick leave for the following year, all at once.

There are also additional rules for the increments of time employees may use for PSL. An employer must permit their employees to use PSL in the smaller of: (1) hourly increments; or (2) the smallest increment that their payroll system uses to account for absences or other time.

Employers may not retaliate against an employee for the use of PSL. This would include employees who may exercise their rights under the new law, make a complaint in regards to the usage of PSL or to support another employee’s complaint. In addition, employers are prohibited from using paid sick leave absences for disciplinary actions or termination.

Tracking Leave and Reporting Requirements
Implementing the new mandatory paid sick leave may present challenges to employers. For example, the Act requires employers to record on the employee’s regular paycheck (i) the amount of earned paid sick time available to the employee, (ii) the amount of earned paid sick time taken by the employee to date in the year, and (iii) the amount of pay the employee has received as earned paid sick time.

Employers with paid leave policies that meet or exceed the Act requirements may fulfill their record-keeping obligations by recording equivalent or more favorable earned and used paid time off (PTO) benefits on their employees’ paystubs and payroll records. For example, an employer with a PTO policy that is more generous than the benefits required under the Act, may fulfill its
paycheck recording obligations by including the following information on each employee’s paycheck paystub: (i) the amount of earned PTO available to the employee, (ii) the amount of earned PTO taken by the employee to date in the year, and (iii) the amount of pay the employee has received as earned PTO.

**Employer Best Practices**

Arizona employers should review their current leave policies (e.g., paid sick leave, PTO) to ensure compliance with the new paid sick leave law. Employers that plan to maintain current policies or implement a separate paid sick time policy should consider including clear definitions of appropriate usage and other related information from the Act itself.

If employers plan to implement a separate paid sick time policy, it should include language, advising employees that retaliation will not be tolerated and also include information on internal resources to address any concerns.

For employers with PTO plans that exceed the earned paid sick time granted under the Fair Wages and Healthy Families Act, there is still work to be done prior to July 1st. Be sure to get the notices posted and internal tracking and reporting systems up and running. Arizona employers are required to follow the provisions set forth in the Act or risk being liable for penalties and damages which can get very expensive, very fast. Finally, given the complexities of the new mandatory paid sick leave, it is recommended for employers is to make the necessary updates to their handbooks and policies to reflect the changes from the Act, and make sure to post the required notices in a common areas within the workplace.

**General FAQs**

**What is Proposition 206?**
Proposition 206, the Fair Wages and Healthy Families Act, was a ballot initiative on the November 8, 2016 Arizona ballot. The Act established a new state minimum wage that went into effect on January 1, 2017, and entitles employees to accrue earned paid sick time beginning July 1, 2017.

**What is earned paid sick time?**
Earned paid sick time is sick time accrued by an employee that is paid at the same hourly rate and with the same benefits, including health care benefits, as the employee normally earns during hours worked.

**When can employees begin accruing earned paid sick time?**
Arizona employees can begin accruing earned paid sick time upon hire date or July 1, 2017, whichever is later.

**If an Arizona employer’s employees work outside of Arizona, are those employees entitled to earned paid sick time?**
The Fair Wages and Healthy Families Act’s earned paid sick time provisions currently applies
only to Arizona employees. Therefore, Arizona employers will not need to include the non-Arizona employees in the employer’s total employee count for earned paid sick time purposes.

Is an Arizona employer required to provide notice to its employees about earned paid sick time rights and responsibilities?
Yes. Arizona employers are required to give employees written notice of the following upon hire date or by July 1, 2017, whichever is later:
Employees are entitled to earned paid sick time;
The amount of earned paid sick time that employees are entitled to accrue;
The terms of use guaranteed by Arizona’s earned paid sick time laws;
That retaliation against employees who request or use earned paid sick time is prohibited;
That each employee has the right to file a complaint if earned paid sick time is denied by the employer or the employee is subjected to retaliation for requesting or taking earned paid sick time; and
Contact information for the Industrial Commission of Arizona.
The Industrial Commission of Arizona’s 2017 model earned paid sick time notice can be found here.

An Arizona employer must also provide employees either as an attachment on or included in the employee’s paycheck:
The amount of earned paid sick time available to the employee;
The amount of earned paid sick time taken by the employee to date in the year; and
The amount of pay time the employee has received as earned paid sick time.

Is an Arizona employer required to carry forward balances of earned paid sick time at the end of a year to the next year?
Arizona employers with 15 or more employees shall permit employees to carry over to the following year a maximum of 40 hours of unused earned paid sick time. Arizona employers with fewer than 15 employees shall permit employees to carry over to the following year a maximum of 24 hours of unused earned paid sick time. Carry over shall not affect accrual or use rights under the Act.

How does an Arizona employer determine the hourly wage rate for purposes of earned paid sick time?
The Industrial Commission of Arizona is proposing rules consistent with the following for determining the hourly wage rate for employees:

- **Single hourly rate.** Arizona employees paid on the basis of a single hourly rate, the employer is required to pay the employee the same hourly rate that the employee would have earned for the period of time in which sick time is used. For example, if an employee’s hourly rate is $15 per hour, the employer is required to pay the employee $15 for each hour of earned paid sick time.

- **Multiple hourly rates.** Arizona employers are required to pay a multi-rate employee the actual hourly wages that the employee would have been paid for the period of time in
which sick time is used. If unknown, the employer must pay an hourly rate equivalent to the weighted average of all hourly rates of pay during the previous pay period.

- **Salaried employees.** An Arizona employee who is exempt under the Fair Labor Standards Act is presumed to have worked 40 hours per workweek, unless the employee’s normal workweek is less than 40 hours (in which case accrual of earned paid sick time is based on the employee’s normal workweek).

- **Commissioned, piece-rate, or fee-for-service employees.** Such employees’ hourly rates are determined in the following order of priority:

  1. The hourly rate of pay agreed upon by the employer and the employee, if an hourly rate of pay was previously established.
  2. The wages that the employee would have been paid, if known, for the period of time in which earned paid sick time is used.
  3. A reasonable estimation of the wages that the employee would have been paid for the period of time in which the earned paid sick time is used.
  4. The weighted average of all hourly rates of pay during the previous 90 days, if the employee worked regularly during the previous 90-day period.

**Is an Arizona employee required to provide the employer with advance notice of intent to use the earned paid sick time?**

When the leave is foreseeable, an employee must make an effort to provide notice of the need to use earned paid sick time in advance and should schedule the leave in a manner that does not unduly disrupt the employer’s operations.

**Does the Act exempt any professions or salary ranges from the earned paid sick leave law?**

No. The Fair Wages and Healthy Families Act does not exempt any professions or salary ranges from the earned paid leave laws.

**If an Arizona employer already has an existing paid leave policy that meets or exceeds the Act’s requirements, is the employer still required to offer additional paid sick time?**

No. The Act provides that an employer with a paid leave policy shall make available an amount of paid leave sufficient to meet the accrual requirements under the Act. Therefore, the employer need not offer additional leave.

Legal Disclaimer
This summary is compiled using information published on [www.ny.gov/new-york-state-paid-family-leave](http://www.ny.gov/new-york-state-paid-family-leave) and is designed to be a brief description of the proposed regulations of the NYS PFL law. It’s not a complete summary of all provisions nor does it contain any recommendations by GBS. It provides general information only on the current state of this legislation and regulation. It should not be construed as legal advice. Your general counsel or an attorney specializing in these areas should be sought for specific issues.
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