

LABOR AND EMPLOYMENT

ALERT

JULY
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PA Supreme Court Upholds Pittsburgh Paid Sick Day Act

By Karen Baillie

JULY 2019 UPDATE

On July 17, 2019, the Pennsylvania Supreme Court reversed the lower courts' rulings which had halted implementation of the Pittsburgh Paid Sick Day Act ("PSDA"), originally adopted in 2015. The Court found that although "the PSDA certainly burdens Pittsburgh employers, it clearly falls within the ambit of the City's express statutory authority to legislate in furtherance of disease control and prevention." We expect that this means the ordinance will now become effective, and we therefore encourage covered employers to consider revisiting their handbooks and policies, such as those addressing time off from work, call off procedures, documentation requirements and the like, to determine whether their existing policies already cover the requirements of the PSDA or whether some revision is necessary. To remind employers of the specific requirements of the PSDA, please see our earlier summary of the law, enclosed below for your convenience.

[Click here to read the majority decision of the PA Supreme Court.](#)

[Click here to read the Pittsburgh Paid Sick Day Act.](#)

SCHNADER'S ORIGINAL CLIENT ALERT (2015)

The effective date of Pittsburgh's new sick leave ordinance has been posted — January 11, 2016. This summer, Pittsburgh City Council enacted a new ordinance which requires employers to pay employees up to 40 hours of paid sick leave each year. Council invoked its authority under the Disease Prevention and Control Law (35 P.S. §521.16(a)(c)), and stated

that "employees who have access to sick time are more productive and less likely to come to work ill and unfit to perform their job[s]." Further, according to City Council, "many of the workforce members who lack access to paid sick days frequently have contact with the general public, posing a high public health risk and increasing the likelihood of transmission of communicable illnesses." The legislation was introduced July 7, and passed less than a month later on August 3, 2015. Mayor Bill Peduto signed the legislation (2015-1825) on August 13, 2015. Pittsburgh joins a growing list of municipalities in enacting sick day legislation, including New York City, Philadelphia, San Francisco and several New Jersey municipalities (Jersey City, Newark, Passaic, East Orange, Paterson, Irvington, Trenton, Montclair and Bloomfield, NJ).

The specifics of the Pittsburgh Ordinance:

- *Covered Employers.* Any entity that employs one or more persons "situated or doing business in the City" is an employer.
- *Excluded Employees.* Four groups of employees are excluded: (1) independent contractors; (2) state and federal employees; (3) any member of a construction union covered by a collective bargaining agreement; and (4) seasonal workers. Seasonal workers are those who are hired for, and notified in writing at the time of hire that they are hired for, a temporary period of not more than sixteen weeks during a calendar year.
- *Effective Date.* The new law is effective 90 days after required notices and regulation are posted. The Controller's office posted notice October 12,

2015 and fixed the effective date as January 11, 2016.

- *Accrual Rate.* Employees accrue one hour of leave for every 35 hours worked.
- *Maximum amount of leave.* Unless an employer's policy allows additional leave, the maximum amount of accrued leave is 40 hours of paid sick time per calendar year per employee for employers of 15 or more employees. For smaller employers, the maximum accrual is 24 hours, and these are unpaid for the first year only and paid in all years after 2016.
- *Waiting Period.* Employees can use accrued sick time after 90 days of employment.
- *Carry Over Rights.* Employees can carry over unused accrued sick time from one calendar year to the next, unless the employer's policy provides the full complement at the beginning of each calendar year (without requiring accrual).
- *No Payout Upon Termination.* Unused sick days need not be paid out upon termination, unless the employer's policy says otherwise. Note, however, that if a terminated employee is rehired within six months, all previously accrued, unused time must be reinstated, and the employee must be permitted to use the accrued time immediately and begin to accrue time immediately.
- *Permitted Purposes.* (1) Employees' own mental or physical illness, injury or health condition, their need for diagnosis, care, treatment, or for preventive medical care. (2) Care of a family member with a mental or physical illness, injury or health condition or who needs diagnosis, care, or treatment or preventive medical care. (3) Public health emergencies, including (a) the closure of the employee's place of business by order of a public official due to a public health emergency; (b) care of a child whose school or place of care has been closed by order of a public official due to a public health emergency; and (c) care of a family member when it has been determined by health agencies or a health care provider that the family member's presence in the community would jeopardize the health of others because of the

family member's exposure to a communicable disease, whether or not the family member has actually contracted the communicable disease.

- *Who is considered a family member of the employee?* The list is expansive: (1) A biological, adopted or foster child, stepchild or legal ward, a child of a domestic partner, or a child to whom the employee stands in loco parentis; (2) a biological, foster, adoptive, or step-parent or legal guardian of an employee or an employee's spouse or domestic partner or a person who stood in loco parentis when the employee was a minor child; (3) a person to whom the employee is legally married under the laws of any state; (4) a grandparent or spouse or domestic partner of a grandparent; (5) a grandchild; (6) a biological, foster or adopted sibling; (7) a domestic partner; and (8) any individual for whom the employee has received oral permission from the employer to care for at the time of the employee's request to make use of sick time.
- *Procedures.*
 - *Notice.* The employer may adopt a reasonable notification policy, but must permit employees to provide oral notice of their intention to use their accrued sick time.
 - *Documentation.* Employers may require documentation for the use of sick time that lasts three (3) or more full consecutive days. "Documentation signed by a health care professional indicating that sick time is necessary shall be considered reasonable documentation. An employer may not require that the documentation explain the precise nature of the illness." This last part may create conflicts when an employee may also be eligible for FLMA leave or reasonable accommodation pursuant to the laws that protect individuals with disabilities.
 - *Minimum Time Periods.* An employee may use sick time in hourly increments or the smallest increment that the employer's payroll system uses to account for absences or use of other time.

- *No Retaliation.* Employers cannot retaliate against employees for using their sick time or otherwise exercising their rights to file a complaint, to inform any person of an employer's alleged violation or to inform another person of their rights under the ordinance. Employers cannot require employees to find their own substitutes.
- *Notice.* Employers must provide written notice that employees are entitled to sick time, the amount of sick time, and the terms of its use guaranteed under this Ordinance, that retaliation against employees who request or use sick time is prohibited and that each employee has the right to file a complaint with the Agency if sick time as required by this Section is denied by the employer or the employee is retaliated against for requesting or taking sick time."
- *Enforcement.* The City Controller's Office has the authority to enforce this ordinance and to determine the enforcement mechanisms. Willful violations shall be subject to a fine in an amount not to exceed \$100 per separate offense.
- *Record Keeping.* Employers must retain records showing hours worked by employees and sick time taken for a period of two years and must allow the designated enforcement Agency access to such records.

We recommend that Pittsburgh employers consider reviewing their existing policies along with the upcoming regulations to determine whether they need to make amendments to bring their leave policies into compliance. Potential conflicts may include, for example, employer policies on carry over rights, notification procedures, documentation requirements, minimal time increments to use sick time, rehire rights and finding replacement workers. ◆

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