

LABOR AND EMPLOYMENT

ALERT

JANUARY
2020

EMPLOYERS TAKE NOTICE: PITTSBURGH PAID SICK DAYS ACT GOES INTO EFFECT MARCH 15

By Danielle Bruno McDermott and Karen Baillie

The City of Pittsburgh has announced that its Paid Sick Days Act (the “Act”) [1] will become effective on March 15, 2020. This follows a lengthy court challenge that delayed enforcement of the ordinance. A decision by the Pennsylvania Supreme Court in July 2019 permitted the Act, adopted back in 2015, to finally go into effect. [2]

To implement the Act, the city released a form Notice for posting by employers [3] and a Guidelines document (the “Guidelines”) [4] which provides direction to employers concerning how the Act will be implemented and enforced. Perhaps most importantly, the Guidelines clarify that the agency designated to administer and enforce the Act is (drumroll please....) the Mayor’s Office of Equity. [5]

As made clear by the Act, employees working within Pittsburgh city limits must be allowed to accrue time off for use when the employee or a family member becomes ill or when employees miss work due to public health emergencies.

Even small employers, defined as those employing fewer than 15 people, must allow their employees to accrue unpaid sick time for the first year after March 15, 2020, and starting March 15, 2021, small employers will need to provide paid sick time. Employees at large companies must be permitted to accrue up to 40 hours of paid sick time per year starting March 15, 2020. For small employers, their employees can accrue up to 24 hours.

Notably, the Act states that employees shall accrue at least “one hour of paid sick time for every thirty-five (35) hours worked in Pittsburgh.” The Guidelines make

clear that even employers located outside of the city will be subject to these provisions with respect to those employees who work within the city limits. According to the Guidelines, after an employee reaches a threshold of 35 hours of work conducted within the geographical limits of the City of Pittsburgh, the employee begins to accrue sick time.

The Act and Guidelines discuss recording requirements – employers must maintain records of sick time accrued and used, and the Guidelines recommend that employers should make it easy for employees to locate and understand information about how much time they have accrued. Failure to keep records can lead to a presumption that the employer violated the Act in the event of a complaint and investigation. Additionally, there are anti-retaliation provisions, which prohibit employers from taking adverse action against an employee for using sick time pursuant to the Act.

The Mayor’s Office of Equity plans to soon publish a form to allow workers to file complaints against their employers if they suspect violations of the Act.

The Guidelines describe how investigations and enforcement will be handled by the Mayor’s Office of Equity. If an investigation occurs, all parties will have an opportunity to present evidence and the Mayor’s Office of Equity may convene a fact-finding hearing in accordance with the requirements for practices and procedures before local agencies. The Guidelines specifically note that investigations and proceedings pursuant to Chapter 626 are not governed by the Rules of Evidence, and that the Chief Equity Officer

and investigator may consider “all relevant information that tends to prove or disprove the allegations in the complaint, regardless of whether the information would be admissible in a court of law.” The Mayor’s Office of Equity is empowered to assess fines and penalties up to \$100 per violation, and appeals may be taken to the Court of Common Pleas.

The Pittsburgh Paid Sick Days Act requires that sick time will accrue starting March 15, 2020. Therefore, employers whose employees perform work within the city limits should consider reviewing their time off policies now to ensure compliance. Employers must begin adhering to the requirements of the Act and Guidelines, including providing sick leave, keeping records, and giving notice, among other provisions.

Note that the Act and Guidelines also include provisions that further: (i) define covered employees; (ii) identify excluded employees, such as independent contractors, state and federal employees, members of construction unions, and seasonal workers; (iii) define covered family members; (iv) define notice and documentation requirements each employer may require; (v) set minimum time increments in which leave may be used; and (vi) define the reasons sick time may be used.

Does your company have a paid time off policy? Has it been a while since it was updated? Now is the time to review these issues. Employers should consider updating or establishing a written policy, training supervisory employees, and providing notice to workers. These actions may help to reduce vulnerability and costs in the event of a complaint or if an investigation occurs pursuant to the Act. Employers with workforces in many jurisdictions should be aware that similar sick day laws are in effect in several other locations. ◆

[1] [Pittsburgh City Code Chapter 626 \(2015\)](#). Click on “Text”

[2] See Schnader’s July 22, 2019 client alert, “[PA Supreme Court Upholds Pittsburgh Paid Sick Day Act](#)”

[3] https://apps.pittsburghpa.gov/redtail/images/8014_NOTICE_PAID_SICK_FINAL_12-16-19_-_Rev._12-17-19.pdf

[4] https://apps.pittsburghpa.gov/redtail/images/8015_Guidelines_for_Paid_Sick_Days_Act.docx_FINAL_12-16-19.pdf

[5] The Act had defined “Agency” as “[t]he Office of the City Controller or a department or entity designated by the Office of the Mayor.” It is now clear that the Mayor’s Office of Equity will be the enforcing agency.

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