

Duff on Hospitality Law

## **Seattle's Mandatory Paid Sick/Safe Leave Law: Are You Ready for September 1, 2012?**

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Just this week, the Seattle Office for Civil Rights released its final regulations for the new Paid Sick/Safe Time ordinance. They arrived not a moment too soon, because the ordinance goes into effect on September 1, 2012. If you haven't already started planning for compliance, you should now.

The new law will require businesses to accrue and provide paid sick and safe leave for employees when they or their family members are ill or are a victim of domestic violence. The law also includes notice and posting requirements to employees, as well as record keeping and reporting.

In an [earlier posting](#), we walked through the basic requirements of the law. Here is a more detailed look at the law and tips on how you can ensure compliance.

### **Does the law apply to my company?**

If you are an employer with five (5) or more full-time equivalent (FTE) employees and you employ any workers in Seattle, you must comply with the law. Federal, state and local government employers are exempt. The law also exempts new businesses within their first two years of operation.

Employees are covered if they work full time, part time, or temporarily within Seattle city limits. "Occasional" employees are covered if they work more than 240 hours in a calendar year in Seattle. Both exempt and non-exempt employees are covered. The law applies to unionized employees, however an employer and union could agree to a clear and unequivocal waiver of the ordinance's requirements in a collective bargaining agreement.

### **What employers must do on September 1, 2012:**

- Post a notice (in either physical or electronic form) to all Seattle employees with information about their rights under the ordinance.

- Begin accruing sick and safe time for all employees who perform work in Seattle in accordance with the accrual requirements in the ordinance.
- Begin tracking and retaining records of employees' actual hours worked in Seattle, accrued leave, and used paid leave. Records must be maintained for two years.
- Begin providing employees with written notification each time wages are paid summarizing the amount of paid leave available for use as sick/safe time.

### How to Accrue Sick Leave

Employee accrual is determined by total full-time equivalent employees, based on a 40-hour work week ("FTE"), regardless of where those employees work. For example, if the business has 100 FTEs total, but only 10 work in Seattle, the 10 Seattle-based employees are entitled to earn paid sick and safe days at the Tier 2 accrual rate. **Employer Size Accrual Rate Annual Cap** **Micro-business** 0-4 *Exempt Exempt* **Tier 1** 5-49 FTEs 1 hour for every 40 hours worked 40 hours (5 days) **Tier 2** 50-249 FTEs 1 hour for every 40 hours worked 56 hours (7 days) **Tier 3** Over 250 FTEs 1 hour for every 30 hours worked 72 hours (9 days)

### Information to help revise existing policies

Uses of Sick and Safe Time: In order to comply, an existing sick leave or paid time off policy must meet the minimum accrual rates and employees must be allowed to use the paid leave for the same reasons and in the same manner as required by the Seattle ordinance. Beware that some of the terms of the ordinance may be broader than your policy. For example, employees must be allowed to use sick leave to attend the physical or mental health needs of a grandparent. Employees also must be allowed to use safe time for assisting with domestic violence issues of a former spouse or someone they are dating or have dated in the past.

Carry Over: Accrued but unused sick and safe leave carries over to the following year.

Caps on Usage: Employers may place caps on the amount of sick time an employee can use in a calendar year regardless of how much time s/he has accrued. (See chart above.)

Doctor's notes or Documentation for Sick/Safe Leave: Employers may require documentation of illness if an employee uses more than three (3) consecutive days of leave. But the employer cannot require a health care provider to explain the nature of the illness. Documentation is merely a signed statement by a health care provider that sick time is necessary.

Documentation for safe leave can be a variety of documents including court records and even a written statement by the employee that they are taking the leave to deal with a domestic violence issue.

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**Expense of Obtaining Doctor's Notes:** If the employer does not offer health insurance, the employer and employee must share the expense of obtaining such documentation.

**Commission/Piecework Employees:** When sick/safe time is used, employers must pay the same hourly rate that the employees would have earned if they had worked that time. But employees are not entitled to lost tips. For employees paid on commission or by the piece, they must receive an hourly wage equal either to their base wage (if there is one) or minimum wage, whichever is greater.

**Vacation Use in PTO System:** If an employer offers a universal PTO and the employee uses all paid leave for vacation (or some other reason unrelated to sick/safe time), the employer is not obligated to provide additional leave for sick/safe time under the ordinance.

If you have questions or would like additional information about this new law and its effect, please feel free to contact [Greg](#).

**Tags:** Seattle Office for Civil Rights, sick leave