

Cannabis Business Blog

Varied and Changing Minimum Wage and Paid Leave Laws Affect Washington State Cannabis Businesses

By Jared Van Kirk on 3.7.16 | Posted in Employment Law

New cannabis businesses face a myriad of challenges. The state of Washington's fragmented and expanding approach to minimum wage and paid leave is only becoming more difficult. Law and legislation in this area already impacts cannabis businesses in Seattle, Tacoma and Spokane, and may soon affect all cannabis businesses statewide.

As of this update written on March 7, 2016, the Legislature appears unlikely to pass a measure that addresses statewide minimum wage or paid sick and safe leave. These issues are, however, far from over. On March 5, labor-backed Raise Up Washington kicked off its campaign to qualify Initiative Measure No. 1433 for the November 2016 ballot. Now is a good time to take stock of your existing local paid leave obligations and consider the paid leave and minimum wage requirements that would be imposed statewide if I-1433 were approved.

If you conduct business in Seattle, Tacoma, or Spokane local law already requires (or will soon require) paid sick and safe leave for many employees working in those cities. Although these local laws are detailed, the basic obligations are as follows:

These laws differ in a number of important ways – including accrual rate, accrual caps, use caps, carry over, minimum increments of leave, the benefit “year,” treatment of “occasional” employees, exemptions of certain employees, rehire requirements, and applicability to bereavement leave. Uniformity across more than one location is challenging.

In December 2015, Seattle significantly amended all of its labor standards ordinances, including paid sick and safe leave. These amendments strengthen penalties, allow civil suits by employees, and establish a rebuttable presumption that an adverse action within 90 days of an employee exercising his or her rights is retaliation.

If you have employees who work in Seattle only occasionally, the rules for “occasional basis” employees have also changed. If such employees work 240 hours in Seattle during a benefit year, they will now accrue paid leave for those first 240 hours as well as for future Seattle hours. They will also now be considered covered by Seattle paid leave for the duration of their future employment.

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If your payroll system allows for leave to be accounted for in 15-minute increments, you must do so for non-exempt employees who use paid leave, which may also require reevaluation of the minimum increment used to track FMLA leave.

Seattle employers may now choose any 12-month benefit year to administer paid leave, not just the calendar year. The amendments impose a number of other administrative requirements, including keeping paid leave records for three years and providing a written policy notice to employees by April 1, 2016. If you are a Seattle employer you should review your policies and practices in light of these amendments.

Initiative 1433, if ballot qualified and approved in November, would not supersede these local rules (unless they are less favorable to employees) and would not, therefore, bring statewide uniformity. It would, however, create minimum statewide paid sick and safe leave while increasing the minimum wage to \$13.50 by 2020.

Under I-1433, employers of all sizes would be required to provide at least one hour of paid leave for every 40 hours worked, with no cap on accrual or use in a year, and only a 90-day allowed waiting period. The initiative would require at least 40 hours to be carried over at year-end. These minimum requirements would change at least one element of any paid leave program developed under the local laws. The Initiative would also require reinstatement of unused leave and eligibility after periods of separation of 12 months or less, longer than required under local law and long enough to capture repeat seasonal workers.

The minimum wage increases mandated by I-1433 would be phased in over four years, but would not displace higher minimum wages in local jurisdictions.

With no competing legislation or referendum waiting likely to be approved, it is possible that greater minimum wage and paid sick and safe leave requirements will be coming to Washington soon, without any significant improvement on the fragmentation caused by local laws.

Warning Regarding Federal Law: The possession, distribution, and manufacturing of marijuana is illegal under federal law, regardless of state law which may, in some jurisdictions, decriminalize such activity under certain circumstances. Penalties for violating federal drug laws are very serious. For example, a conviction on a charge of conspiracy to sell drugs carries a mandatory minimum prison term of five years for a first offense and, depending on the quantity of marijuana involved, the fine for such a conviction could be as high as \$10 million. In addition, the federal government may seize, and seek the civil forfeiture of, the real or personal property used to facilitate the sale of marijuana as well as the money or other proceeds from the sale. Although the U.S. Department of Justice (DOJ) recently rescinded its guidance regarding prioritization of criminal prosecutions of individuals and entities operating in compliance with effective state regulatory systems, DOJ left in place long standing guidance to federal prosecutors regarding how to exercise this discretion. Individuals and companies are cautioned to consult with experienced attorneys regarding their exposure to potential criminal prosecution before establishing business operations in reliance upon the passage of state laws which may decriminalize such activity. Federal authority to prosecute violations of federal law as crimes or through seizures and forfeiture actions is not diminished by state law. Indeed, due to the federal

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government's jurisdiction over interstate commerce, when businesses provide services to marijuana producers, processors or distributors located in multiple states, they potentially face a higher level of scrutiny from federal authorities than do their customers with local operations.

Tags: accrual caps, accrual rate, accrue paid leave, benefit year, bereavement leave, cannabis businesses, carry over, I-1433, labor standards ordinances, Measure No. 1433, minimum increments of leave, minimum wage, occasional employees, paid leave, paid leave and minimum wage requirements, Raise Up Washington, Seattle, Spokane, statewide minimum wage, statewide paid sick and safe leave, Tacoma, use caps, Washington state