

# Employer Guide to Implementing the New Paid Sick Leave Law

## Background Information

In November 2016, Initiative 1433 was passed by Washington voters and as been included in Chapter [49.46 RCW Minimum Wage Requirements and Labor Standards](#). It increases the minimum wage, direct employers to convey tips and service charges to appropriate employees were applicable, prohibits retaliation and requires employers to provide their employees with paid sick leave beginning January 1, 2018.

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## Implementing a Paid Sick Leave Policy for Your Company

The Department of Labor & Industries (L&I) has prepared this page to provide guidance to employers about their roles and responsibilities under the [new paid sick leave law](#) ([lawfilesexxt.leg.wa.gov](http://lawfilesexxt.leg.wa.gov)).

- An employer should consider creating a paid sick leave policy to develop consistent workplace practices and communicate the new requirements to employees. An employer must create a paid sick leave policy if it chooses to require reasonable notice for the use of paid sick leave or request verification for absences exceeding three days.
- An employer must also develop a written policy when it implements a shared leave program for its employees, frontloads paid sick leave to employees (i.e., provide employees access to paid sick leave before it has accrued), chooses a different accrual year (other than January 1st through December 31st), or creates a paid time off (PTO) program for its employees. A collective bargaining agreement can also satisfy the requirement for a written policy for any of these practices.
- An employer's paid sick leave program must meet or exceed the provisions of the new paid sick leave law, including those contained in [RCW 49.46.200](#), [49.46.210](#), and all applicable paid sick leave rules ([WAC 296-128](#)). This section is intended for guidance purposes only, and does not outline all the minimum paid sick leave requirements set forth in the paid sick leave laws. Additionally, employers with employees who work in cities that have a minimum wage and paid sick leave ordinance ([Seattle](#), [Tacoma](#), and the City of [SeaTac](#)) will need to apply the standards of such ordinances that are more favorable to employees. The paid sick leave ordinance in the City of Spokane will sunset on December 31, 2017. For more information, please refer to the Spokane [Earned Sick and Safe Leave](#) rules.

## Paid Sick Leave Accrual and Availability

- Employees accrue at least one hour of paid sick leave for every 40 hours worked. An employer may provide an employee with a more generous leave, including a higher rate of sick leave accrual.
- For employees already employed on or before January 1, 2018, paid sick leave will accrue for all hours worked beginning on January 1, 2018. Employees hired after January 1, 2018 will begin accruing paid sick leave as soon as they begin working.
- Beginning on the 90th calendar day after the commencement of employment, employers must make accrued paid sick leave available to employees for use in a manner consistent with the employer's established payment interval or leave records management system, not to exceed one month after the date of accrual.

## Paid Sick Leave Usage

- An employer must allow an employee to use paid sick leave for the following reasons:
  - An absence resulting from an employee's mental or physical illness, injury, or health condition; to accommodate the employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or an employee's need for preventive medical care;
  - To allow the employee to provide care for a family member with a mental or physical illness, injury, or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or care for a family member who needs preventive medical care;

- When the employee's place of business has been closed by order of a public official for any health-related reason, or when an employee's child's school or place of care has been closed for such a reason; and
- For absences that qualify for leave under the state's Domestic Violence Leave Act (DVLA). For more information, please see [L&I's overview of the DVLA](#).
- Who is a covered "family member"?
  - A child, including a biological, adopted, or foster child, stepchild, or a child to whom the employee stands in loco parentis, is a legal guardian, or is a de facto parent, regardless of age or dependency status;
  - A biological, adoptive, de facto, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child;
  - A spouse;
  - A registered domestic partner;
  - A grandparent;
  - A grandchild; or
  - A sibling.
- What increments of use must an employer provide to its employees?
  - Employers must allow employees to use paid sick leave in increments consistent with the employer's payroll system and practices, not to exceed one hour.
  - For example, if an employer's normal practice is to track increments of work for the purposes of compensation in 15-minute increments, then an employer must allow employees to use paid sick leave in 15-minute increments.
    - L&I may grant a variance from the increments of paid sick leave usage required by [WAC 296-128-630\(4\)](#) for "good cause," which allows an employer to provide a higher increment of use. The employer must file a written application to establish "good cause."
  - "Good cause" means situations where an employer can establish that compliance with the requirements for increments of use are infeasible, and that granting a variance does not have a significant harmful effect on the health, safety, and welfare of the involved employees. The existence of a collective bargaining agreement which sets forth increments of use may be used as a factor in determining good cause for granting a variance.
    - [Variance Application](#).

### **Rate of Pay for Use of Paid Sick Leave**

- Employees must be paid their "normal hourly compensation" for each hour of paid sick leave used. "Normal hourly compensation" is "the hourly rate that an employee would have earned for the time during which the employee used paid sick leave."
- An employer must calculate an employee's normal hourly compensation using a reasonable calculation based on the hourly rate that an employee would have earned for the time during which the employee used paid sick leave.
- Normal hourly compensation does not include tips, gratuities, service charges, holiday pay, or other premium rates, unless the employer or a collective bargaining agreement allows for such considerations. However, if an employee's normal hourly compensation is a different rate paid for the same work performed under differing conditions (e.g., a night shift), this differential rate is not considered a premium rate and must be included.
- For employees who use paid sick leave for hours that would have been overtime hours if worked, employers are not required to apply overtime standards to an employee's normal hourly compensation.

### **Accrual Year**

- The default accrual year is January 1 – December 31, However, an employer may adopt a different fixed consecutive twelve-month period by an employer policy or collective bargaining agreement.

- Examples of other accrual years include a fiscal year, a benefit year, a employment year, or any other fixed consecutive 12-month period used in the ordinary course of the employer's business for the purpose of calculating wages and benefits.

### **Carry Over of Accrued, Unused Paid Sick Leave**

- Accrued, unused paid sick leave balances of 40 hours or less must carry over to the following year. Employers may offer a more generous carry over policy.
- If an employee carries over unused paid sick leave to the following year, accrual of paid sick leave in the subsequent year would be in addition to the hours accrued in the previous year and carried over.

### **Reimbursement for Sick Leave Upon Separation of an Employee**

- An employer may choose whether to provide a financial or other reimbursement to the employee for accrued, unused paid sick leave balances available at the time of separation.
- If an employer chooses to reimburse an employee for any portion of their accrued, unused paid sick leave at the time the employee separates from employment, any such terms for reimbursement must be mutually agreed upon in writing by both the employer and the employee, unless the right to such reimbursement is set forth elsewhere in state law or through a collective bargaining agreement.

### **Rehire of an Employee Within 12 Months of Separation**

- An employer must reinstate the employee's previously accrued, unused paid sick leave, if it rehires an employee within 12 months of separation.
- An employer is not required to reinstate any hours of paid sick leave previously provided to the employee through financial or other reimbursement at the time of separation, as long as the value of the paid sick leave was paid at a rate that was at least equal to the employee's normal hourly compensation.
- Upon rehire, an employer must provide notification to the employee of the amount of accrued, unused paid sick leave available for use by the employee.

### **Retaliation Prohibited by Law**

- An employer may not adopt or enforce any policy that counts the use of paid sick leave for the purposes authorized under [RCW 49.46.210\(1\)\(b\) and \(c\)](#) as an absence that may lead to or result in discipline against an employee.
- It is also unlawful for an employer to interfere with, restrain, or deny the exercise of any employee right provided under or in connection with the Minimum Wage Act (chapter 49.46 RCW). This means an employer may not use an employee's exercise of any of the rights provided under the Minimum Wage Act as a negative factor in any employment action such as evaluation, promotion, or termination, or otherwise subject an employee to discipline for the exercise of any rights provided under the Minimum Wage Act.

### **Optional Sample Policies**

While employers don't need to have a written paid sick leave policy to be in compliance with L&I's paid sick leave rules, it's a best practice to have one so that both employees and employers have a shared understanding of their rights and obligations.

The paid sick leave administrative rules do require an employer to maintain a written policy or collective bargaining agreement if they want to apply specific requirements or elements for their company, such as reasonable notice, a shared leave program or verification requirements.

L&I, in consultation with employee and employer representatives, has developed sample policies that meet L&I's standard for compliance with such areas of the rules. A basic sample Paid Sick Leave Policy is also under development.

- **Basic Sample Paid Sick Leave Policy (coming soon).** This sample policy, once available, will cover the major elements of the law. It is being designed so you can include the optional sample policies below.

- **A Reasonable Notice policy.**
  - If you want to require an employee to provide “reasonable notice” for an absence from work for the use of paid sick leave for an authorized purpose.
    - [Reasonable Notice for Use of Paid Sick Leave \(sample policy\)](#).
    - [Employee Notice for Use of Paid Sick Leave \(sample form\)](#).
- **A Verification policy.**
  - If you want to require an employee to provide verification for paid sick leave uses that exceed three consecutive days the employee is required to work.
    - [Verification for Absences Exceeding Three Days \(sample policy\)](#).
    - [Employee Verification for Authorized Use of Paid Sick Leave for Absences Exceeding Three Days \(sample form\)](#).
- **A Shared Leave policy.**
  - If you would like to give your employees the ability to share leave with co-workers.
    - [Shared Paid Sick Leave Program \(sample policy\)](#).
    - [Employee Request to Donate Paid Sick Leave \(sample form\)](#).
    - [Employee Request to Receive Shared Paid Sick Leave \(sample form\)](#).
- **A Frontloading policy.**
  - If you want to frontload an employee’s paid sick leave balance before it would otherwise accrue.
    - [Frontloaded Paid Sick Leave \(sample policy\)](#).
    - [Employee Notification of Frontloaded Paid Sick Leave \(sample form\)](#).

## Notification Requirements

Employers must provide a one-time notification to each employee of their paid sick leave rights.

L&I, in consultation with employee and employer representatives, has developed this [Employee Paid Sick Leave Notification form](#). Using this form meets the department's standard for compliance with these rules.

An Employee Paid Sick Leave Notification must include:

- Their entitlement to paid sick leave;
- The rate at which the employee will accrue paid sick leave;
- The authorized purposes under which paid sick leave may be used; and
- That retaliation by the employer for the employee's lawful use of paid sick leave and other rights provided under the Minimum Wage Act (chapter 49.46 RCW), and all applicable rules, is prohibited.

Employers must provide such notification in written or electronic form, and must make this information readily available to all employees.

Employers must provide this notification to employees by the dates below:

Employee Status	Date Written or Electronic Notification Due to Employee
<b>NEW</b> Hired on or after January 1, 2018	No later than the commencement of employment
<b>Existing</b> (Already working for employer before January 1, 2018)	No later than March 1, 2018

## Not Less Than Monthly Notification

- At least once a month, an employer must provide a notification to its employees which details:
- The amount of paid sick leave accrued since notification was last made;
- The amount of paid sick leave reductions since notification was last made; and
- The total amount of unused paid sick leave available for use by the employee.
- Employers may satisfy these notification requirements by providing this information in regular payroll statements.
- For an employer that chooses to frontload an employee’s paid sick leave, please see the requirements set forth in [WAC 296-128-760\(2\)\(b\)](#).

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# Payroll and Recordkeeping Requirements

## Payroll

The employer must pay paid sick leave to an employee no later than the payday for the pay period in which the paid sick leave was used by the employee, unless it requests verification for an absence exceeding three days. However, an employer must have a verification policy in place before it asks for verification.

If verification is required by the employer, paid sick leave must be paid to the employee no later than the payday for the pay period during which verification is provided to the employer by the employee.

## Required Records

Employers with employees covered by the Minimum Wage Act are required to keep and preserve the [Required Payroll Records](#), in addition to the following **new paid sick leave** requirements:

- Paid sick leave accruals each month, and any unused paid sick leave available for use by an employee;
- Paid sick leave reductions each month including, but not limited to: paid sick leave used by an employee; paid sick leave donated to a co-worker through a shared leave program; and, paid sick leave carried over to the following year.
- The date of commencement of the employee's employment.

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# Training and Webinars

## Webinars

Get an overview of Initiative 1433.

[Click here to Register Now.](#)

## E-Learning

[Paid Sick Leave and Initiative 1433 Overview](#)

*(this e-learning module is best viewed using one of the following web browsers: Edge, Firefox, Chrome or Safari)*

## Presentations

Interested in having an L&I Representative come and present at your next association meeting or conference?

Send an email request to: [LNITraining@LNI.WA.GOV](mailto:LNITraining@LNI.WA.GOV)

## Publications

- Required “Your Rights as a Worker” Poster.
  - [Paid Sick Leave Fact Sheet \(English\).](#)
  - [Paid Sick Leave Fact Sheet \(Spanish\).](#)

## Stay Informed

[Sign up for email updates](#) on policies and procedures, trainings and information pertaining to [Initiative 1433](#).

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# Laws, Codes and Rules

- [Initiative 1433](#)
- [RCW 49.46 Minimum Wage Requirements and Labor Standards.](#)
- [RCW 49.76 Domestic Violence Leave.](#)
- [L&I Administrative Policies.](#)
- [Chapter 296-128 WAC – Minimum Wage Act.](#)
- [L&I Workplace Rights/Employment Standards.](#)
  - [City of Seattle.](#)
  - [City of SeaTac.](#)
  - [City of Tacoma.](#)