

## Employment, Labor & Benefits Alert

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# Connecticut to Require Many Employers to Offer Paid Sick Leave

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The Connecticut General Assembly has passed a sick leave law that will make Connecticut the first state to mandate **paid** sick leave for certain hourly service workers. The law, which will become effective on January 1, 2012 if Governor Malloy signs it, which he is expected to do, applies to employers of 50 or more persons within the State of Connecticut. While many Connecticut employers with 50 or more employees likely already provide paid leave to their employees, the Paid Sick Leave Act (the "Act") provides a floor below which employers may not fall when it comes to these benefits.

### Which Connecticut Employers are Subject to the Act?

Employers of 50 or more employees in the State of Connecticut are subject to the Act. Unlike the Connecticut Family and Medical Leave Act (CFMLA), which has been construed to apply extraterritorially with respect to calculating the number of employees, the Act on its face appears to only apply to employers with 50 or more employees *within* the State of Connecticut. An employer will be subject to the Act if the employer has at least 50 such employees on its payroll in any one quarter in the previous year determined on January 1st annually. The Act specifically exempts manufacturers and nationally chartered 501(c)(3) organizations that provide recreation, child care and educational services.

### Which Connecticut Employees have Rights under the Act?

Individuals eligible for paid sick leave include certain specified *hourly* service employees who worked at least 520 hours within the 12 months preceding the request for leave. Day or temporary workers are not eligible for sick leave benefits. Examples of some of the 68 different categories of eligible hourly service workers include food service managers, dental assistants, fast food workers, medical assistants, waiters, child care workers, data entry and information processing workers, and retail salespersons.

### How do Sick Leave Benefits Accrue and How are they Paid?

Beginning January 1, 2012 (or for employees hired after that date, when employment begins), eligible employees will be entitled to accrue at a rate of one hour for each 40 hours worked, up to a maximum of 40 hours of paid sick leave for each calendar year. Employees who do not use paid sick leave benefits in one calendar year may carry over up to 40 accrued hours to the next calendar year (but may not use more than 40 hours in each calendar year). Employees may use accrued sick leave once the employee completes 680 hours of employment after January 1, 2012 (beginning after April

30, 2012), or 680 hours after the employee begins work if work begins after January 1. Eligible employees seeking to take leave may not do so if they did not work an average of 10 or more hours a week in the most recent completed calendar quarter. An employer is not obligated to pay accrued sick leave benefits upon an employee's termination unless the employer provides for such payment in its policies or in a collective bargaining agreement.

## What if Employers have Existing Paid Sick or Disability Leave Policies in Place?

The Act is a floor below which employers subject to the Act may not fall. An employer will be deemed fully compliant with the Act if the employer offers a combination of leave or leave benefits that satisfy the minimum paid leave under the Act. For these purposes, leave might include paid vacation, personal days or other paid time off. Benefits under the Act are not intended to diminish any rights employees have under a collective bargaining agreement.

## How Much Must Employers Pay?

The 40 hours of sick leave must be paid at a rate equal to the employee's normal hourly rate or the minimum wage pursuant to the Connecticut General Statutes (and not Federal law). Employees whose wage rates vary must be paid the average hourly wage the employee earned in the pay period prior to the period in which the employee takes sick leave.

## What is Qualifying "Sick Leave" under the Act?

Qualifying leaves under the Act include illness, injury or health condition, or for preventative medical care, for the employee or the employee's spouse or child. An employee who is the victim of family violence or sexual assault may also take paid leave for medical care and for other reasons related to the family violence or sexual assault.

## What Type of Notice is Required?

Like the Federal and Connecticut Family and Medical Leave Acts, notice to the employer is required if leave under the Act is foreseeable; if the leave is not foreseeable, then the employee must give notice as soon as practicable. Employers may request documentation from a health care provider for leaves taken for three or more consecutive days.

## Prohibition Against Retaliation

The Act prohibits employers from taking retaliatory action or otherwise discriminating against employees because the employee requests or uses paid sick leave or files a complaint with the Connecticut Department of Labor regarding leave under the Act.

## What are the Remedies for Violations?

The Act vests jurisdiction for complaints about violations within the Department of Labor, which is empowered to hold hearings, and which may assess a civil penalty of \$500.00 for a violation of the retaliation and discrimination provisions, and a civil penalty of \$100.00 for each violation of the substantive provisions (or notice provision) of the Act. The Labor Commissioner is also empowered to require an offending employer to rehire or reinstate an employee and to pay back wages and benefits.

## The Notice Obligations

Connecticut employers will be required, as of January 1, 2012, to provide notice, at the time of hiring, regarding the entitlement to sick leave, and to specifically advise eligible employees that employers are prohibited from retaliating against them. Employers may comply with their notice obligations by posting a notice in a conspicuous location incorporating these requirements.

## Areas of Concern for Employers

The Act presents two areas of concern for employers. First, eligible “service workers” include a quite broadly defined group of workers encompassing 68 occupation codes. Employers who are not certain if an employee qualifies as eligible under the Act should proceed carefully to ensure that a categorization mistake is not made. Employers should not attempt to classify employees as “exempt” from overtime to evade the Act. Misclassification could result in far greater penalties than those encompassed in the Act, including exposure to civil suit and damages.

The second area of concern for employers is that the Act provides the legal minimum for paid sick leave policies for eligible service workers. While many businesses with 50 or more employees likely already offer some form of paid sick leave benefits, occasionally those benefits are predicated on longer eligibility provisions or otherwise restrict the use of paid sick time. Employers should review their existing sick leave policies before January 1, 2012 to ensure full compliance with the Act.

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