

It's not just paid time off — it's the law

Attorneys explain what Seattle's new sick leave ordinance means for employers

Starting next Sept. 1, companies in Seattle with five or more workers must provide at least five paid sick days a year. Businesses with 50 to 249 employees must offer seven, and those with 250 must provide nine days.

To help employers prepare, we asked employment attorneys Mary Drobka with Davis Wright Tremaine LLP, Cliff Freed with Frank Freed Subit & Thomas LLP, Steven Peltin with Foster Pepper PLLC, Tamara Roe with Montgomery Purdue Blankinship & Austin PLLC, and Josephine Vestal with Williams Kastner to weigh in.

Will some employers compensate by decreasing other benefits?

MARY DROBKA: I don't think larger Seattle employers will. However, employers in some sectors who have not traditionally offered sick leave may revisit whether they'll offer short term disability insurance coverage, or even whether they offer vacation. This may also become a factor in whether an employer locates in Seattle or outside the city.

TAMARA ROE: Yes, many of my client employers will eliminate or decrease pension contributions and/or health insurance benefits. Many may decrease the type of health benefits offered (such as eliminating dental or selecting a plan with higher co-pays), and some may require employees to pay a portion of the premiums or increase the percentage they're paying. Also, many will continue salary or hiring freezes.

JOSEPHINE VESTAL: I expect that some employers will decrease vacation accrual to offset increased paid sick/safe leave. Other employers that have had a generous, though informal, paid leave practice may be forced to formalize their policies and be effectively less generous.

STEVEN PELTIN: Employers who currently provide no paid sick leave — and cannot afford to pay for such a benefit — may decrease other benefits. Many employers, however, already maintain a sick leave or Paid Time Off (PTO) program that will satisfy the ordinance's requirements.

CLIFF FREED: I don't expect that most employers will compensate by decreasing other benefits. I suppose it's possible that a few will react viscerally without waiting to see what the effects of the new law will be, but I'd imagine that most will be pleasantly surprised to discover that it's not necessarily more expensive, and to the extent it marginally is, it will have benefits not only to employees but to the businesses as well. A healthier work force with higher morale will ultimately inure to the benefit of the employers.

What will be the biggest unanticipated consequence?

DROBKA: This new requirement doesn't just grant paid time off — the devil is in the details. It appears to regulate when you start to earn sick leave, when you can begin to use what you earned, what you can carry over if you have not used all you accrued by year's end, and when employers must pay the costs of requiring verification of illness or injury. These are all details that previously differed by employer. For example, right now it is legal for larger employers who are covered by the federal Family and Medical Leave Act (50-plus employees) to require employees to pay any uninsured costs of obtaining a certification from a health care provider related to a serious health condition. This ordinance, however, requires that the initial verification of illness or injury be paid by the employer. My impression is large employers have not studied this and analyzed all the changes this ordinance will impose on them.

FREED: I think one of the unanticipated consequences for employers will be that they see better attendance and lower turnover. Employees who have the ability to take a finite number of sick days off will value those days and use them sparingly and for good reasons. They'll also feel better about their work and will be less inclined to look for other job opportunities.

VESTAL: The reasons for which employees can use paid sick leave are very broad: "An absence resulting from the employee's mental or physical illness, injury or health condition..." This says nothing about being unable to work because of the condition, though perhaps it is implicit. The most documentation of the need for the absence that is allowed by the ordinance is a signed health care provider's note that the absence is "necessary," with no disclosure of the nature of the illness. It also appears that temporary staffing agencies are responsible for paid sick/safe leave for the employees they place, whereas they generally have no responsibility for pay. The cost to an employer to obtain medical verification of the need for sick leave may be prohibitive for many employers who do not provide health insurance. The costs may include paying for costs for diagnosis, and half the costs of transportation to the health care provider. It is unclear how this is intended to work with workers' compensation if an employee is eligible for payment under both. Will this decrease



Drobka



Freed



Peltin



Roe



Vestal

Seattle employers' workers' compensation premiums if the employer effectively pays time loss? What are the employee's options? How does paid sick leave coordinate with accommodation obligations under the Americans with Disabilities Act? Can an employee choose to take paid sick leave where the employer has offered an effective accommodation that would allow the employee to work?

PELTIN: While nearly all attention has been paid to paid sick time, the ordinance also provides for "paid safe time." An employee may qualify for paid safe time if the employee's business or child's school is closed on account of an infectious agent or hazardous material, or if the employee or a family member is the victim of domestic violence, sexual assault or stalking. The first kind of paid safe time presumably will be rare; more employers will face requests for paid time off on account of domestic violence, sexual assault or stalking. When seeking paid sick time of at least three consecutive days, employees can be required to produce a note from a health care provider to prove illness. Safe time can be justified by a wider variety of sources, such as a police report, court order, or attorney statement. Most employers are less familiar with this kind of documentation and may find it difficult to determine whether the request for paid time off is warranted.

Seattle is the fourth city, after San Francisco, Washington, D.C., and Milwaukee, to do this. Do you foresee this trend sweeping the nation?

DROBKA: Hard to call. I hope not — largely because when these types of details are legislated at the level of cities or counties, it makes it extremely hard to have a national and global work force with a semi-uniform offering of employee benefits. I can't imagine what you will do if you have employees in San Francisco, D.C., Milwaukee and Seattle! Savvy larger organizations will consider these types of ordinances when deciding where to locate, relocate or expand. If you are headquartered in Oak Brook, Ill., and determine that Bothell or Bellevue will allow you to continue your current sick leave policy, you may decide to expand your work force outside the Seattle city limits — even if you currently grant more hours of sick leave or PTO than would be mandated by this ordinance.

FREED: I don't necessarily see it as becoming a trend, given the current economic circumstances. But you should be aware that most unionized work forces already have paid sick leave, as do most public employers and many larger private sector employers. Once the economy starts to improve, I think you may see more discussion in the more progressive areas.

ROE: No, most cities are more focused on decreasing high unemployment rates, not on enacting laws that will deter businesses from hiring.

VESTAL: I do not foresee this ordinance becoming a nationwide trend in this economic climate and given the take-backs we have seen in other parts of the country.

PELTIN: Not likely. The cities that previously passed sick leave laws did so three or more years ago. There is no indication that passage of the Seattle ordinance will provoke a trend more than San Francisco, Milwaukee or Washington.

Many large employers for years have been mingling together different types of paid time off. Will this change that?

DROBKA: Yes, especially if they don't want all the bells and whistles that are part of this ordinance to become the "rules" they have to follow in administering their PTO or sick leave policies.

FREED: Short answer — no.

VESTAL: This ordinance may cause employers to rethink their PTO policies because of the high level of carry-over required, particularly for Tier 3 employers, since a use-it-or-lose-it policy is no longer permitted — at least for the required level of carry-over — and there is apparently no maximum accrual. Since employees can use the leave carried over for vacation as well as sick/safe leave, employers may end up having to pay for it at the end of employment, though they would not have to pay for it on termination of employment if it was sick/safe leave rather than PTO.

PELTIN: Not likely. PTO or other combined leave programs will satisfy the ordinance as long as employees are accruing the minimum number of required paid hours (40, 56, or 72, depending on the size of the employer), and those hours may be carried over to the following calendar year. No special accounting for sick leave is required.

SEATTLE@BIZJOURNALS.COM | 206.876.5437

THE TOP LEAD LIST IN THE REGION.

Sponsored By:

Washington Federal.
invested here.

greenrubino
IDEAS THAT CONVINCE

McGladrey

Seattle
metronatural
Seattle's Community of Urban Runners

TEAM
MEDICINE

BOOK OF LISTS

Subscribe today to get your free copy!
Mike Smith: mesmith@bizjournals.com or 206.876.5417