

OUR INSIGHTS

FAQs on the Spokane, Washington Paid Sick and Safe Leave Law

Author: Sarah Jung Evans (Seattle)

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On January 25, 2016, the Spokane City Council overturned the Spokane mayor's veto and passed [Ordinance C-35300](#), which provides paid sick and safe leave to employees performing more than 240 hours of work in the city of Spokane in a calendar year. Spokane follows the cities of Seattle, Tacoma, and SeaTac in implementing paid leave ordinances in Washington. The ordinance requires employers to provide employees with one hour of paid sick and safe leave for every 30 hours worked starting on January 1, 2017. Below are answers to some frequently asked questions about the new law.

Effective Date

Q: What is the effective date of the new law?

A: Employers must comply with the new law starting on January 1, 2017. However, newly licensed businesses will not be required to comply until one year after the date of their first business registration in the city of Spokane.

Coverage and Eligibility

Q: Which employers are covered under the new law?

A: An employer is covered by the ordinance if it has one or more employees working in the city of Spokane.

Excluded from coverage are the United States government; the State of Washington; any city, county, or local government; and any business owned and operated by one person (or one person and his or her spouse) and having zero employees.

In addition, as explained above, the ordinance does not apply to newly licensed businesses for one year following the issuance of the business's first City of Spokane business license.

Q: Which employees are eligible to receive paid leave?

Employees who perform more than 240 hours of work physically in the city of Spokane in a calendar year (excluding seasonal and domestic workers, independent contractors, work study students, and those employed by firms engaged in "construction work" as defined in Washington Administrative Code 296-155-012) are eligible for paid leave. The ordinance defines a "seasonal worker" as a worker "with a term of employment expected to last less than one year and which is intermittent or recurs annually."

Q: Are employers required to provide paid leave to temporary workers?

A: Yes, if the employer and the employee otherwise satisfy the eligibility requirements for paid leave under the ordinance.

Reasons for Leave

Q: For what reasons may employees take paid leave under the law?

A: An employee may use paid leave for the following reasons:

- the diagnosis, care, or treatment of his or her mental or physical illness, injury, or health condition;
- the diagnosis, care, or treatment of his or her family member's mental or physical illness, injury, or health condition;
- any reason identified in Revised Code of Washington Section 49.76.030, or to seek protection or safety from events or conduct specified in Spokane Municipal Code Section 10.09.010(B) (both laws relate to domestic violence, harassment, and/or stalking);
- during any period in which the employer's business or the employee's child's school or place of care is closed by order of a public official to limit exposure to an infectious agent, biological toxin, or hazardous material; or
- for bereavement in connection with a family member of the employee.

Q: How does the law define "family member"?

A: Under the law, "family member" includes an employee's:

1. spouse or domestic partner;
2. children who are either:
 1. under 18 years of age, or
 2. 18 years of age or older and incapable of self-care due to a mental or physical disability;
 3. parents or guardians;
 4. grandparents; or
 5. grandchildren.

Accrual and Caps on Leave

Q: At what rate do employees accrue paid leave under the law?

A: Beginning on his or her first day of employment, an employee accrues leave at the rate of at least one hour for every 30 hours worked. Employers are not prohibited from "front-loading" leave hours at the beginning of each year.

What is the maximum amount of paid leave employees may use each year?

Employees of businesses with 10 or more employees working in the city of Spokane may use up to 40 hours of leave accrued each year. Employees of businesses that have fewer than 10 employees working in the city of Spokane may use up to 24 hours of leave accrued each year. Immediate family members and business owners are not included when counting employees for this purpose.

Q: How much leave can an employee carry over to the next year?

A: An employee may carry over up to 24 hours of earned sick and safe leave that were not used in the prior year into the following year.

Q: May an employer require an employee to complete a probationary period before the employee can use

accrued leave?

A: Yes, however, any such probationary period cannot be longer than 90 days.

Q: Can an employer cap employees' accrual of paid leave?

A: The ordinance is silent with regard to whether a cap is permitted; therefore, employers may not want to impose a cap on accrual. As a practical matter, employees are subject to a cap on usage, which restricts how much paid leave an employee can use in a year regardless of the amount accrued.

Q: What happens to unused but accrued paid leave at the end of the employment relationship?

A: Employers are not required to pay out accrued, unused leave at the time of termination, or to reinstate any earned leave balance accrued from any prior period of employment, after the parties have ended the employment relationship.

Use

Q: What are the law's main requirements for employees' use of paid leave??

A: The ordinance does not specify what documentation or notice an employer may require from an employee asking to use paid leave. Employers may want to abide by their ordinary policies regarding requests for leave.

Q: Does the law provide any guidance as to the increments in which an employee may take as paid leave?

A: No, the ordinance does not.

Payment

Q: At what rate of pay must employers pay employees who have taken paid leave?

A: Employees taking paid leave under the ordinance must be compensated at the same rate of pay and with the same benefits that the employee would have earned during the time in which the leave is taken. However, employers are not required to compensate employees for tips or commissions the employee would have earned during the leave period.

Notices and Posting

Q: What records regarding paid leave are employers required to maintain?

A: Employers are required to maintain records consistent with the employer's usual and customary business practices of each employee's earned sick and safe leave accrual and use for three years.

Q: What notice must employers provide to employees regarding paid leave?

A: At least once per quarter, and upon request by the employee, employers must provide information regarding an employee's accrued paid leave, including the employee's leave balance and the amount of leave used by that employee during the current fiscal year. Administratively, tracking this information on an employee's pay stub may be an efficient method of providing this information to employees.

By January 1, 2017, employers must post, in a place commonly accessible to employees, a notice provided by the City that summarizes employees' and employers' rights and obligations concerning earned sick and safe leave as provided under the ordinance.

Enforcement

Q: What are the penalties for noncompliance with the ordinance?

A: Failure to comply with the ordinance results in a “Class 1” civil infraction. These infractions carry a maximum civil penalty, not including statutory assessments, of \$261. However, if an employer is found to have retaliated against an employee for the employee’s exercise of rights under the ordinance (meaning that the employer took an adverse action against the employee because of the employee’s status as a charging party or for exercising his or her rights), the penalty may be tripled.

For each subsequent violation of the ordinance, the penalty may be doubled.

Remedies may be pursued either through the as-yet unnamed City of Spokane department responsible for enforcing this ordinance, or in court. The enforcement of rights, duties, and obligations created by the ordinance will be in effect no later than October 1, 2016.

Sarah Jung Evans (Seattle)



Ms. Evans focuses her practice on both employment litigation and preventative counseling. In her practice, she defends employers in single-plaintiff discrimination matters, charges of discrimination, harassment and retaliation before state and federal agencies, investigations involving health and safety violations, and in arbitrations of unfair labor practices. In addition, Ms. Evans has experience litigating cases involving trade secret misappropriation and breach of non-competition agreements,...
