

# Washington State and Seattle Paid Sick and Safe Leave Updates

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By Sherry L. Talton and Arianna L. Gardner

The first quarter of 2024 has brought multiple updates to the State of Washington's and the City of Seattle's respective paid sick leave laws, addressing concerns for commercial construction workers, app-based gig economy workers, and any workers subject to a paid time off (PTO) program. Employers may want to take note of these changes to ensure compliance with these updated laws.



## Quick Hits

- The respective paid sick leave laws of the State of Washington and the City of Seattle have recently been clarified and updated.
- Under Washington's paid sick and safe leave law, only construction workers who are directly engaged in construction work by performing "service, maintenance, or construction work on a jobsite, in the field or

in a fabrication shop using tools of the worker’s trade or craft” are eligible for paid sick and safe leave payouts upon separation of service. Washington’s paid sick leave law also does not apply to commercial construction workers who are directly engaged in construction and covered by certain collective bargaining agreements.

- Seattle’s new ordinance reaffirms and extends permanent paid sick and safe time benefits for app-based gig economy workers in Seattle.

## **Changes to Washington State Paid Sick and Safe Leave**

### *Commercial Construction Workers*

As of January 1, 2024, Washington’s paid sick leave law imposes a new requirement on employers to pay the entire balance of accrued but unused paid sick leave to commercial construction workers at the time of their separation, even if they had not been employed for ninety days otherwise required for other workers to use accrued time. The 2024 law originally defined “construction worker” as any nonexempt employees, other than those performing residential building construction, covered under the [North American Industry Classification System \(NAICS\) Code 23](#), including workers not directly engaged in the construction work itself, such as administrative staff. On March 13, 2024, Governor Jay Inslee signed a legislative amendment, [Senate Bill \(SB\) 5979](#), limiting the new payout requirement to workers directly engaged in construction work by performing “service, maintenance, or construction work on a jobsite, in the field or in a fabrication shop using tools of the worker’s trade or craft.” Employers may also want to note that employers that use frontloading with covered construction workers must pay out the entire balance of frontloaded time at separation.

Washington’s paid sick leave law also does not apply to commercial construction workers who are directly engaged in construction and covered by a collective bargaining agreement (CBA) if (1) “the union signatory to the [CBA] is an approved referral union program”; (2) the CBA “establishes equivalent sick leave provisions”; and (3) the requirements of Washington’s paid sick leave law “are expressly waived in the [CBA] in clear and unambiguous terms or in an addendum to an existing agreement that is open for negotiation.” Employers can pay such commercial construction workers covered by a qualifying CBA for their accrued paid sick leave at the normal hourly compensation before usage. Importantly, the law requires employers to keep payroll and other records to show paid sick leave payments to construction workers covered by a CBA before usage and any paid sick leave remaining after payment.

### *Employers With PTO Programs*

The Washington legislature also clarified paid sick leave requirements for employers that utilize PTO programs to satisfy their paid sick leave requirements. PTO programs are programs combining more than one type of leave, such as sick leave and vacation leave. Employers are now required to notify employees if their PTO program is intended to satisfy Washington’s paid sick leave requirements.

The law further provides that all PTO must be available on the same terms for all purposes under the paid sick leave law, unless the employer provides a *more* generous amount of leave in the same bank. It also includes the following requirements:

- the sick leave portion accrues at the rate of one hour or more for every forty hours worked;
- the sick leave is paid at the greater of the minimum hourly rate for tipped employees or the normal hourly compensation;
- at least forty hours of unused time are carried over;
- the sick leave portion is tracked separately from the non-sick leave portion;
- employers cannot require or encourage employees to use their sick leave for non-paid sick leave purposes before accessing the non-paid sick leave time; and
- for construction workers, the balance must be paid out upon separation.

#### *Additional Grounds for PSSL*

The Washington legislature also passed [Substitute Senate Bill \(SSB\) 5793](#), which Governor Jay Inslee signed into law on March 28, 2024, with an effective date of January 1, 2025. This amendment:

- allows employees to take paid sick leave when the “employee’s child’s school or place of care” was closed for either a “health-related reason” or public emergency;
- redefines family member to include any person who regularly resides in the employee’s home (unless there is no expectation that the employee cares for the person) or whose relationship creates an expectation of care by the employee. This change aligns the paid sick leave law with recent updates to the definition of “family member” under Washington’s Paid Family and Medical Leave law; and
- redefines family member to include a child’s spouse.

### **Changes to Seattle Paid Sick and Safe Time**

#### *App-Based, Gig Economy Workers*

Seattle’s new ordinance, [SMC 8.39](#), reaffirms and extends permanent paid sick and safe time benefits for app-based gig economy workers in Seattle. Under this new law, app-based workers receive payment for paid sick leave based on the worker’s “average daily compensation” for each day worked for the network company. Average daily compensation is recalculated every month to reflect changes in gig workers’ earnings. Beginning on January 13, 2024, this law applied to *all* app-based workers who work at a network company that hires 250 or more workers worldwide, not just food delivery workers.

Under this law, and as explained by the [Seattle Office of Labor Standards](#), covered app-based workers accrue one day of paid sick leave for every thirty days with at least one work-related stop in Seattle (e.g., shopping at a store in Seattle, making a delivery in Seattle). Network companies must “allow app-based workers to carry over at least nine days of accrued, unused paid sick and paid safe time to the following year.” A covered entity may request “reasonable verification” from a worker to use more than three consecutive days. Further, in addition to a written paid sick and safe time policy and procedure, hiring entities must provide no less than monthly notification of the app-based worker’s average daily compensation, and accrued, used, and available paid sick leave.

Ogletree Deakins’ [Seattle office](#) will continue to monitor developments and will publish updates on the [Leaves of Absence](#) and [Washington](#) blogs as additional information becomes available.

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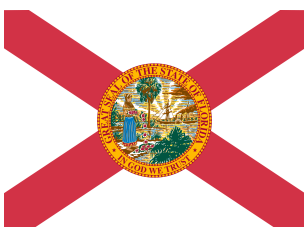
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