

OUR INSIGHTS

Vermont Becomes Fifth State to Require Paid Sick Leave

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On March 9, 2016, Vermont Governor Peter Shumlin signed into law a measure that will make Vermont the fifth state to require employers to provide paid sick leave. [Vermont's new sick leave law](#) bears similarities to some other states' paid sick leave laws, but has its own unique features. Here are the key aspects of the Vermont law:

- **Phased Effectiveness.** Most employers will need to comply with the law starting on January 1, 2017. However, employers may elect to establish a waiting period of up to one year, during which employees who are employed as of January 1, 2017 will accrue sick leave, but will not be permitted to use it. Small businesses will not be required to comply until January 1, 2018.
- **Coverage.** The law applies to all private employers doing business or operating in Vermont. However, newly established businesses will be given a grace period, and will not be required to be in compliance until one year after the hiring of their first employee. In addition, there are several categories of employees who are not entitled to receive sick leave. Notably, the Vermont law excludes several employee populations that would otherwise have presented difficult compliance challenges (and which are not exempted under some other states' laws): part-time employees who work less than 18 hours per week on average; temporary employees who work (or are scheduled to work) fewer than 20 weeks in a year; and per diem and intermittent employees.
- **Permitted Usage.** The Vermont law requires that employees be permitted to use paid sick leave for several reasons in addition to caring for their own illnesses or injuries. Specifically, an employee also must be permitted to use accrued leave for absences that occur because the employee:
 - “obtains professional diagnostic, preventive, routine, or therapeutic health care;” “cares for a sick or injured parent, grandparent, spouse, child, brother, sister, parent-in-law, grandchild, or foster child [‘family member’], including helping that individual obtain diagnostic, preventive, routine, or therapeutic health treatment, or accompanying the employee’s parent, grandparent, spouse, or parent-in-law to an appointment related to his or her long-term care;”
 - “is arranging for social or legal services or obtaining medical care or counseling for the employee or for the employee’s [family member], who is a victim of domestic violence, sexual assault, or stalking or who is relocating as the result of domestic violence, sexual assault, or stalking;” or
 - “cares for a [family member] because the school or business where that individual is normally

located during the employee's workday is closed for public health or safety reasons."

Eligible employees also must be allowed to take leave in the smallest increment that the employer uses to track other absences, but are not required to allow employees to take sick leave in increments of less than one hour.

- **Accrual Rate and Annual Accrual Cap.** The Vermont law requires that employees accrue sick leave at rate of at least one hour of paid sick leave for every 52 hours worked. The total amount of paid sick leave that employees must be provided each year is to be phased in gradually. During the first 2 years the law is in effect (i.e., between January 1, 2017 and December 31, 2018), employers may limit total annual accrual to 24 hours. Beginning on January 1, 2019, employees must be allowed to accrue up to 40 hours of paid sick leave per year.
- **One Year New-Hire Waiting Period.** Employers may impose a one-year waiting period on new employees, during which the new employee must accrue earned sick time, but need not be permitted to use it. As noted above, employers also may impose such a one-year waiting period on employees who are employed as of the January 1, 2017 effective date of the law.
- **Carryover, Cap on Annual Usage, and Payout Issues.** Employers must allow employees to carry over any unused, accrued sick hours from one year to the next, unless the employer chooses to make a payout to the employee at the end of the year. Employers are permitted to cap the amount of paid sick leave that an employee may use (regardless of the accrued amount available) as follows: 24 hours per year between January 1, 2017 and December 31, 2018, and 40 hours per year in 2019 and thereafter. Moreover, an employer is not required to pay out any unused sick leave hours that remain at the time of an employee's separation.
- **Compliance Based on Existing PTO Policies and Collective Bargaining Agreements.** Covered employers can comply with the Vermont law's requirements by maintaining a paid time off (PTO) policy or being party to a collective bargaining agreement that provides employees with any type of PTO—including sick, personal, vacation, all-purpose and/or general PTO, or similar types of leave—so long as the relevant policy or agreement (1) allows employees to use their PTO for all of the reasons allowed by the Vermont sick leave law and (2) provides an annual amount of PTO equal to or greater than the amount required by the Vermont sick leave law, either by accruing time at a rate equal to or greater than the statutory accrual rate or providing a lump sum of PTO at the start of the year (which need not be carried over year to year).

Vermont's enactment is part of an ongoing national trend. With passage of this law, three of the six New England states will require state-wide paid sick leave. In addition to Vermont, [Massachusetts](#) already requires paid sick leave for most employees (small businesses are only required to provide unpaid leave), and [Connecticut](#) requires paid sick leave for employees in certain occupations. Also, paid sick leave is required by law in [California](#), [Oregon](#), and many municipalities across the United States. The Obama administration has been pressing for national action on paid sick leave as well, including in the [ongoing rulemaking](#) to implement an executive order mandating that federal contractors provide paid sick leave. Indeed, the administration trumpeted Vermont's passage of paid sick leave, with President Obama issuing a statement commending Vermont's action and calling on Congress to pass national sick leave legislation; Sharon Block, Principal Deputy Assistant Secretary at the U.S. Department of Labor,

even participated in the Vermont bill signing ceremony.

Vermont's new sick leave law adds to the growing patchwork of state and local laws mandating employer-provided sick leave. Though all of these laws share a common purpose and many similar aspects (e.g., expanding sick leave usage for the illness of family members), they differ substantially in key areas, including the required amount of paid sick leave, the rate of accrual, covered employee populations, and the ability to rely on existing PTO benefits. Employers with Vermont operations—or operations in California, Connecticut, Massachusetts, Oregon, or the many municipalities that have enacted such laws (notably including New York City, Seattle, Philadelphia, and Washington, D.C.)—should review their existing sick leave and PTO policies to determine if any changes are needed to ensure compliance.

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Mr. Mason provides employment law counseling and litigation services to clients that include businesses of all sizes (ranging from start-ups to multinational corporations), higher education institutions, and non-profits. He regularly litigates claims involving employees or former employees in federal and state courts and before federal and state fair employment practices agencies. Mr. Mason also has extensive experience litigating complex cases before arbitral bodies such as the Financial...
