

Initiative 1433 - Paid Sick Leave

Employer Requirements and Employee Rights

Overview

Mt. Vernon Chamber

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Washington State Department of
Labor & Industries



- The ***intention*** of this presentation is to help provide the public with ***guidance*** on the application of the Washington State ***Paid Sick Leave*** law, taking effect ***January 1, 2018***.
- This ***presentation*** is strictly for ***educational purposes*** and is not intended to substitute or replace professional legal counsel. The answers provided during this presentation are based on the facts provided and ***subject to change*** with the inclusion of other variables.
- Employers with ***employees who work in cities*** that have a minimum wage and paid sick leave ordinance (***Seattle, Tacoma, and the City of SeaTac***) will ***need to apply*** the ***standards of such ordinances*** that are ***more favorable*** to ***employees***. The paid sick leave ordinance in the City of Spokane is effective until December 31, 2017.

Disclaimer



Initiative 1433 (I-1433)

In November 2016, voters passed I-1433

- ***Increases the state minimum wage*** over the next several years;
- Ensures employees receive the ***tips and service charges*** due;
- Requires employers to ***provide paid sick leave*** to employees beginning ***January 1, 2018***; and
- ***Protects employees from retaliation*** for the lawful use of any employee right set forth under the Minimum Wage Requirements and Labor Standards Act (***chapter 49.46 RCW***), including paid sick leave.



I-1433 Covered Employees

I-1433 was written into the existing Minimum Wage Act

Chapter 49.46 RCW Minimum Wage Requirements and Labor Standards

- **Workers** that are **exempt** from the definition of “employee” in the **Minimum Wage Requirements and Labor Standards Act** are also **exempt** from the **new paid sick leave requirements**.
 - See **RCW 49.46.010(3)(a)–(p) for a list of exemptions**.
- Examples of such workers include, but are not limited to: Any individual paid a certain salaried amount and employed in a bona fide executive, administrative, or professional capacity.
- Any individual whose duties require that he or she reside or sleep at the place of his or her employment.

Minimum Wage



Applies to employees in ***both agricultural and non-agricultural*** jobs, unless another exemption applies.



Although there are ***some exemptions***, most workers must be ***paid*** at least the ***minimum wage*** for ***all "hours worked"*** as required by state law.



Agreements may not be entered into, individually or collectively, between an employee and an employer that ***result*** in the ***employee receiving less than what is due*** under the ***Minimum Wage Requirements and Labor Standards Act*** (chapter ***49.46 RCW***), which includes minimum wage, overtime, and paid sick leave.



Future Minimum Wage Rates

The minimum wage will increase annually over the next several years:

Year	Rate (per hour)
2017	\$11.00 (already in effect)
2018	\$11.50
2019	\$12.00
2020	\$13.50
2021+	Calculated by L&I*



*Starting Jan. 1, 2021, and each January thereafter, the minimum wage will be tied to the rate of inflation (based on the Consumer Price Index for Urban Wage Earners and Clerical Workers), as calculated by L&I the previous September.

2017 Minimum Wage



Employers must pay employees **age 16 and older at least \$11 per hour.**



Employers may pay employees **under 16 years of age 85%** of the minimum wage (\$9.35 per hour in 2017).



Tips & Service Charges



Tips and service charges paid to an employee are in ***addition to***, and ***may not count towards***, the employee's hourly minimum wage.



Paid Sick Leave Accrual

WAC 296-128-620



Employees (including ***part-time, seasonal and temporary staff***) **accrue** paid sick leave for **ALL** hours worked (including overtime).



Employees are **eligible** to use their accrued paid sick leave beginning on the **90th calendar day** after the **start of their employment**.



An employee shall accrue **at least one hour** of paid sick leave for **every 40 hours worked**.



For each hour of paid sick leave used, an employee shall be **paid** their **normal hourly compensation**.

Paid Sick Leave Accrual

WAC 296-128-620

- An **employer may provide** an employee with a **more generous accrual rate** than one hour of paid sick leave for every 40 hours worked.
- For employees who are **employed on or before January 1, 2018**, paid sick leave will **accrue** for all hours worked **beginning on January 1, 2018**.
- Employees **hired after January 1, 2018**, begin **accruing** paid sick leave **upon the start** of their employment.

Paid Sick Leave Accrual

WAC 296-128-620



Employees accrue paid sick leave for ***all hours worked***. An employer ***may not cap*** an employee's accrual.



Accrued, unused paid sick leave balances of **40 hours or less** ***must carry over*** to the following year.

- The default accrual year is **January 1 – December 31**, but an employer may adopt a different **fixed consecutive twelve-month period** by an employer policy or collective bargaining agreement.



An employer ***may elect*** to provide employees with a **more generous carry over**.

Paid Sick Leave – Authorized Uses

Mental/physical illness, injury, or health condition*

Preventative medical care*

Treatment of a mental/physical illness, injury, or health condition*

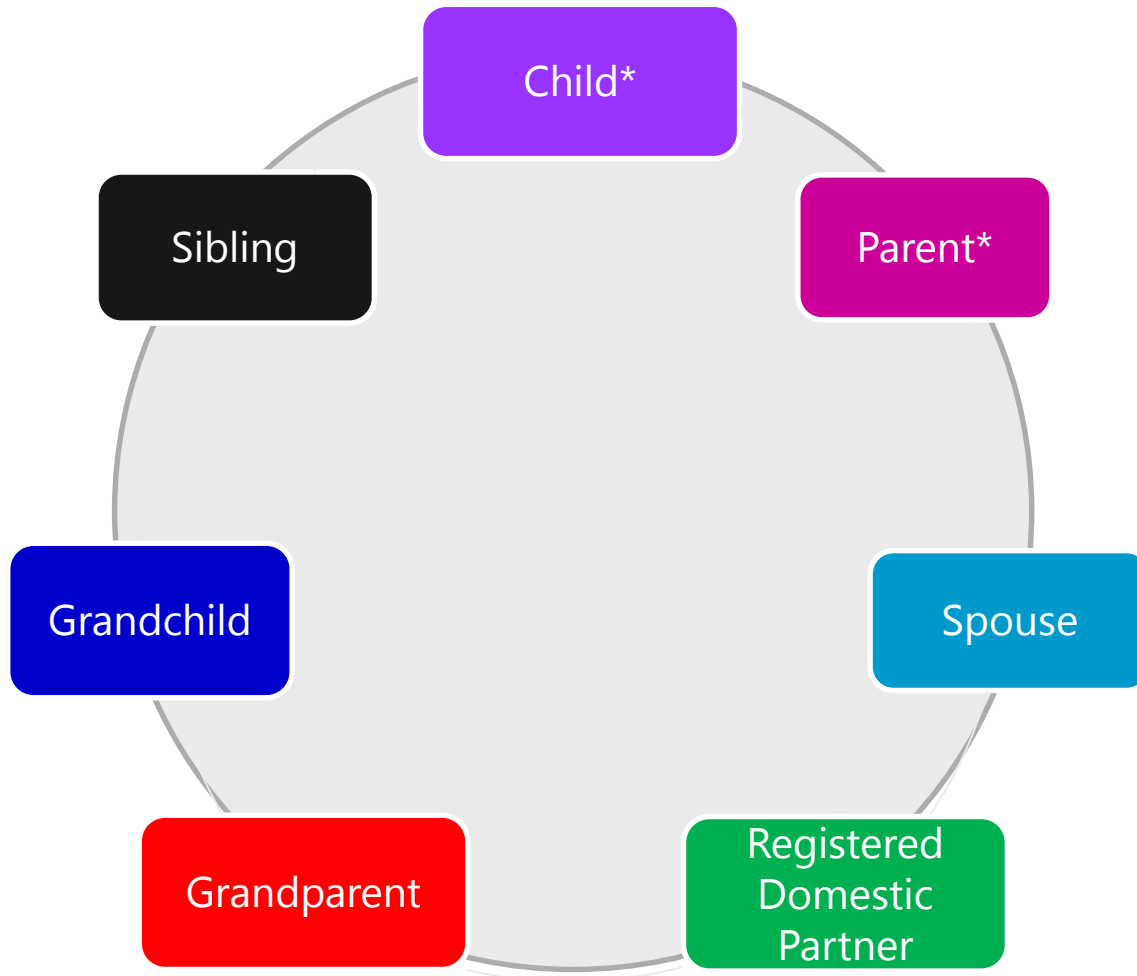
Employee's place of business closed by order of a public official for any health-related reason

Employee's child's school or place of care closed by order of a public official for any health-related reason

Absences that qualify for leave under WA's Domestic Violence Leave Act

*For both the employee and the employee's "family member," as defined at RCW 49.46.210(2).

Definition of “Family Member”



* Includes biological, adopted/adoptive, foster, de facto, step, in loco parentis, and legal guardian. See RCW 49.46.210(2) for detailed definitions.

Paid Sick Leave Usage

WAC 296-128-630



Beginning on the **90th calendar day** after the start of employment, employers ***must*** make accrued paid sick leave **available** to employees **for use** in a manner consistent with the employer's established payment interval or leave records management system, ***not to exceed one month after the date of accrual.***



Unless subject to a variance, employers must allow employees to **use** paid sick leave in ***increments consistent with*** the employer's ***payroll system*** and practices, ***not to exceed one hour.***

- ***Example:*** *If an employer's payroll system and practice is to track increments of work in 15 minute increments, then an employer must allow employees to use paid sick leave in 15-minute increments.*

Reasonable Notice

WAC 296-128-650



An **employer** may require employees to give **reasonable notice** of an absence from work for the use of paid sick leave for an authorized purpose.



Foreseeable (i.e. doctor's appointment) – **At least 10 days**, or as early as practicable, in advance of the use of paid sick leave (**employer can require less advance notice**).

Unforeseeable (emergency) – **As soon as possible** before the required start of the employee's shift, **unless it is not practicable to do so**.



Employers are required to: have a **written policy or collective bargaining agreement** in place prior to requiring reasonable notice; **notify** all **employees** of such policy; and make the policy **readily available** to all employees.

Verification for Absences Exceeding Three Days

WAC 296-128-660



For absences exceeding **three (3) days**, an employer may **require verification** that an employee's use of paid sick leave is for an authorized purpose.



Verification **may not** result in an **unreasonable burden or expense** on the employee.



Employers are required to: have a **written policy or collective bargaining agreement** in place prior to requiring verification; **notify** all employees of such policy; and make the policy **readily available** to all employees.

Rate of Pay

WAC 296-128-670



For ***each hour*** of paid sick leave used, an employee must be paid their ***normal hourly compensation***.



An employer must calculate an employee's normal hourly compensation using a ***reasonable calculation*** based on the hourly rate that an employee would have earned for the time during which the employee used paid sick leave.



An employer must apply a ***consistent methodology*** when calculating the normal hourly compensation of similarly-situated employees.

Paid Sick Leave - Rate of Pay

Example of a reasonable calculation of normal hourly compensation for an employee paid partially or wholly on a piece rate basis:

- **Dividing the total earnings by the total hours worked in the most recent workweek** in which the employee performed identical or substantially similar work to the work they would have performed had they not used paid sick leave.



Paid Sick Leave - Rate of Pay

Example of a reasonable calculation for an employee whose hourly rate of pay fluctuates:

- If the employer ***can identify*** the hourly rates of pay for which the employee was scheduled to work, **a calculation equal to the scheduled hourly rates of pay** the employee would have earned during the period in which paid sick leave is used.
- If the employer ***cannot identify*** the hourly rates of pay for which the employee would have earned if the employee worked, **a calculation based on the employee's average hourly rate of pay** in the current or preceding thirty (30) days, whichever is greater.



Paid Sick Leave – Payment of Overtime



For employees who use paid sick leave for hours that would have been overtime hours if worked, **employers are not required to apply overtime rates** to an employee's normal hourly compensation. Overtime (at least 1.5 x the employee's regular hourly rate) pay is required only for hours worked above 40 in a seven-day workweek.

Payment of Paid Sick Leave

WAC 296-128-680

- Unless verification for absences exceeding three days is required by an employer, the **employer must pay paid sick leave to an employee no later than the payday for the pay period** in which the **paid sick leave was used** by the employee.
- If **verification is required** by the employer, paid sick leave **must be paid to the employee no later than the payday for the pay period during which verification is provided** to the employer by the employee.

Separation & Reinstatement

WAC 296-128-690



If an **employee separates from employment**, an **employer is not required to provide financial or other reimbursement** to the employee for accrued, unused paid sick leave balances available at the time of separation.



If an **employer chooses to reimburse an employee** for any portion of their accrued, unused paid sick leave at the time the employee separates from employment, any such **terms for reimbursement must be mutually agreed upon in writing by both the employer and the employee**, unless the right to such reimbursement is set forth elsewhere in state law or through collective bargaining agreement.

Separation & Reinstatement

WAC 296-128-690



If an **employee is rehired** by the same employer **within 12 months** of separation, the **employer must reinstate** the employee's **previously accrued**, unused paid sick leave.



An **employer is not required** to **reinstate any hours** of paid sick leave previously provided to the employee through **financial or other reimbursement at the time of separation**, as long as the **value** of the paid sick leave was **paid at a rate** that was at least equal to the employee's normal hourly compensation.



Upon **rehire**, an **employer** must **provide notification** to the employee of the amount of **accrued**, unused paid sick leave **available for use** by the employee.

Paid Time Off (PTO) Programs

WAC 296-128-700

- **Paid time off** (PTO) provided to employees by an employer's PTO program (e.g., a program that combines vacation leave, sick leave, or other forms of leave into one pool), **satisfies the requirement** to provide paid sick leave if the PTO program **meets or exceeds the provisions of the paid sick leave law, and all applicable rules.**
- If an **employee chooses to use their PTO leave for purposes other than those authorized by the paid sick leave law**, and the **need for use of paid sick leave later arises when no PTO leave is available**, the **employer is not required to provide any additional PTO leave** to the employee.



Shared Leave

WAC 296-128-710

SHARED
LEAVE

An employer ***may establish*** a ***shared paid sick leave program*** where an employee may choose to donate paid sick leave to a co-worker.

Policy^{AV}
ProcedureST

Employers are required to: have a ***written policy or collective bargaining agreement*** in place prior to allowing an employee to donate or use shared paid sick leave; **notify** all employees of such policy; and make the **policy readily available** to all employees.

Shift Swapping

WAC 296-128-720

Upon mutual agreement by the employer and employee(s) involved, an **employee may work additional hours or shifts, or trade shifts** with another employee, in lieu of using available paid sick leave **for missed hours** or shifts that qualify for the use of paid sick leave.

An employer may **not require** that an employee search for or find a **replacement worker** to cover the hours during which the employee is using paid sick leave.



Frontloading

WAC 296-128-730



An employer may, but is *not required to*, **frontload** paid sick leave to an employee in **advance** of accrual.



If an **employer frontloads** paid sick leave, the employer must **ensure** that such frontloaded paid sick leave **complies** with the paid sick leave **requirements**, and all applicable rules.



Employers are required to: have a **written policy or collective bargaining agreement** in place prior to frontloading an employee paid sick leave; **notify** all employees of such policy; and make the **policy readily available** to all employees.

Third Party Administrators

WAC 296-128-740

- Employers ***may*** contract with a **third-party administrator** in order to administer the paid sick leave requirements.
- Employers are ***not relieved*** of their **obligations** under the paid sick leave law, and all applicable rules, if they elect to contract with a third-party administrator to administer paid sick leave requirements.

Employee Use of Paid Sick Leave for Unauthorized Purposes

WAC 296-128-750

Paid Sick Leave



If an **employer can demonstrate** that an employee's use of paid sick leave was for an ***unauthorized purpose***, the **employer may withhold payment** of paid sick leave for such hours, but ***may NOT*** subsequently **deduct** those **hours** from an employee's paid sick leave balance.

Paid Sick Leave



If an **employer withholds payment** for the unauthorized use of paid sick leave, the employer ***must provide notification*** to the employee.

Paid Sick Leave



If an **employer withholds payment** for the unauthorized use of paid sick leave, and ***an employee maintains*** that the use was for an authorized purpose, the employee may ***file a complaint with L&I***.

Employer Notification and Reporting

WAC 296-128-760

Employers must notify each employee of:

- Their **entitlement** to paid sick leave;
- The **rate** at which the employee will accrue paid sick leave;
- The **authorized** purposes for which paid sick leave may be used; and
- That **retaliation** by the employer for the employee's lawful use of paid sick leave and other rights provided under the Minimum Wage Requirements and Labor Standards Act, and all applicable rules, is prohibited.

Employers must provide such **notification** in **written** or **electronic** form, and must make this information **readily available** to all employees.

Employee	Notice Due to Employee
New – Hired on or after January 1, 2018	No later than the start of employment
Existing – Already working for employer prior to Jan. 1, 2018	No later than March 1, 2018

Employer Notification and Reporting

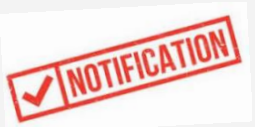
WAC 296-128-760

Not less than monthly, an employer must provide each **employee** with **notification** detailing:

- The **amount** of paid sick leave **accrued** since the last notification;
- The **amount** of paid sick leave **reduced** (through usage, donation, etc.) since the last notification; and
- The **total** amount of unused paid sick leave **available** for use.



Notification must be provided in **written** or **electronic** format.



Employers may **satisfy** the **notification** requirements by **providing** this information in **regular payroll statements**.

Recordkeeping

WAC 296-128-010 (Update to Existing WAC)





Updated Recordkeeping Requirements



Employers are required to keep and preserve payroll or other records containing the following information with respect to each employee covered by the Minimum Wage Requirements and Labor Standards Act:

- Paid sick leave **accruals** each month;
- Any unused paid sick leave **available**;
- Paid sick leave **reductions** each month (i.e., paid sick leave used, donated, or not carried over to the following year); and
- **Date of commencement** of the employee's employment.

Employee Rights *Highlights*

-  Entitled to use accrued paid sick leave beginning on the **90th calendar** day after start of their employment.
-  Use paid sick leave **without** being **required to find a replacement** for their shift.
-  **Carry over** to the following year of **accrued, unused** paid sick leave balances of **40 hours or less**.
-  Have accrued, unused paid sick leave **reinstated** if rehired by the same employer within **12 months of separation**.

Paid Sick Leave – Employer Rights



OK

Provide **more generous** paid sick leave policies, including a more generous **accrual rate** and **purposes for use**.

OK

An employer **may**, but is not required to, **frontload** paid sick leave to an employee in advance of accrual. Such frontloading must **meet or exceed** the **requirements** for paid sick leave, and **all applicable rules**.

OK

Employers **may contract with a third-party administrator (TPA)** in order to administer the paid sick leave requirements under the law, and all applicable rules. Employers are **not relieved of their obligations** under the paid sick leave law should they opt to contract with a TPA.

Employers May Not:



Interfere with, restrain, or deny the exercise of any employee right provided under or in connection with the Minimum Wage Requirements and Labor Standards Act .



Adopt or enforce any policy that counts the use of paid sick leave for an authorized purpose as ***an absence that may lead to or result*** in discipline against an employee.



Retaliate or discriminate against, or discipline an employee who uses accrued paid sick leave for ***authorized purposes***.

WAC 296-128-610 – Requirements for a Written Policy

- ❑ Where these rules set forth requirements for an employer to have a written policy (verification for absences exceeding three days, reasonable notice, frontloading, and shared leave), the department shall, in consultation with employee and employer representatives, develop sample policies which meet the department's standard for compliance with these rules.
- ❑ The department shall make such sample policies available on the department's website.



Paid Sick Leave Draft Sample Policies

To help employers implement the requirements set forth in the paid sick leave rules, and to help workers understand their rights, L&I wants your feedback on the draft sample policies and draft employee paid sick leave notification.

We are asking the public to review the draft sample policies and draft employee paid sick leave notification by November 21, 2017. When providing comments, please make reference to the policy title and WAC you are commenting on. The links to those drafts are located here.

[Employee Paid Sick Leave Notification](#)

[Paid Sick Leave Policy](#)

[Verification \(WAC 296-128-660\)](#)

[Frontloaded \(WAC 296-128-730\)](#)

[Reasonable Notice \(WAC 296-128-650\)](#)

[Shared Paid Sick Leave \(WAC 296-128-710\)](#)

Feedback can be submitted directly to this page via the “**Submit Comments**” tab, or using an attached document via the “**Upload Documents**” tab.

Feedback can also be submitted via the i1433rules@Lni.wa.gov (External link) email box. Feedback submitted to the email box will be uploaded to this engagement site.



Requirements for a
Written Policy
WAC 296-128-610

Check out our
Engagement Site

<https://lni.us.engagementhq.com/>

Submit your Comments

Extended Deadline:

November 21, 2017



- **October 17th:** The employee rights/employer requirements rules were filed with the Office of the Code Reviser.
- **December 19th: Enforcement** rule language will be **filed** with the Office of the Code Reviser.

Check out our website for updated information:

www.lni.wa.gov

UPDATE

Stay informed

by signing up for our **LISTSERV**:





Leave & Benefits

Leave from Work

- ▶ **Paid Sick Leave**
- ▶ Sick Family Members
- ▶ Pregnancy & Parental Leave
- ▶ Military Spouse Leave of Absence
- ▶ Domestic Violence Leave
- ▶ Leave for Certain Emergency Services Personnel
- ▶ Laws About Caring for Family

[Holiday, Vacation, Sick or Bereavement Leave](#)

[Pregnancy Accommodations](#)

[Health Benefits](#)

Employer Resource Center for Paid Sick Leave



IMPORTANT: Check out our [L&I Initiative 1433 Engagement Site](#) and participate in providing feedback on our [Paid Sick Leave Draft Sample Policies](#) before they become public!

Employer Guide to Implementing the New Paid Sick Leave Law

Paid Sick Leave Law Webinars



December 11, 2017

~~9:30am - 11:00am~~

~~12:00pm - 1:30pm~~

~~2:30pm - 4:00pm~~

5:30 – 7:00pm

December 18, 2017

~~9:30am - 11:00am~~

~~12:00pm - 1:30pm~~

~~2:30pm - 4:00pm~~

5:30 – 7:00pm

December 21, 2017

~~9:30am - 11:00am~~

12:00pm - 1:30pm

2:30pm - 4:00pm

5:30 – 7:00pm

January 2018

TBA

Website: <http://www.lni.wa.gov/workshops>

E-mail: LNITraining@lni.wa.gov

Call: Mandi Mackey (360) 902-5217

Thank you!

Contact Information:

Eva Coblentz – Paid Sick Leave Outreach Specialist
(360) 902-4776
Eva.Coblentz@lni.wa.gov

Contact the **Employment Standards Program**
Phone 1-866-219-7321 or
Email: esgeneral@lni.wa.gov

WSR 17-21-092 Permanent Rules L&I filed on Oct. 17th :
<http://lawfilesexternal.wa.gov/law/wsr/2017/21/17-21-092.htm>



Questions

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