

Washington State Paid Sick Leave Law, effective January 1, 2018

FAQ's

Background:

In November 2016, Initiative 1433 was passed by Washington voters and included in Chapter [49.46 RCW](#) *Minimum Wage Requirements and Labor Standards*. It increases the minimum wage, requires employers to allocate tips and service charges to appropriate employees where applicable, prohibits retaliation and requires employers to provide their employees with paid sick and safe leave beginning January 1, 2018. This FAQ is related to the requirements under the paid sick leave portion of this new state law.

1. As an employer, what are my minimum requirements under this new law?

In general, you are required to provide eligible employees with paid sick leave to be used for sick and safe reasons, that equates to at least one hour of paid sick leave for every 40 hours worked. Your paid sick leave policy must allow for accrued paid sick leave to be carried over into the next accrual year at a minimum of 40 hours. Accruals start on the first day of employment (or if already employed, on January 1, 2018), and employees are eligible to use accrued paid sick leave on their 90th day of employment. Also, this new law does not allow an employer to cap the amount of paid sick leave accrued or used within the year.

You are required to have a written policy including the specific provisions of the leave, how time accrues and is paid, and retaliation language.

You are required to provide notification to your employees regarding the law. You must notify your new employees hired after January 1, 2018 of the policy on their first day of employment. You must notify existing employees of the policy by March 1, 2018. We recommend notifying all as of January 1, 2018 and having them sign an acknowledgement that they received this notice.

2. Who is eligible for the new paid sick leave?

This law only requires an employer to provide paid sick leave to non-exempt regular, full-time, part-time, seasonal and temporary employees. Employers are not required to give exempt employees paid sick leave.

Note: This is one of the areas Seattle's Paid Sick and Safe Leave Ordinance differs from the new paid sick leave requirements. See the chart at the end of the FAQs for more details.

3. How much paid sick leave are we required to provide to eligible employees?

Eligible employees must accrue paid sick leave at a minimum rate of 1 hour for every 40 hours worked. The law does allow you to be more generous.



4. When do I need to start accruing sick leave for employees?

For employees already employed as of January 1, 2018, paid sick leave accrual should begin no later than January 1, 2018. For employees hired after the law goes into effect, it begins on their first day of employment.

5. When can an employee begin using their accrued paid sick leave?

You must allow employees to begin using their accrued paid sick leave on their 90th day of employment. 90th day of employment is counted by calendar days from their first day of work or their start date, forward. You may have a policy that allows employees to begin using their accrued paid sick leave earlier than their 90th day of employment.

6. Can I require my employees to take time off in 4 hour increments?

No. Employees may take the time in less than 1 hour increments. When your employees clock in and out, whatever minute you round to is the amount of time that they can take the leave. For instance, if you round to the nearest 15 minutes, then they can take the time in 15 minute increments. If you round to the nearest 5 minutes then they can take the time in 5 minute increments.

7. Do I track accrual on a calendar year or service anniversary year?

The law states that if you use a paid sick leave accrual year that is different than a calendar year, you must ensure that is noted and communicated to employees in your paid sick leave policy.

We recommend that you use a calendar year for your designated paid sick leave usage year.

8. Why do I have to establish a paid sick leave usage year?

The law states that at a minimum, employees are allowed to carryover up to 40 hours into the following year. It is easiest to track this “year” is by using a calendar year. For example, if an employee has 30 hours of accrued paid sick leave available on December 31, 2018, that unused time must be carried over, and be available for the employee to use in 2019.

You may allow employees to carry over more than 40 hours into the next year.

9. For what reasons are employees allowed to use paid sick and safe leave?

You must allow employees to use paid sick leave for the following sick and safe reasons:

- To care for themselves or their family members.
- When the employees’ workplace or their child’s school or place of care has been closed by a public official for any health-related reason.
- For absences that qualify for leave under the state's Domestic Violence Leave Act.

You can allow employees to use paid sick leave for additional purposes, such as vacations, religious holidays or other personal reasons; however, you should include written notes regarding this use.

10. If I allow employees to use paid sick leave for reasons other than sick and safe reasons, such as for vacation, and they use all of their paid sick leave for a vacation, do I have to provide additional paid sick time if they then call in sick?

No. If you allow employees to use paid sick leave for reasons other than those outlined in the law (safe and sick), it is up to the employee to determine how the time is used. As the employer, you are not required to give employees additional paid sick time if they exhaust their accruals.

We recommend that if you do allow employees to use paid sick leave for reasons other than safe and sick reasons, you document and keep record of those absences accordingly. If there is ever a question about how an employee used that time, having documentation will provide you with the record of how time was used. JB Consulting Systems has developed a Time Off Request Form that allows the employee to request the time off and document whether the use is for safe and sick reasons, or other reasons. Click on this link <http://jbconsultingsystems.com/forms/> for more information.

11. Can I require an employee to substantiate or prove their need for paid sick leave, such as require a doctor's note?

For absences of more than 3 consecutively scheduled days, you may require an employee to provide certification from a healthcare provider to substantiate the need and eligibility for the paid sick leave usage. However, that must be stated in your policy. The law may allow for another type of verification if the request may be a financial hardship to the employee.

12. Are there any requirements for letting employees know what their accrued sick leave is?

Yes, the law requires employers to notify employees of their accrued paid sick leave balances at least monthly if not per pay period. The notification must include the following:

- Accrued paid sick leave since the last notification
- Used paid sick leave since the last notification
- Current balance of paid sick leave available for use

Ideally, your payroll system will allow this information to be on the payroll check stub. An email or paper statement distributed to eligible employees with this information, or electronic access to this balance, will also meet the compliance requirements.

13. If an employee terminates, am I required to pay out their accrued paid sick leave balance?

No. The law does not require you to pay out any unused accrued paid sick leave that an employee has at the time of termination. Review your written policy to be sure it does not say that you will pay it out. However, you can choose to pay it out, as well as put parameters around when you will pay it out in your policy. An example would be the employee must provide at least a two week notice to be eligible to receive all or a portion of their accrued paid sick leave paid out, etc.

If you don't pay out paid sick leave, you must reinstate an employee's paid sick leave balance if they are rehired within 12-months of their termination/separation date. Only time accrued and not paid out at the time of termination/separation must be reinstated and available to the rehired employee.

14. Can I discipline an employee for excessive use of paid sick leave?

No. Safe and sick leave taken under this law is considered protected and you cannot take adverse action against an employee for absences that qualify under this law.

If you allow employees to use paid sick leave for reasons other than safe and sick, as required under this law, you will want to have a clear record of when the time is being used for safe and sick, versus other personal reasons. If an employee is using paid sick leave and taking excessive time off related to personal reasons other than safe and sick under the law, you can discipline the employee under your attendance policy. Caution – you must have clear documentation that outlines when the time is safe and sick, when it is pre-approved, such as a vacation, and when it is for other unplanned personal usage, such as car trouble. We have a Time Off Request Form available for purchase that allows for documenting those various situations.

15. Can I require an employee to use paid sick leave for safe and sick reasons?

You can require an employee to use paid sick leave for all sick reasons but the law does not allow you to require that safe and sick usage be used for absences related to domestic violence, i.e., safe reasons. The employee can request that time to be unpaid and it would still be protected time off.

16. If I have a PTO plan, will that comply with this new law?

If your PTO plan has an accrual rate that is equivalent or greater to the required accrual method of 1 hour for every 40 hours worked, and includes all of the other requirements outlined under the law, then yes, with some added compliance language, your PTO plan would likely be compliant.

17. When an employee uses their paid sick time, what rate do I have to pay them?

Paid sick leave must be paid to employees at their normal hourly compensation.

18. Some jobs require that we pay prevailing wage. When an employee calls in sick when they are going on a prevailing wage job, what rate do I have to pay?

You need to pay the rate of pay that would apply to the job for which they were scheduled when they call in sick. If they were scheduled for a prevailing wage job, you would pay them the prevailing wage rate.

19. I have commissioned employees, how are they paid when they use paid sick time?

To determine their hourly rate, use the average of what the individual has made over the 90 days prior to using the paid sick leave. To calculate their hourly rate, add the total earnings over the past 90 days and divide that by the number of hours worked. That is the hourly rate used to pay the person for their paid sick leave usage. Remember, each time the person uses paid sick leave; you will need to perform this same look-back calculation to determine the correct rate of pay.



20. I have employees that are paid on piece-rate. What hourly rate do I use when a piece-rate compensated employee uses paid sick leave?

Similar to employees paid on commission, you need to determine the hourly rate by taking an average of the piece-rate paid to the employee (total earnings) over the 90 days prior to the paid sick leave time usage. That is the hourly rate used for to pay the person for this paid sick leave usage.

21. I have employees that reside in another state but may do jobs or work periodically in Washington. Do I have to give them paid sick leave under this law?

Yes. Similar to other employment laws, when an employee is working in another location, you must follow any employment laws that are in effect where the work is performed.

For example, if your company is in Idaho, but you send employees to Washington to work on different jobs, employees would be eligible to accrue paid sick leave for hours worked in Washington State.

22. I have a union contract, does this law affect me?

Yes. If your union contract does not include Paid Sick and Safe Leave or include provisions that allow employees to use vacation or other time off for sick and safe leave, then you will need to meet the requirements of this law or re-negotiate your contract. We recommend contacting your attorney to ensure that the wording in your union contract will comply.

23. What requirements do I have under this law related to payroll?

You 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. The only exception is if you request verification for the absence that exceeded three days. However, if you are going to ask for verification of the absence, you must state in your policy that you may ask for that verification.

If you require the verification, paid sick leave must be paid to the employee no later than the payday for the pay period during which the verification (note from the doctor) is provided to you by the employee.

You must also retain the following in your payroll records:

- Paid sick leave accruals each month, and any unused paid sick leave available for use by an employee;
- Paid sick leave reductions each month including, but not limited to:
 - paid sick leave used by an employee;
 - paid sick leave donated to a co-worker through a shared leave program;
 - paid sick leave carried over to the following year
- Employee's date of hire

24. Since this is a new Washington State law, is there a new poster that is required to be displayed in the workplace?

Yes. The new “Your Rights as a Worker” is available for download and printing at <http://www.lni.wa.gov/IPUB/700-074-909.pdf>

25. How does this new paid sick leave law affect the Seattle Paid Sick and Safe Time Ordinance?

Seattle updated the Paid Sick and Safe Time Ordinance in late December, 2017, to better align with the new Washington State law. The main differences that still exist include:

	WA State Paid Sick Leave (PSL)	Seattle’s Paid Sick & Safe Time (PSST) Ordinance
Eligibility	<p>Non-Exempt, Full-Time, Part-Time and Seasonal/Temporary Employees.</p> <p>Employees classified as Exempt under the WA State hourly exemption rules are not required to be eligible for paid sick leave.</p>	<p>All employees, exempt, non-exempt, full or part-time, regular and/or seasonal /temporary are eligible for accrued time.</p>
Increments of Use	<p>Employers must permit eligible employees to use PSL in the same increments as time worked is recorded. If time worked is recorded and paid in minute increments, employees must be permitted to use PSL in minutes.</p>	<p>For hourly, non-exempt employees, employers must permit use of PSST in the smaller of hourly increments or, if feasible by the employer's payroll system, increments that round to the nearest quarter of an hour (i.e. 15 minutes).</p> <p>For overtime exempt employees, employers may permit use of PSST in accordance with state and federal wage and hour laws.</p>
Accrual	<p>1 hour for every 40 hours worked.</p>	<p>For all employers with 249 or less Full Time Equivalents (FTE’s) worldwide, the accrual is 1 hour for every 40 hours worked.</p> <p>For large employers, defined as having 250 or more FTE’s, the accrual is 1 hour for ever 30 hours worked.</p>



Carry Over	Must allow up to 40 hours of PSL to be carried over into the next year.	For employers with 49 or fewer FTE's worldwide, must allow up to 40 hours to be carried over into the next year. Employers with 50 – 249 FTE's worldwide, must allow for up to 56 hours of time to be carried over into the next year. Employers with 250 or more FTE's must allow for up to 72 hours of time carried over into the next year. If the employer uses a PTO policy for payment of PSST, the carryover must be up to 108 hours into the next calendar year.
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Still have questions? Contact us for more help or to create a customized policy that meets the needs of your organization and complies with these new laws. <http://jbconsultingsystems.com/>

Disclaimer: Please note that this FAQ is our interpretation of the requirements of the law and was designed to assist our employer clients in navigating best practices in managing the requirements of I1433 as of December 21, 2018. In cases where the law and guidelines from L&I may be contradictory, you should follow the law and guidelines from L&I. You may also call L&I to obtain an opinion.