

## Legal Alert

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Richard K. Mahrle  
[rmahrle@gblaw.com](mailto:rmahrle@gblaw.com)  
602-256-4433

### **THE NEW MINIMUM WAGE LAW AND PAID SICK TIME REQUIREMENT**

Now that attempts to have the voter approved initiative that increased the minimum wage scuttled by the courts have failed, it is time for employers to start thinking about how to implement that part of the initiative that affects paid sick time.

All employers in the State of Arizona, except for Flagstaff—which has an even higher minimum wage—should have been paying employees no less than \$10 an hour since the January 1, 2017. However, it escaped the notice of many that the minimum wage initiative also contains a provision mandating that employers provide all employees, including part time workers, paid sick time. This provision of the new law goes into effect on July 1<sup>st</sup>.

What does the law require? It sets a minimum standard for paid sick time that each employer has to provide. Please note that the law does not require that an employer move any current policy that is more generous down to the statutory standard. The law just sets the minimum that must be provided.

First, for all employers, employees accrue one hour of paid sick time for each 30 hours they work. So, an employee who works 40 hours a week would accrue four hours of paid sick time every three weeks. [3 weeks at 40 hours a week equals 120 hours, divided by 30 gives you 4 hours of accrued paid sick time.] For salaried employees who are exempt from overtime, the law assumes they work 40 hours a week even if they often work more than that. However, if a salaried employee works only 30 hours a week, then you can use the actual hours worked as the basis for determining the accrual. Keep in mind that part time workers accrue paid sick time, even if they work only a few hours a week. The employer has to provide periodic reports to the employee about the number of hours of paid sick time they have accrued and the number they have used. The best practice may be to have this information provided with the employee's pay check.

The statute also allows employers to put a cap on the number of hours of paid sick time that they must pay for in a year. For employers with 15 or more employees, the employer can cap the number of hours used at 40 per year, even if the worker accrues more than that during the course of the year. Employers with less than 15 employees can cap the use of paid sick time at 24 hours per year. The employer can choose what constitutes the year but that needs to be consistently applied for each employee.

There is no requirement that employees who earn paid sick time and do not use it must be paid for that unused paid sick time. The law is very specific on that point. However, the employer must allow the employee to carry over into the next year the unused accrued sick time.

The statute as drafted has some cracks and holes that need to be filled. For example, how many carry over accrued and unused paid sick time hours must an employer carry on its books? What is the paid sick time rate of pay for employees who have fluctuating duties resulting in different rates of pay, or workers who get paid in tips, or how do you deal with piece rate work? In theory, the state industrial commission is supposed to be drafting rules to deal with some of these uncertainties.

Employers also need to decide whether they should abandon the "modern" trend of just granting employees a number of days of paid time off. This PTO is usually not called sick leave, or vacation, or mental health days. Instead, it is just paid time off. Can you still do that when the employer has to provide a minimum number of paid sick days that are called just that?

The paid sick time statute also has provisions about how employees are to provide notice of the need for paid sick time, what documentation the employer can require the employee to provide, and provisions prohibiting retaliation against an employee for using paid sick time.

The key for employers is to get in front of this now. July 1<sup>st</sup> will be here before we know it. You should contact employment counsel soon to start looking at what modifications you need to make to your current policy or get a paid sick time policy in place soon.

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