

# Advisory

LABOR, EMPLOYMENT AND BENEFITS PRACTICE GROUP | JUNE 2011

WIGGIN AND DANA  
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## *Legislative Alert - Connecticut's Recently Enacted Paid Sick Leave Law*

The Connecticut legislature recently approved a landmark law, made effective January 1, 2012, requiring certain employers to provide five days of paid sick leave to eligible employees. The full content of the bill entitled "An Act Mandating Employers Provide Paid Sick Leave to Employees" may be accessed at <http://www.cga.ct.gov/2011/ACT/PA/2011PA-00052-R00SB-00913-PA.htm>

### COVERED EMPLOYERS

All employers who employ 50 or more employees in the state in any quarter in the previous year, determined on January 1st annually, are covered, with the exception of manufacturers and nationally chartered nonprofit organizations providing recreation, child care *and* education services. The manufacturer exception applies to any "business establishment classified in Section 31, 32 or 33 of the North American Industrial Classification System," which encompasses virtually every type of manufacturing operation.

### ELIGIBLE EMPLOYEES

The Act applies to "Service Workers" who are paid hourly or are non-exempt, and who primarily work in one of the 68 specific occupations listed in the Act, as defined by the federal Labor Bureau's Standard Occupational Classification System. The Act encompasses a broad range of eligible service-related occupations. For a specific description of each of the listed occupational codes, please check the following link: [http://www.bls.gov/soc/major\\_groups.htm](http://www.bls.gov/soc/major_groups.htm). Day or temporary workers are excluded.

### PAID SICK LEAVE ENTITLEMENT

Eligible employees are entitled to accrue one hour of paid sick leave time for every 40 hours worked beginning January 1, 2012, or on their date of hire if they are hired after that date. The paid sick leave days accrue in one hour increments up to a maximum of 40 hours per calendar year, and employees are allowed to carry over up to 40 hours of leave into the next calendar year, but cannot use more than 40 hours in a calendar year. Accruals commence on January 1, 2012 unless an employer agrees to an earlier date.

An employee is entitled to use his/her accrued sick leave days, after he/she completes 680 hours of employment, and works an average of at least 10 hours of work per week for the employer in the most recently completed calendar quarter.

An employer must pay each employee for sick leave days at the greater of the normal hourly wage of the employee or the minimum wage in effect when the employee took the sick leave. For those employees whose hourly wage varies depending on the work performed, the "normal hourly wage" is the employee's average hourly wage in the pay period prior to the one in which he/she used the sick leave. Employers need not pay employees for accrued but unused sick pay upon termination of employment, unless otherwise provided by the employer's policies or a collective bargaining agreement.

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The statute authorizes employees to use paid sick leave days for the following: (1) an illness, injury or health condition of the employee or his/her spouse or child; (2) the medical diagnosis, care or treatment of a physical or mental illness of an employee or his/her spouse or child; (3) the preventive medical care for an employee or his/her spouse or child; or (4) the medical care or psychological or other counseling for an employee who is a victim of family violence or sexual assault.

The law authorizes employers to require advance notice of up to seven days for paid sick leave that is foreseeable. For sick leave that is unforeseeable, the employer may require advance notice "as soon as practicable." It is unclear how "as soon as practicable" will be interpreted. If the employee uses three or more consecutive paid sick leave days, the employer can also require "reasonable documentation" to validate that the leave is being used for a proper purpose. Signed documentation by a health care provider who is treating either the employee or his/her covered family member indicating the number of days needed for the leave suffices as "reasonable documentation" for validating purposes.

Employers who provide programs that already offer forms of paid leave, such as paid vacation, personal days or paid time off, will be deemed in compliance if those programs include pay for sick time off, as well as provide overall benefits which, at a minimum, encompass the statutory terms. Such policies may provide more sick leave than the Act requires and may also allow employees to donate unused accrued sick leave to other covered employees. If the policy provides more leave sick than required, the employer may limit the amount of such leave the employee may use for other purposes.

### RETALIATION PROHIBITED

Employers are prohibited from retaliating against any employee for requesting and/or utilizing his/her sick leave entitlement under the Act or the employer's paid sick leave policy. It is unclear whether retaliation includes penalization for violations of rights granted under an employer's policy beyond the rights granted by the Act. Retaliation can be addressed by the filing of a complaint with the Labor Commissioner, and aggrieved employees can seek a variety of remedies, including reinstatement, back wages, and recovery of lost benefits. The Act does not prohibit an employer from disciplining an employee for using paid sick leave for unauthorized purposes.

### REQUIRED NOTICES BY EMPLOYERS

At the time of hire, employers are required to provide notice to each worker regarding his/her right to paid sick leave, as well as the terms governing that entitlement, the anti-retaliation provisions, and the employee's right to file a complaint with the Labor Commissioner for any violation. Employers are further required to post notices in English and Spanish in a conspicuous place accessible to employees.

### PENALTIES FOR VIOLATIONS

In addition to the remedies noted above, employers found in violation of the general provisions of the act can be fined a civil penalty of *up to* \$100 per such violation, and \$500 per violation if such violation involves the anti-retaliation provisions of the Act.

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RECOMMENDATIONS FOR EMPLOYERS

Covered employers should promptly review and revise human resources policies, including any existing PTO policies, to ensure compliance. Such a review should encompass all job descriptions to confirm whether, and which, positions fall within the broad statutory definition of “service workers.” Finally, employers should commence drafting all applicable notices, and obtain all required postings.

We will keep you posted as we expect interpretive regulations to follow.

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