



## **Washington State Department of Labor & Industries Fraud Prevention & Labor Standards Division Employment Standards Program Paid Sick Leave General FAQ**

### **Purpose of this Document**

The intention of this document is to help provide guidance on frequently asked questions (FAQ) about the Washington (WA) State Paid Sick Leave requirements. This document is strictly for educational purposes and is not intended to substitute for or replace professional legal counsel. The answers provided below may be subject to change depending on specific circumstances. For more information on the sources referenced in this document, please click on the hyperlinks provided below.

### **Paid Sick Leave Law Effective Date**

**When does the paid sick leave law take effect?**

The paid sick leave law and all applicable rules go into effect on **January 1, 2018**.

### **Employers Who are Required to Provide Paid Sick Leave**

**Are all employers required to provide paid sick leave?**

Yes. Almost all employers must provide paid sick leave to their employees, unless the employer only has workers who are exempt from [Chapter 49.46 RCW – Minimum Wage Act](#), which includes the paid sick leave requirements.

### **Employees Who are Eligible for Paid Sick Leave**

**Are all employees eligible for paid sick leave?**

Yes. All workers who meet the definition of “employee” as defined in **Chapter 49.46 RCW – Minimum Wage Act** are eligible to receive paid sick leave. However, some workers may not be eligible because of their job duties and requirements. If a worker is exempt under the definition of employee as listed under **Chapter 49.46 RCW**, then the worker would be exempt from eligibility to receive paid sick

leave. An example of an exemption is any individual employed in a bona fide executive, administrative, professional, or outside sales capacity. Exemptions to the paid sick leave law are fact specific. For more information on exemptions to the paid sick leave law, please see [ES.A.1 – Employment Standards Administrative Policy – Minimum Wage Act Applicability](#) and [RCW 49.46.010\(3\)\(a\)-\(p\)](#).

### **Are there any other exemptions from the requirement to provide paid sick leave?**

The following circumstances are some examples of other frequently-asked about scenarios that **do not** have a blanket exemption from the paid sick leave requirements:

- Small businesses or employers with few employees
- An employee’s employment status (e.g., part-time, full-time, seasonal, temporary, etc.)
- Student workers
- Substitute teachers
- Collective Bargaining Agreements (CBA) which waive workers’ rights or entitlements listed under **Chapter 49.46 RCW**. Please see the **Paid Sick Leave & Collective Bargaining Agreements** section for more information.

## **Paid Sick Leave Accrual**

### **When do employees begin accruing paid sick leave?**

All employees begin accruing paid sick leave for all “hours worked” effective on January 1, 2018.

### **What is the required accrual rate for paid sick leave?**

All employees must accrue at least one hour of paid sick leave for every 40 hours worked.

### **What is the definition of “hours worked”?**

**Hours worked** is defined as “all hours during which the employee is authorized or required by the employer to be on duty on the employer's premises or at a prescribed work place.” For more information about hours worked, please see [ES.C.2 – Employment Standards Administrative Policy – Hours Worked](#) and [WAC 296-126-002](#).

### **Do employees accrue paid sick leave for overtime hours?**

Yes. Overtime (OT) hours are considered hours worked, and must be taken into account for the purposes of paid sick leave accrual.

**Is there a set time frame in which employees must perform work to accrue paid sick leave? For example, an employee works less than 40 hours in a week, so they do not accrue one hour of paid sick leave because they did not work 40 hours. Is the employee’s hours worked forfeited for accrual purposes because they did not work 40 hours in that week?**

No. Paid sick leave accrues continuously based on all hours worked. There is no set time frame (e.g., daily, weekly, monthly, etc.) for which hours worked need to be performed to accrue paid sick leave.

**Example:** A part-time employee works 30 hours in a week. The employee does not accrue one hour of paid sick leave for that time because they did not work 40 hours. However, the hours worked must still be counted for paid sick leave accrual purposes. The employee works 15 hours of work the following week. The employee would accrue one hour of paid sick leave because they reached 40 hours worked.

The five additional hours of work must still be counted for paid sick leave accrual purposes. When the employee has worked an additional 35 hours, regardless of when the work is performed, that employee would accrue one hour of paid sick leave.

**Do employees accrue paid sick leave for hours when they are using leave? For example, would an employee accrue paid sick leave while using paid sick leave?**

No. Employers are not required to allow employees to accrue paid sick leave for hours paid when not working. Employees only accrue paid sick leave for hours worked.

**Example:** Employers are not required to allow employees to accrue paid sick leave during vacation, paid time off (PTO), or while using paid sick leave.

**Is there a cap for paid sick leave accrual?**

No. There is no cap for paid sick leave accrual. Employees must accrue paid sick leave for all hours worked. However, an employer is not required to allow an employee to carry over more than 40 hours of paid sick leave into the following year. See the Paid Sick Leave Carryover section below.

**May employers define “year” for accrual and carryover purposes?**

Yes. An employer may define “year” for paid sick leave accrual and carryover purposes. The default definition of year is “calendar year”, unless defined by the employer.

A **year** may be defined as a “calendar year, fiscal year, benefit year, employment year, or any other fixed consecutive twelve-month period established by an employer policy or a CBA, and used in the ordinary course of the employer’s business for the purpose of calculating wages and benefits.” – [WAC 296-128-620\(6\)](#)

## **Paid Sick Leave Usage**

**When is an employee eligible to use their accrued paid sick leave?**

An employee is eligible to use their accrued paid sick leave beginning on the 90th calendar day of their employment.

**Note:** For employee eligibility for the use of paid sick leave, it is based on calendar days, not work days.

### **When can employees hired before January 1, 2018 use paid sick leave?**

Employees who have 90 calendar days of employment prior to January 1, 2018 will be eligible to use their paid sick leave once they have accrued it and it is available.

For employees hired before January 1, 2018 who did not reach the 90th calendar day of their employment, their previous calendar days of employment prior to the law taking effect must be counted towards their eligibility for the use of paid sick leave.

**Example:** An employee has 60 calendar days of employment before January 1, 2018. When the law takes effect, the employee would only need an additional 30 calendar days of employment before they are eligible to use their accrued, available paid sick leave.

### **What are the authorized purposes for which an employee can use their accrued paid sick leave?**

An employee may use their accrued paid sick leave for the following purposes:

1. **To care for themselves or a family member** for the following reasons: mental or physical illness, injury, or health condition; to accommodate the employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or an employee's need for preventive medical care.
2. **An employee's place of business, or their child's school, or place of care** has been closed by order of a public official for any health-related reason.

**Note:** A closure due to weather conditions does not count as an authorized purpose for the usage of paid sick leave.

3. An employee who qualifies for leave under [Chapter 49.76 RCW – Domestic Violence Leave Act](#).

### **What is the definition of a “family member”?**

**Family member** is defined as:

1. **A child** including: a biological, adopted, or foster child, stepchild, or a child to whom the employee stands in loco parentis, is a legal guardian, or is a de facto parent, regardless of age or dependency status.

2. **A parent** including: a biological, adoptive, de facto, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child.

3. **A spouse**
4. **A registered domestic partner**
5. **A grandparent**
6. **A grandchild**
7. **A sibling**

**In what increments may employees use paid sick leave?**

Employers must allow employees to use paid sick leave in increments consistent with the employer’s payroll system and practices for tracking compensation, but not to exceed one hour.

**Example:** If an employer’s normal practice is to track increments of work for the purposes of compensation in 15-minute increments, then an employer must allow employees to use paid sick leave in 15-minute increments.

**Is there a cap for the amount of paid sick leave an employee can use?**

No. There is no cap for the amount of paid sick leave an employee can use. As long as an employee has available, accrued paid sick leave, the employee must be allowed to use their leave for an authorized purpose listed above.

## **Rate of Pay for Employees Using Paid Sick Leave**

**What is the rate of pay that employers are required to provide employees using paid sick leave?**

Employers must provide employees using paid sick leave with their “normal hourly compensation”.

**What is the definition of “normal hourly compensation”?**

**Normal hourly compensation** is defined as “the hourly rate that an employee would have earned for the time during which the employee used paid sick leave.” – [WAC 296-128-600\(10\)](#)

**Note:** For employees who use paid sick leave for hours that would have been OT hours if worked, employers are not required to apply OT standards to their normal hourly compensation. In addition, normal hourly compensation does not include tips, gratuities, service charges, holiday pay, or other premium rates, unless the employer or a CBA allows for it.

**How does an employer calculate normal hourly compensation for employees who are not paid an hourly rate?**

For employees using paid sick leave that are paid other than an hourly rate, employers must apply a reasonable calculation to determine the normal hourly compensation for their employees. Such a

calculation must be applied to consistently to all employee of similar status. The Department offers examples of reasonable calculations for determining the rate of pay for employees using paid sick leave that are paid other than an hourly rate under [WAC 296-128-670\(2\)\(a\)-\(d\)](#).

**Example:** For an employee paid partially or wholly on a commission basis, the employer would want to divide the employee's total earnings by the total hours worked in the full pay periods in the prior 90 days of employment.

## **Paid Sick Leave Carryover**

### **What is the carryover requirement for employees with unused paid sick leave at the end of a year?**

Employers must allow employees with 40 hours or less of unused, accrued paid sick leave to carry over their unused paid sick leave into the following year.

**Example:** An employee accrues and does not use 52 hours of paid sick leave in 2018. The employer caps the employee's carryover of unused, accrued paid sick leave at 40 hours. The employee begins 2019 with 40 hours of paid sick leave. During 2019, the employee accrues 52 hours of paid sick leave in addition to the unused paid sick leave carried over from 2018. If the employee does not use any paid sick leave in 2019, then at the end of 2019 the employee would have a balance of paid sick leave of 92 hours. The employer can choose to cap the employee's carryover of unused, accrued Paid Sick Leave at 40 hours at the end of 2019. If the employer chooses to cap the employee's carryover, the employee would begin 2020 with 40 hours of paid sick leave.

### **Do employees accrue additional paid sick leave if they carried over unused paid sick leave from the prior year?**

Yes. Accrual of paid sick leave in the following year is in addition to the carried over paid sick leave hours from the previous year.

**Example:** An employee carries over 40 hours of unused paid sick leave into 2019 from 2018. During the first week of 2019, the employee accrues one hour of paid sick leave. The one hour of paid sick leave is in addition to the 40 hours of unused paid sick leave carried over from 2018. This means that the employee would have a balance of 41 hours of paid sick leave.

**Note:** An employer *may* define year for paid sick leave accrual and carryover purposes. Please see the **Paid Sick Leave Accrual** section for more information.

## **Frontloading Paid Sick Leave**

### **May employers frontload paid sick leave?**

Yes. Employers *may choose* to frontload paid sick leave.

### **What are the requirements for an employer who chooses to frontload paid sick leave?**

For employers who *choose* to frontload paid sick leave to their employees, they must ensure that the frontloaded paid sick leave covers the hours of paid sick leave that their employees are projected to accrue. Frontloaded programs or policies must also be created through a written policy or a CBA addressing the requirements for the use of frontloaded paid sick leave. In addition, frontloaded programs or policies must meet or exceed all requirements of the law.

**What happens if an employer does not frontload enough paid sick leave?**

If an employer *chooses* to frontload paid sick leave to an employee, but the frontloaded paid sick leave is less than the amount the employee was entitled to accrue, the employer must correct the difference no later than 30 days after identifying the discrepancy.

**Can an employer request reimbursement from an employee during on-going employment if the employee uses more frontloaded paid sick leave than what they would have accrued?**

No. If an employer *chooses* to frontload paid sick leave to an employee and an employee uses more frontloaded paid sick leave than what they would have accrued, the employer is not allowed to seek reimbursement from the employee during the course of ongoing employment.

**Can an employer request reimbursement from an employee for using more paid sick leave than what they would have accrued and a separation of employment occurs?**

Yes. If an employee uses more frontloaded paid sick leave than what they would have accrued and there is a separation of employment, an employer *may* deduct from the employee's final wages if a policy or agreement was established prior to allowing for such a deduction. Deductions from an employee's final wages also need to meet the requirements of [RCW 49.48.010](#) and [WAC 296-126-025](#).

**If an employer chooses to frontload paid sick leave, are they required to allow an employee to carry over 40 hours or less of unused paid sick leave?**

Yes. Employers who *choose* to frontload paid sick leave are not relieved of the paid sick leave carryover provision.

## **Paid Sick Leave in the Form of Paid Time Off**

**May employers provide paid sick leave in the form of a paid time off program or policy?**

Yes. An employer *may choose* to provide paid sick leave in the form of a paid time off (PTO) program or policy.

**Note:** A **PTO program or policy** means a program or policy that provides employees with one bank of leave that can be used for multiple purposes, including the requirements set forth in the paid sick leave law.

**What are the requirements for employers who choose to provide paid sick leave in the form of a PTO program or policy?**

For employers who *choose* to provide paid sick leave to their employees in the form of a PTO program or policy, they must ensure that their PTO program or policy meets or exceeds all requirements of the law and all applicable rules. Such programs need to be created through a CBA or written policy addressing the requirements for the use of PTO.

**Is an employer required to provide additional PTO in the event that an employee uses all their leave for other purposes other than what the law requires?**

No. If an employer *chooses* to provide paid sick leave in the form of a PTO program or policy, they are not required to provide additional PTO in the event that an employee uses all of their PTO bank, regardless if the employee used it all for purposes not designated.

**Example:** An employee uses all of their PTO bank to go on vacation. When the employee returns to work, they claim that they are sick and request more PTO to cover the time they will miss. If the employer has met their obligations of providing PTO according to the law and all applicable rules, the employer is not required to provide additional PTO to the employee.

## **Employee Use of Paid Sick Leave for Unauthorized Purposes**

**What can an employer do if they can demonstrate that their employee's use of paid sick leave was for an unauthorized purpose under the law?**

If an employer can demonstrate that an employee's use of paid sick leave was for an unauthorized purpose, the employer may withhold payment for the paid sick leave used, but may not deduct those hours from an employee's legitimately accrued, unused paid sick leave. If an employer withholds payment for the unauthorized use of paid sick leave, the employer must provide notification to the employee. For more information about employees using paid sick leave for unauthorized purposes, please see [WAC 296-128-750](#).

## **Paid Sick Leave & Collective Bargaining Agreements**

**Can a CBA waive an employee's right to paid sick leave?**

No. Any agreement between an employee and an employer allowing for the employee to receive less than what is due under **Chapter 49.46 RCW** is unlawful, including the requirement to provide paid sick leave.

## **Paid Sick Leave & Separation of Employment and Rehiring**

**Are employers required to pay out unused paid sick leave in the event of a separation of employment?**

No. Employers are not required to provide employees with financial or any other type of reimbursement for unused, accrued paid sick leave in the event of a separation of employment.



**What happens if an employee is rehired by the same employer?**

If an employee is rehired within 12 months of separation, at the same or different business location of the employer, the employer must reinstate any unused accrued paid sick leave from the previous period of employment.

**Are employees required to wait an additional 90 calendar days to use their accrued paid sick leave bank if rehired within 12 months?**

No. If an employee is rehired within 12 months of separation, at the same or different business location of the employer, the previous calendar days of employment must be counted for purposes of determining the employee's eligibility to use paid sick leave.

**Example:** An employee has 80 calendar days of employment with an employer prior to separation of employment. The employee is rehired within 12 months of separation. The employee would only need to remain employed 10 more calendar days before they could use their accrued paid sick leave.

**Shared Paid Sick Leave**

**May employers establish a shared paid sick leave program?**

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

**What are the requirements for employers who choose to provide a shared paid sick leave program?**

If an employer establishes a shared paid sick leave program, the employer must have a written policy or a CBA which specifies that an employee may donate accrued, unused paid sick leave to a co-worker for purposes authorized under the law. In addition, employers must notify employees of such a policy or agreement prior to allowing an employee to donate or use shared paid sick leave, and must make this information readily available to all employees.