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## HR411® Tip of the Week

# Sick Leave: What Employers Need to Know

While no federal law requires employers to offer paid sick leave to employees, to date, eight jurisdictions in the U.S. have passed legislation requiring employers to do so. Outside of these jurisdictions, it is up to the employer to decide whether to offer paid sick leave and how to administer it. The following are several factors to consider when designing and implementing a sick leave program:

Paid sick leave laws. Currently, the following jurisdictions require employers to provide paid sick leave to employees:

- » Connecticut (employers with more than 50 employees must provide paid sick leave to “service employees”);
- » Jersey City, New Jersey;
- » Newark, New Jersey (effective May 29, 2014);
- » New York City;
- » Portland, Oregon;
- » San Francisco;
- » Seattle; and
- » Washington, DC.

These laws address, among other things, employee eligibility, accrual of leave time, permitted reasons for taking leave, and notice requirements. Covered employers should review these laws carefully to make sure their sick leave programs are compliant. Employers should also note that these laws may apply to you if you have employees working in these jurisdictions -- even if your business is located elsewhere.

**Weighing pros and cons.** Absent a requirement to provide sick leave, employers should determine whether it makes business sense to provide such leave voluntarily. While there are costs associated with providing paid sick leave, the cost of having sick employees working to avoid losing pay can be even greater. These employees are likely to be unproductive and may spread illness throughout the workplace, creating greater loss for the company.

**Call-in procedures.** Whether sick leave is paid or unpaid, employers should have clearly defined call-in procedures for employees who are unexpectedly absent due to illness. The procedures should address who the employee should contact (e.g., the employee’s supervisor), when the employee should contact that individual (e.g., at least 1 hour before the start of the shift), how the employee is to notify the individual (e.g., by phone), and that disciplinary action may be taken against employees who fail to follow call-in procedures.

**Handling no-calls/no-shows.** Employees who fail to report for work without prior notice may overburden other employees and leave employers scrambling to find replacements on short notice. Any no-call/no-show policy should make it clear that failure to report to work after a certain number of consecutive shifts, and a failure to call in, may be deemed a voluntary termination. Employers should remember, however, that extenuating circumstances, such as a serious accident or emergency, may have prevented the employee from notifying the employer of his or her absence. For these reasons, employers should consider having procedures in place to contact employees, consult legal counsel, and verify the absence isn’t protected under federal, state, or local law prior to applying the no-call/no-show policy.

**Notice.** Employers may require employees to provide reasonable notice when the employee’s need for leave is foreseeable (e.g., the employee has scheduled a medical procedure in advance). All notice requirements should be communicated to employees in a written policy.

**Documentation.** If an absence lasts longer than a certain period of time (e.g., three consecutive days), employers may consider asking employees to provide documentation regarding the reason for an absence, such as a doctor's note. Some employers also require a doctor's note when employees take a sick day before or after a vacation or holiday. If you decide to implement such requirements, they must be enforced consistently. Note: The Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, and many state laws give employees certain privacy rights and may limit the information an employer can request from an employee. Employers should make sure that any documentation requirement complies with these, and all applicable laws.

**Carryover and caps.** The jurisdictions that require paid sick leave also generally mandate that employers allow employees to carry over a certain amount of unused sick time from year to year. Absent such a requirement, employers generally may enforce the forfeiture of unused sick leave at the end of the year, but it is important to check state law first. Several states prohibit employers from applying use-it-or-lose-it policies to vacation and paid time off policies, and employers in these states need to determine whether these prohibitions apply to their policy. For example, in California, if an employer has a Paid Time Off (PTO) program whereby employees are granted a certain number of paid days off that can be used for any purpose, including sick leave, the employer must carry over any unused, accrued PTO from year to year. However, employers are permitted to put a reasonable cap on the accrual of PTO. In jurisdictions with paid sick leave requirements, the cap is set by law.

**Exempt employees.** Exempt employees must receive their full salary in any workweek in which they perform work, regardless of the number of hours worked. Deductions for absences related to sickness are not permitted, unless the employee is absent for a full workweek. Thus, even if exempt employees exhaust all of their sick leave, they must still be paid their full salary if they worked any part of the workweek.

**Other leave laws.** Even if you don't offer paid leave for employees who are sick, employees may be entitled to unpaid leave under the law. Employers should understand their obligations at the state, federal and local level to provide unpaid, job protected leave, and how these obligations interact with any paid sick leave laws. For example, the federal Family and Medical Leave Act requires employers with 50 or more employees to provide up to 12 weeks of unpaid, job-protected leave to employees who have, among other reasons, a "serious health condition." Several states have enacted similar laws, some of which may cover smaller employers. Some states have laws that entitle employees to unpaid leave if they donate an organ or are victims of certain crimes and need medical (or other) services. Additionally, employees who have a disability covered under the Americans with Disabilities Act may also be entitled to paid or unpaid leave as a reasonable accommodation, absent undue hardship on the employer.

#### **Conclusion:**

Whether you are required to offer paid sick leave or do so voluntarily, it is important to ensure that your policy complies with federal, state and local laws and is effective in meeting your business needs and the needs of your employees. Employers should have an overall understanding of how various leave requirements interact with one another and should have clear communications, policies and procedures in place to make sure their employees understand their leave entitlements under all available leave programs. Employers may consider consulting legal counsel with questions regarding how legislated leave laws impact their own policies and individual employee circumstances.



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