



Connecticut's
Paid Sick Leave Law
Questions & Answers

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Q&A

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For questions, please contact:

<http://www.jacksonlewis.com/home.php>

Frank P. Alvarez

Jackson Lewis LLP

One North Broadway, 15th Floor
White Plains, NY 10601
(T) 914-514-6149
alvarezf@jacksonlewis.com

Michael J. Soltis

Jackson Lewis LLP

177 Broad Street, 8th Floor
Stamford, CT 06901
(T) 203-363-2558
soltism@jacksonlewis.com

Beverly W. Garofalo

Jackson Lewis LLP

90 State House Square, 8th Floor
Hartford, CT 06103
(T) 860-522-0404
GarofaloB@jacksonlewis.com

Holly L. Cini

Jackson Lewis LLP

90 State House Square, 8th Floor
Hartford, CT 06103
(T) 860-522-0404
CiniH@jacksonlewis.com

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Connecticut's Paid Sick Leave Law Questions and Answers

On July 1, 2011, with Governor Dannel Malloy's signature on Public Act No. 11-52 ("An Act Mandating Employers Provide Paid Sick Leave to Employees"), Connecticut became the first and only state in the nation to require employers to provide paid sick leave to their employees.

The law, which is effective January 1, 2012, requires employers with 50 or more employees within Connecticut (excluding most manufacturing establishments and the nationally chartered tax-exempt organizations described in the law), to provide non-exempt "service workers" with paid sick leave that accrues at a rate of one hour per 40 hours worked, to a maximum of 40 hours per calendar year. "Service workers" are employees whose primary duties track those of the 68 federal Standard Occupational Classification System titles listed in the law. The law also prohibits covered employers from retaliating against any employee for requesting or using paid sick leave as provided by the law or in accordance with the employer's own paid sick leave policy, or for filing a complaint against the employer for violation of the law. The Commissioner of the Connecticut Department of Labor is expected to provide additional guidance on the paid sick leave law that, perhaps due to the compromises and haste in which it was ultimately passed, leaves many questions unanswered.

Through this series of 28 questions and answers, we have broken down our analysis of the law. By way of source material, we drew from the text of the law and the State of Connecticut Office of Legislative Research's (OLR) analysis of the bill. Also, on June 3, 2011, the House of Representatives held a lengthy hearing on the bill at which the Chair of the Labor Committee responded to questions about it. We reviewed and incorporated information from the transcript of that hearing.

Purpose

Q-1. What is the purpose of the paid sick leave law?

Governor Malloy's statement after the General Assembly's approval of the bill said, in part:

[T]his is good public policy and specifically, good public health. Why would you want to eat food from a sick restaurant cook? Or have your children taken care of by a sick day care worker? The simple answer is – you wouldn't. And now, you won't have to. Without paid sick leave, frontline service workers – people who serve us food, who care for our children, and who work in hospitals, for example – are forced to go to work sick to keep their jobs. That's not a choice I'm comfortable having people make under my tenure, and I'm proud to sign this bill when it comes to my desk.

Covered Employers

Q-2. Which employers must provide paid sick leave under this law?

The law defines "employer" as any person, firm, business, educational institution, nonprofit agency, corporation, limited liability company or other entity that employs 50 or more individuals in the state in any one quarter in the previous year. The law applies to the state and its municipalities with 50 or more employees as well. The exclusions from the definition are described in Q-3.

Q-3. Are there specific exclusions from the definition of employer?

Yes. "Employer" does not include any business establishment classified in sector 31, 32 or 33 in the North American Industrial Classification System (NAICS), or any nationally chartered organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986 that provides all of the following services: recreation, child care and education. The House hearing discussion revealed that the Section 501(c)(3) exclusion was intended to exempt YMCAs specifically, although other organizations also may satisfy the requirements for this exclusion.

The exclusion for manufacturers extends to include all forms of manufacturing, including food, textiles, wood, petroleum, chemical, plastics, metal, machinery, motor vehicles, aerospace, computer, electronic, and miscellaneous products. Discussions at the House hearing suggested that the exclusion for manufacturing establishments may extend only to the sites at which manufacturing operations are conducted and not to other locations in the state, such as research and development or a warehouse, that are not engaged in manufacturing activities. However, because the law is silent on this significant point, additional guidance is needed from the Labor Commissioner.

A company in bankruptcy proceedings is not exempt from the bill.

Q-4. When is the requirement of "fifty or more individuals in the state" determined?

Unless falling within one of the exclusions, an employer that had 50 or more employees (including full and part-time employees) during any one quarter in the previous calendar year is subject to the law. The 50-employee threshold is determined annually as of January 1st, based upon the quarterly employer wage reports employers must submit to the Labor Commissioner pursuant to CGS § 31-225a (j). According to the testimony at the House hearing, those working at the employer's worksite but who are on the payroll of a temporary staffing company are not counted as employees for purposes of determining applicability. The transcript of the House hearing on the bill shows that an employer must count all in-state employees, at all of the employer's locations, to determine whether it meets the 50-employee threshold even if it has fewer than 50 service workers.

Employees Eligible for Paid Sick Leave

Q-5. Who are "service workers"?

A "service worker" is an employee engaged primarily in an occupation within one of the occupation code numbers/titles identified in the statute (see Appendix A) that are listed by the federal Bureau of Labor Statistics Standard in its Occupational Classification system (www.bls.gov/soc/), who is paid on an hourly basis or is otherwise not exempt from the federal Fair Labor Standards Act (FLSA) minimum wage and overtime requirements. In determining whether an employee is a "service worker," an employer should focus on the duties primarily performed by the employee, as opposed to a specific job title. The list includes some obvious job titles, such as cashier, while excluding others that would seem to fit the definition of a service worker, such as a grocery store bagger, and including some that do not seem to fit, such as pharmacists. Accordingly, employers should not assume they do or do not employ service workers without carefully reviewing the list.

According to the House hearing transcript, if an employee performs both "service worker" and non-service worker functions, the employee is entitled to paid sick leave if the employee spends more than

half of his or her time as a “service worker.” Also according to comments at the hearing, if an employee is transferred from a “service worker” to a non-service worker position, the employee “gets the sick days for that year.”

Q-6. Are there employees performing “service worker” duties who are not eligible for paid sick leave?

Employees not eligible for paid sick leave include those in positions properly classified as exempt under the federal FLSA (as opposed to under Connecticut law).

Covered employers are also not required to provide paid sick leave to “day or temporary workers,” defined as those who perform work on a per diem basis or an occasional or irregular basis, for only the time required to complete the work, whether they are paid by the person for whom such work is performed or by an employment agency or temporary help service, as defined by C.G.S. § 31-129. There is no further insight in the law as to the parameters of the definition of “day or temporary” workers or “per diem” employees.

It is unclear whether undocumented immigrants who are service workers are entitled to paid leave.

Q-7. Are service workers who work part-time eligible for paid sick leave?

Yes, part-time service workers are eligible for paid sick leave with the limited exception of those working an average of fewer than 10 hours per week in the prior quarter, as described in Q-9.

Administration of the Paid Sick Requirement

Q-8. What is the paid sick leave requirement?

Beginning January 1, 2012, an employer (within the meaning of the law) must provide paid sick leave annually to each of its service workers in Connecticut at a rate of one hour of paid sick leave for each 40 hours worked, accrued in one hour increments, to a maximum of 40 hours per calendar year. For service workers hired after January 1, 2012, the accrual begins on the service worker’s date of employment. An employer may not delay accrual of paid sick leave during a probationary or introductory period. The law does not prohibit employers from providing more paid sick leave than required.

Q-9. When can the sick leave be used?

Under the law, service workers cannot begin using accrued paid sick leave until completion of 680 hours of employment, counted from January 1, 2012, if employed on or before that date, or counted from the service worker’s date of employment if hired after that date. The law does not specify how the 680 hours of employment is to be measured (i.e., hours actually worked or simply hours employed). Further guidance is required on this issue. Although there was suggestion at the House hearing that the 680-hour requirement starts anew on January 1 every year, it appears to be a one-time requirement absent a break in service.

Also, service workers must have worked an average of at least 10 hours a week in the most recently completed calendar quarter to be eligible to use accrued paid sick leave time.

Q-10. If an employer allows an employee to use paid sick leave before it has accrued, does that leave count against the law's entitlement?

An employer may agree to allow employees to use accrued paid sick leave prior to completion of 680 hours of employment. The law does not address the effect of an employer's advancing paid sick leave on the paid sick leave entitlement, but, because doing so will be viewed as an additional benefit, such a practice is likely to be permissible.

Q-11. Can an employer require service workers to take paid sick leave in minimum increments, such as four-hour increments?

The law does not address this issue on its face, but during the House hearing it was noted that an employer cannot require employees to take paid sick leave in minimum increments. Although during the hearing there was also repeated reference to an employee's right to take time off "an hour at a time," absent further clarification from the Labor Commissioner, employers should refrain from imposing minimum increments on the use of paid sick leave.

Q-12. What is the effect of switching shifts or working extra hours to make up for sick leave?

If the employer and service worker agree the worker will switch shifts or work extra hours during the same or following pay period as the sick leave in lieu of taking sick leave, the time should not be counted against the service worker's paid sick leave bank.

Q-13. Can paid sick leave be carried over from year to year?

A service worker may carry over up to 40 unused accrued hours of paid sick leave from the current calendar year to the following calendar year; but, unless allowed by an employer's policy, an employee may not use more than 40 paid sick leave hours in any year.

Q-14. At what pay rate must the employer pay the accrued sick leave?

An employer must pay the service worker for paid sick leave at the worker's normal hourly wage or the minimum wage, if higher. If the service worker's hourly wage varies based on the duties performed, the "normal hourly wage" is the average hourly wage paid the employee in the pay period prior to the leave. According to discussions during the House hearing, this means that restaurant employees who are paid a "tipped" rate that is below the minimum wage must be paid the minimum wage for paid sick leave time off.

Q-15. Must an employer pay accrued but unused sick leave upon termination?

No, unless an employer policy or collective bargaining agreement provides otherwise.

Q-16. Does a rehired employee regain formerly accrued paid sick leave?

No, unless the employer agrees otherwise. At the House hearing, it was noted that at the moment an employee terminates employment, the employee loses accrued paid sick leave, regardless of whether the individual is rehired a day later.

Q-17. For what purpose may paid sick leave be used?

A service worker may use paid sick leave for his or her, or a spouse's or child's:

1. illness, injury, or health condition;
2. medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or
3. preventive medical care.

A "child" is an employee's biological, adopted, or foster child, stepchild, legal ward, or a child of an employee acting instead of a parent, when the child is either under 18 years old or over 18 but incapable of self-care due to mental or physical disability. This is the same definition as under the Connecticut Family and Medical Leave Act. A "spouse" means a husband or wife. The law does not provide any guidance concerning the term "preventive medical care."

A service worker also may use paid sick leave when the service worker is a victim of family violence or sexual assault for:

1. medical care or psychological or other counseling for physical injury or disability;
2. services from a victim services organization;
3. relocating; or
4. participation in any civil or criminal legal proceedings.

Q-18. May a service worker donate paid sick leave to another service worker?

An employer may, but is not required to, allow a service worker to donate unused accrued paid sick leave to another service worker.

Q-19. What if an employee uses paid sick leave for a purpose not allowed by law?

Employers are not prohibited from taking disciplinary action against a service worker who uses paid sick leave for purposes other than those described by the law. However, as discussed in response to Q-21, employers may not require employees to produce documentation substantiating the reason for taking paid sick leave unless the employee is out of work for three consecutive days.

Notice and Documentation Requirements

Q-20. What are an employee's notice requirements for using paid sick leave?

Employers may require service workers to provide up to seven days' notice before taking the leave, if it is foreseeable, or notice as soon as practicable if it is not foreseeable. Employers may be able to deny leave or even take disciplinary action against an employee who fails to comply. It is thus of critical importance that employers include call-in and other notice requirements in their policies.

Q-21. May an employer require documentation to ensure that the leave is being used for its intended purpose?

For paid sick leave of three or more consecutive days, an employer may require reasonable documentation. In such cases, for mental or physical illness, treatment of an illness or injury, mental or physical diagnosis, or preventive medical care for the service worker or the employee's child, or spouse, an employer may require documentation signed by the health care provider treating the service worker or the service worker's child or spouse, indicating the need for the number of days of the leave.

For a victim of family violence or sexual assault taking leave of three or more consecutive days, an employer may require a court record or documentation signed by an employee or volunteer working for a victim services organization, an attorney, police officer, or other counselor involved with the service worker.

Q-22. What are an employer's notice requirements?

Employers subject to the law must give notice to each service worker at the time of hire that:

1. the service worker is entitled to paid sick leave, the amount provided, and the terms under which it can be used;
2. the employer cannot retaliate against the employee for requesting or using sick leave; and
3. the service worker can file a complaint with the Labor Commissioner for any violation.

An employer can comply with this requirement by displaying a poster containing this information in English and Spanish in a conspicuous place, accessible to employees, at the employer's place of business. The law authorizes the Labor Commissioner to adopt regulations establishing additional notice requirements.

Anti-Retaliation Prohibitions

Q-23. What retaliatory conduct does the law prohibit?

The law prohibits covered employers from terminating, suspending, constructively discharging, demoting, unfavorably assigning, refusing to promote, disciplining, or taking any other adverse employment action against any employee (not limited to service workers) because the employee requested or used paid sick leave as provided by the law, or in accordance with the employer's "own paid sick leave policy," or filed a complaint with the Labor Commissioner alleging an employer violated the law.

Accordingly, covered employers may not retaliate, including taking disciplinary or other adverse job action against a service worker who requests or uses paid sick leave (scheduled or unscheduled and no matter the increment in which it is taken) for one of the purposes covered by the law or under an employer's paid sick leave policy. Of course, if the service worker is taking the leave for reasons not covered by the law, the employer may take appropriate disciplinary action.

Although the mandate to provide paid sick leave is limited to service workers, the provision prohibiting retaliation for taking or using paid sick leave was intentionally not limited to service workers and is

applicable to all employees. Whereas application of the anti-retaliation provision to service workers seems relatively clear (e.g., covered employers cannot discipline or otherwise take adverse action against them for requesting or using 40 hours of time for one of the purposes covered by the law), how it will apply to non-service workers is not as clear. Given the potentially steep penalties described in Q-27, employers should exercise caution when taking action against any employee for requesting or using paid sick leave under the law or their existing policies unless and until there is further clarification from the Labor Commissioner.

Integration with Other Laws, Policies and Labor Contracts

Q-24. How does this law affect an employer's existing paid sick leave policy?

An employer that provides sick leave or "other paid leave," such as vacation, personal days or paid time off (PTO), is "deemed to be in compliance" with the paid sick leave aspect of the law if: (a) service workers can use the leave for the purposes enumerated in the law; and (b) leave accrues at a rate equal to or greater than the rate described in the law.

The law does not provide any further explanation of this "safe harbor" or the interplay between an employer's own policies and the paid sick leave law. What is clear is that employers seeking to rely on this "safe harbor" must reconcile their existing paid leave policies with the requirements of the paid sick leave law with respect to its application to service workers. Thus, for example, for leave requested or taken for reasons enumerated in the law, the policy cannot exclude part-time service workers, cannot delay accrual of leave until completion of an introductory period, cannot impose greater notice or documentation requirements, cannot require that leave be taken in minimum increments and the request or use of leave for covered reasons cannot lead to disciplinary or other adverse job action. Once an employee uses 40 hours of paid leave for reasons covered by the law, the employer should be deemed to have fully complied with its obligations and should thereafter be able to attach conditions or take disciplinary action in accordance with its policies.

The law does not address what happens if the employee uses some amount of available paid leave under the employer's policies for a reason other than those enumerated in the paid sick leave law. The following illustration was used at the House hearing: if an employer's vacation policy meets the paid sick leave law's requirements, and the employee takes five vacation days early in the calendar year and gets sick later in the year, the employer need not pay the employee for those sick days under this law. This example appears to address the situation in which the employer offers only 40 hours of paid leave per calendar year. It does not address a situation in which the employer offers more than 40 hours of paid leave and that same employee chooses to take that additional time when s/he gets sick later in the year. The question in that circumstance is whether that additional time (beyond the initial 40 hours) is still subject to the requirements and prohibitions of the paid sick leave law if taken for a reason covered by the law? Additional clarification is needed from the Labor Commissioner on this significant point, but it is of note that informal information from the Labor Commissioner's office suggests that the answer is yes – that is, if paid leave beyond 40 hours is available, until an employee exhausts 40 hours of leave for the reasons covered by the law, any leave taken for those reasons must be treated in accordance with the law.

Q-25. What is the effect of this law on collective bargaining agreements?

The law states that it shall not be construed to diminish any rights provided to any employee or service worker under a collective bargaining agreement, or preempt or override the terms of any collective

bargaining agreement effective prior to January 1, 2012. It also states that the Labor Commissioner shall advise employees who file a complaint under this law and who are covered by a collective bargaining agreement of their right to pursue a grievance with their collective bargaining agent. At the House hearing, it was clarified that because the law does not have any special provisions for employment contracts, it applies to service workers who are party to such contracts.

Q-26. How does this law integrate with the federal or state family and medical leave act?

Neither the paid sick leave law nor the OLR analysis addresses this issue.

Federal law allows an employer to require an employee to substitute any other paid leave for otherwise unpaid FMLA leave. The Connecticut Family and Medical Leave Act also allows an employer to require such substitution. At the House hearing, when asked about the relationship between this law and the family and medical leave law, the response was that “we felt there was a difference between paid and unpaid [sick leave].” We believe, however, that to the extent such laws permit employers to request medical documentation for absences of fewer than three consecutive days in duration (such as in the case of intermittent FMLA leave), it is likely that an employer will be able to continue to do so to ensure that the employee gets the protection and benefits of those laws.

Enforcement

Q-27. How will this law be enforced?

Any employee may file a complaint with the Labor Commissioner. After a hearing, an employer found to have violated the law shall be liable for a civil penalty as follows:

1. up to \$100 for each violation of the general provisions of the bill; and
2. up to \$500 for each violation of the retaliation provision.

The Labor Commissioner can award the employee all appropriate relief, including payment for used paid sick leave, rehiring or reinstatement to the employee's previous job, payment of back wages, and reestablishment of benefits for which the employee was otherwise eligible if not for the retaliatory personnel action or being discriminated against. Aggrieved parties can appeal the Commissioner's decision to Superior Court.

The law does not provide an aggrieved employee the right to file an action directly in court.

Q-28. Will the Labor Commissioner be issuing further regulations?

The law authorizes the Labor Commissioner to issue further regulations concerning only the employer posting requirement. However, the Labor Commissioner is expected to issue non-binding guidance prior to the January 1, 2012 effective date of the law.

Jackson Lewis attorneys are available to assist employers with the new paid sick leave law and other workplace requirements. We will, of course, continue to provide timely updates as additional guidance becomes available.

Appendix A

The Connecticut paid sick leave law identifies individuals employed in jobs with the same or similar primary duty as the titles below as “service workers” subject to its provisions:

Title	Code	Title	Code
Food Service Managers	11-9050	Medical and Health Services Managers	11-9110
Social Workers	21-1020	Social and Human Service Assistants	21-1093
Community Health Workers	21-1094	Community and Social Service Specialists, All Other	21-1099
Librarians	25-4020	Pharmacists	29-1050
Physician Assistants	29-1070	Therapists	29-1120
Registered Nurses	29-1140	Nurse Anesthetists	29-1150
Nurse Midwives	29-1160	Nurse Practitioners	29-1170
Dental Hygienists	29-2020	Emergency Medical Technicians and Paramedics	29-2040
Health Practitioner Support Technologists and Technicians	29-2050	Licensed Practical and Licensed Vocational Nurses	29-2060
Home Health Aides	31-1011	Nursing Aides, Orderlies and Attendants	31-1012
Psychiatric Aides	31-1013	Dental Assistants	31-9091
Medical Assistants	31-9092	Security Guards	33-9032
Crossing Guards	33-9091	Supervisors of Food Preparation and Serving Workers	35-1010
Cooks	35-2010	Food Preparation Workers	35-2020
Bartenders	35-3010	Fast Food and Counter Workers	35-3020
Waiters and Waitresses	35-3030	Food Servers, Non-restaurant	35-3040
Dining Room and Cafeteria Attendants and Bartender Helpers	35-9010	Dishwashers	35-9020
Hosts and Hostesses, Restaurant, Lounge and Coffee Shop	35-9030	Miscellaneous Food Preparation and Serving Related Workers	35-9090
Janitors and Cleaners, Except Maids and Housekeeping Cleaners	37-2011	Building Cleaning Workers, All Other	37-2019
Ushers, Lobby Attendants, and Ticket Takers	39-3030	Barbers, Hairdressers, Hairstylists, and Cosmetologists	39-5010
Baggage Porters, Bellhops, and Concierges	39-6010	Child Care Workers	39-9010
Personal Care Aides	39-9021	First-Line Supervisors of Sales Workers	41-1010
Cashiers	41-2011	Counter and Rental Clerks	41-2021
Retail Salespersons	41-2030	Tellers	43-3070
Hotel, Motel, and Resort Desk Clerks	43-4080	Receptionists and Information Clerks	43-4170

Couriers and Messengers	43-5020	Secretaries and Administrative Assistants	43-6010
Computer Operators	43-9010	Data Entry and Information Processing Workers	43-9020
Desktop Publishers	43-9030	Insurance Claims and Policy Processing Clerks	43-9040
Mail Clerks and Mail Machine Operators, Except Postal Service	43-9050	Office Clerks, General	43-9060
Office Machine Operators, Except Computer	43-9070	Proofreaders and Copy Markers	43-9080
Statistical Assistants	43-9110	Miscellaneous Office and Administrative Support Workers	43-9190
Bakers	51-3010	Butchers and Other Meat, Poultry, and Fish Processing Workers	51-3020
Miscellaneous Food Processing Workers	51-3090	Ambulance Drivers and Attendants, Except Emergency Medical Technicians	53-3010
Bus Drivers	53-3020	Taxi Drivers and Chauffeurs	53-3040

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