

Initiative 1433 – Minimum Wage Increase and Paid Sick Leave Mandate

Background: Originally, Washington’s Minimum Wage Act covered only non-agricultural workers. However, in 1988 voters approved Initiative 518, which changed the Minimum Wage Act to cover all workers employed in Washington state. Consequently, the state minimum wage is the same for both non-agricultural and agricultural workers.

In 1998, voters approved Initiative 688, which raised the minimum wage and required the Washington State Department of Labor & Industries to make a cost-of-living increase to the minimum wage each calendar year based on the federal Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W).

The minimum wage for 2016 under Washington law is \$9.47/hour. The federal Fair Labor Standards Act minimum wage is presently \$7.25/hour. Washington employers must pay the higher of those rates. In addition, some municipalities such as Seattle and Tacoma have enacted higher minimum wage rates in their jurisdictions. Employers subject to those laws must pay the highest minimum wage required.

Full Text: The full text of I-1433 can be found at http://sos.wa.gov/assets/elections/initiatives/FinalText_954.pdf.

Minimum Wage: Section 3 sets a multi-year increase in the state’s minimum wage rate for workers 18 years of age and older. The first increase is to \$11 per hour beginning January 1, 2017. The wage would then increase to \$11.50 per hour in 2018, \$12 per hour in 2019, and \$13.50 per hour in 2020.

Note that there are two large increases – an increase of \$1.53 per hour from 2016 to 2017 and an increase of \$1.50 per hour from 2019 to 2020.

I-1433 leaves in place the annual minimum wage escalator based on the CPI-W. It mandates that employers pass along all tips and gratuities and certain service charges to employees, and those tips and charges may not count toward the employee’s hourly minimum wage.

Paid Sick Leave: Section 5 mandates that all employers provide paid sick leave to their employees beginning January 1, 2018.

Employees would accrue at least one hour of paid sick leave per 40 hours worked. This is the minimum requirement. Employers may provide more generous paid sick leave policies or permit the use of paid sick leave for additional purposes.

Each hour of paid sick leave is valued at the higher of the minimum wage or the employee’s normal wage. Employers are required to provide regular notification to employees regarding the amount of paid sick leave they have available.

Employees can use paid sick leave for their own mental or physical health needs (including domestic violence) or for their family members' health needs. Employees are entitled to use paid sick leave after 90 days of employment.

Employers may require employees to give reasonable notice of an absence from work as long as that notice does not interfere with the workers' lawful use of paid sick leave. For absences exceeding three days, employers may require verification that the use of paid sick leave was for an authorized purpose.

Employers cannot require employees, as a condition of using paid sick leave, to find a replacement worker for their time absent from work.

Unused paid sick leave can be carried over into the following year. The minimum requirement is that employees be allowed to carry over up to 40 hours of unused paid sick leave.

Nothing in I-1433 requires financial or other reimbursement to a worker for unused paid sick leave when that worker leaves employment. However, if the worker is rehired within 12 months, the unused paid sick leave must be reinstated to the worker, and the 90-day window for not using paid sick leave does not start over.

Employers may not discriminate or retaliate against employees for using paid sick leave, and employers may not discipline employees for absences covered by paid sick leave.

Relationship of State and Local Laws: I-1433 does not include state preemption, which means that a patchwork of local labor standards will be allowed to continue in Washington under I-1433. The initiative sets a new wage and benefit floor for employees. Cities and other jurisdictions would still be permitted to enact additional local labor standards that are more favorable to employees.

Rulemaking: The state Department of Labor & Industries is mandated to adopt rules to enforce I-1433. These rules must include, at a minimum, the procedures for reporting sick leave, notifying employees about it, and protecting employees from retaliation for the lawful use of sick leave and other rights. L&I has set up an [I-1433 engagement site](#), where pertinent information is posted.

L&I has divided the rulemaking into two separate categories – policy and enforcement.

The policy piece will move forward first so that employers have time to plan to meet the I-1433 mandates by the Jan. 1, 2018, deadline. Adoption of the policy rule will be on Oct. 17, 2017, with an effective date of Jan. 1, 2018.

The proposed language for the enforcement piece was officially filed on Oct. 3. The draft language can be found [here](#). The public hearings will be in Spokane on Nov. 8 and Tumwater on Nov. 9. Written comments are due by Nov. 17. More details can be found in the CR-102 filing [here](#). The final enforcement rule language will be adopted on Dec. 19.

L&I will conduct education and outreach to employers and employees from October through December 2017.

Highlights of Proposed Rules:

- I-1433 mandates that employees accrue at least 1 hour of paid sick leave for every 40 hours worked.
- Employers may provide a more generous accrual rate.
- Accrual is not required for non-work hours (i.e., vacation, sick leave). It is for hours spent working.
- Accrual begins Jan. 1, 2018.
- Employees are allowed to carry over at least 40 hours of accrued, unused paid sick leave to the following year.
- Employees are entitled to use paid sick leave beginning on the 90th calendar day after employment commences.
- Collective bargaining agreements are not exempt.
- Employee use of paid sick leave is to be done in time “consistent with the employer’s payroll system and practices, not to exceed one hour.” If an employer tracks time in 15-minute increments, then employees must be allowed to use sick leave in 15-minute increments.
- The draft rules include reasonable notice provisions and verification for absences exceeding three days.
- The rate of pay for use of paid sick leave has received much discussion in preliminary rule drafts and meetings. Employers must value and compensate used sick leave at the employee’s “normal hourly compensation using a reasonable calculation based on the hourly rate that the employee would have earned for the time during which the employee used paid sick leave.” This rate may be easy to calculate for some workers, but there are different calculations for workers whose wage rates vary.
- Generally speaking, employers must reinstate an employee’s hours of accrued, unused paid sick leave if the employee leaves employment and is rehired by the same employer within 12 months.
- Universal paid time off (PTO) benefits are recognized as hours of paid sick leave under the draft rules.
- Employers cannot retaliate against employees for using paid sick leave.

Additional Information or Questions: Contact Scott Dilley at scott@wastatedairy.com or 360.581.8153 for more information.