

## **Paid Sick Leave**

**Background:** Initiative 1433 passed statewide in 2016 by a vote of 57.42% in favor and 42.58% against. The initiative changed state law to increase the minimum wage and mandate that employers provide employees with a minimum amount of paid sick leave. I-1433 was codified at [RCW 49.46](#).

**Paid Sick Leave:** I-1433 mandates that all employers provide paid sick leave to their employees beginning Jan. 1, 2018. The Washington State Department of Labor & Industries has adopted rules to implement this law at [WAC 296-128-600 through 296-128-860](#). Below are several of the main topics included in the final rules. For more details, you will want to consult the adopted rules.

**Eligibility:** I-1433 applies to employers and employees subject to the state Minimum Wage Act. The definitions in [RCW 49.46.010](#) apply broadly to employees. There are a few exemptions, the most common of which is for workers who are “employed in a bona fide executive, administrative, or professional capacity...” (RCW 49.46.010(3)(c)). Unless your workers meet one of the narrow exemptions from the minimum wage statutes, the paid sick leave requirements apply to them.

**Benefit State Date:** The law became effective Jan. 1, 2018, which is when employees begin accruing paid sick leave. Employees may use their paid sick leave 90 days after their date of hire.

**Accrual:** An employee accrues one hour of leave for every 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. Accrual starts on Jan. 1, 2018. Hires after Jan. 1, 2018, begin to accrue leave upon date of hire. Beginning on the 90<sup>th</sup> calendar day after commencement of employment, employers must make accrued paid sick leave available to employees for use in a manner consistent with the rules. There is no limit for how much leave an employee can accrue in a year. Accrual is not required for non-work hours (i.e., vacation, sick leave). It is for hours spent working.

**Reasons for Leave:** Leave can be used for employee illness, injury, or health condition; receipt of health care (including preventative medical care); closure of the workplace for a health-related reason; closure of the employee’s child’s school or daycare; domestic violence-related reasons; and the illness or care of a family member, including grandparents, grandchildren, siblings, and “de facto parents” (broader coverage than the state Family Care Act at RCW 49.12.265 or federal Family and Medical Leave Act).

**Increments of Use:** Leave must be taken in increments 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 leave in 15-minute increments.

**Reasonable Notice:** 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 foreseeable leave, the employee must give notice as soon as practical, but at least 10 days advanced notice. For unforeseeable leave, the employer can require the employee to notify as soon as possible

before the start of shift, unless doing so is impracticable. In each case the employee can have another person notify the employer if the employee is unable to do so. Leave for domestic violence is not subject to the same requirements.

**Verification:** An employer can require employee verification, such as a doctor's note, for absences exceeding three work days. Employers must have a written policy before they can require verification.

**Rate of Pay:** Each hour of paid sick leave is valued at the higher of the minimum wage or the employee's normal hourly compensation and must usually be paid in the pay period in which the leave was used.

- Commission: Total earnings for 90 days divided by total hours worked.
- Piece Rate: The same as commission, but for the work week doing substantially similar work.
- Salaried: Annual salary divided by 52 weeks divided by the normal scheduled of hours of work.
- Fluctuating Pay: Hourly rate that would have been used during time the employee took leave.

**Shared Leave, Shift Swapping, and Frontloading:** Employer may allow employees to share leave, but it is not required. A written policy must exist to allow shared leave. Employers cannot require employee to find a replacement worker. Employers may allow shift swapping. Employers may frontload leave. Excess use cannot be deducted from wages unless there is a specific agreement.

**Capping, Carrying Over, and Cashing Out Leave:** There is no cap on the number of hours that can be accrued in a year. Accrued, unused paid sick leave of 40 hours or less must be carried over to the employee's next year. The rules define a year as the calendar year unless the employer defines an alternate 12-month period (including each individual employee's anniversary date) via written policy. There is no requirement to pay unused leave on termination. The employer can pay out leave on termination at a mutually agreed rate. If an employee with at least 90 days service returns within 12 months, the employer must reinstate accrued leave (except for any portion cashed out at the normal hourly rate). An employee who returns within 12 months and worked less than 90 days is allowed to count earlier days worked toward eligibility.

**Paid Time Off Programs:** Use of PTO program is permitted. However, to substitute for paid sick leave, it must be in writing and meet all sick leave requirements for accrual, carryover, permitted uses, notice, and recordkeeping. Once the leave is exhausted, it is exhausted.

**Exemptions and Variances:** There are no exemptions for collective bargaining agreements. Variances are available for the increments of use, but the variance procedure is very complicated.

**Notice and Recordkeeping:** No later than March 1, 2018, an employer must notify current employees of paid sick leave rights (and notify new employees on date of hire), including at least the accrual rate, permitted leave purposes, and statement of no retaliation. At least once a month, the employer must provide each employee with a notice of accrued leave, used leave, and leave balance. On rehire, an employer must provide notice of available leave.



**Retaliation:** The new law protects employees from retaliation for exercising their rights, which includes filing a complaint for wages owed, lawfully using paid sick leave, or exercising protected rights.

**Relationship of State and Local Laws:** I-1433 allows 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 will still be permitted to enact additional local labor standards that are more favorable to employees. Seattle, SeaTac, and Tacoma already have paid sick leave ordinances, and any part of those ordinances that is above the standards of I-1433 will need to be followed by employers/employees in those jurisdictions. Nothing in I-1433 precludes other jurisdictions from passing similar ordinances.

**Additional Information or Questions:** Contact Scott Dilley at [scott@wastatedairy.com](mailto:scott@wastatedairy.com) or 360.581.8153 for more information.

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## **Steps for Implementing Paid Sick Leave at Your Business**

The Washington State Department of Labor & Industries has attempted to make it easy for businesses to implement I-1433 Paid Sick Leave. L&I has developed an Employer Resource Center to provide information to business owners, answer questions, and provide sample policies. That website can be found at <http://www.lni.wa.gov/WorkplaceRights/LeaveBenefits/VacaySick/EmployerInfo.asp>.

**Policies:** Employers do not need to have written paid sick leave policies to comply with the rules. But if employers want to apply specific provisions of the rules to their businesses, then written policies or collective bargaining agreements are required. Below are links to the sample policies L&I has developed.

- **Paid Sick Leave:** This sample policy covers the major elements of the law. It is designed so you can include the other, optional sample policies below. An employer's paid sick leave program must meet or exceed the provisions of the new paid sick leave law, agency rules, and local ordinances (for employers in Seattle, Tacoma, and SeaTac). This policy applies to employees entitled to the protections of the Minimum Wage Act (RCW 49.46).
  - [Paid Sick Leave Policy \(sample policy\)](#)
- **Reasonable Notice:** This sample policy is for requiring an employee to provide "reasonable notice" for an absence from work for the use of paid sick leave for an authorized purpose. (See WAC 296-128-650.)
  - [Reasonable Notice for Use of Paid Sick Leave \(sample policy\)](#)
  - [Employee Notice for Use of Paid Sick Leave \(sample form\)](#)
- **Verification:** This sample policy is for requiring an employee to provide verification for paid sick leave uses that exceed three consecutive days the employee is required to work. (See WAC 296-128-660.)
  - [Verification for Absences Exceeding Three Days \(sample policy\)](#)
  - [Employee Verification for Authorized Use of Paid Sick Leave for Absences Exceeding Three Days \(sample form\)](#)
- **Shared Leave:** This sample policy is for giving your employees the ability to share leave with co-workers. (See WAC 296-128-710.)
  - [Shared Paid Sick Leave Program \(sample policy\)](#)
  - [Employee Request to Donate Paid Sick Leave \(sample form\)](#)
  - [Employee Request to Receive Shared Paid Sick Leave \(sample form\)](#)
- **Frontloading:** This sample policy is for frontloading an employee's paid sick leave balance before it would otherwise accrue. (See WAC 296-128-730.)
  - [Frontloaded Paid Sick Leave \(sample policy\)](#)
  - [Employee Notification of Frontloaded Paid Sick Leave \(sample form\)](#)

- **Definition of “Year”:** According to WAC 296-128-620, the default definition of “year” for paid sick leave benefits is the calendar year. If you want to establish a different definition (such as fiscal year, benefit year, employee anniversary date), you need to establish that definition in writing.
- **Paid Time Off Programs:** According to WAC 296-128-700, if you want to use a paid time off program to meet the requirements of paid sick leave benefits, you will need to do so by a written policy or collective bargaining agreement.

**Notification Requirements:** Employers must provide a one-time notification to each employee of their paid sick leave rights. (See WAC 296-128-760.) Employers must provide such notification in written or electronic form and must make this information readily available to all employees. An employee paid sick leave notification must include:

- Their entitlement to paid sick leave;
- The rate at which the employee will accrue paid sick leave;
- The authorized purposes under which paid sick leave may be used; and
- That retaliation by the employer for the employee's lawful use of paid sick leave and other rights provided under the Minimum Wage Act (RCW 49.46), and all applicable rules, is prohibited.

Employers must provide this notification to employees hired on or after Jan. 1, 2018, no later than the commencement of employment. Notification to existing employees already working for the employer before Jan. 1, 2018, no later than March 1, 2018.

L&I developed an [employee paid sick leave notification form](#), which meets the standard for compliance with these rules. L&I has also updated the “Your Rights as a Worker” poster to include paid sick leave benefits. The new poster can be found at <http://www.lni.wa.gov/IPUB/700-074-909.pdf>. Employers must display this poster where employees can read it.

**Payroll:** The employer must pay paid sick leave to an employee no later than the payday for the pay period in which the paid sick leave was used by the employee, unless the employer requests verification for an absence exceeding three days. (The employer must have a verification policy in place before asking for verification.) If the employer requires verification, paid sick leave must be paid to the employee no later than the payday for the pay period during which verification is provided to the employer by the employee.

**Required Records:** Employers with employees covered by the Minimum Wage Act are required to keep and preserve the [required payroll records](#). In addition, you need to keep and preserve the following paid sick leave information:

- Paid sick leave accruals each month and any unused paid sick leave available for use by an employee.
- Paid sick leave reductions each month including, but not limited to, paid sick leave used by an employee, paid sick leave donated to a co-worker through a shared leave program, and paid sick leave carried over to the following year.
- The date of commencement of the employee’s employment.