



# COMPLIANCE BULLETIN

## HIGHLIGHTS

- Employees must accrue a minimum of one hour of paid sick time for every 30 hours worked.
- Employers with 15 or more employees may limit employees' paid sick time accrual to 40 hours per year.
- Employers with fewer than 15 employees may limit employees' paid sick time accrual to 24 hours per year.

## IMPORTANT DATES

July 1, 2017

Arizona's earned paid sick time requirements become effective.

## Arizona Voters Approve Earned Paid Sick Time

On Nov. 8, 2016, Arizona voters approved [Proposition 206](#), a ballot measure that increases Arizona's minimum wage and requires employers to provide employees with earned paid sick time, which will become **effective July 1, 2017**. Under the new law:

- ✓ Virtually all Arizona employers are required to provide earned paid sick leave to their employees.
- ✓ Employers must provide employees with a notice of the law's requirements by July 1, 2017.

## ACTION STEPS

Employers should review their existing paid time off (PTO) policies and determine whether any changes must be made in order to comply with the earned paid sick time law's requirements. Employers should also consider whether other company policies, such as attendance policies, must be revised to comply with the law's anti-retaliation provisions.

If changes are required, employers should prepare to make these updates to their policies prior to July 1, 2017. Also, employers should be prepared to provide the required employee notices and comply with the law's recordkeeping requirements.

Provided By:  
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## Covered Employers

Virtually all private employers in Arizona are covered by the earned paid sick time law. There is no exception for small businesses. Even small businesses that are exempt from the state's minimum wage requirements will be required to comply with Arizona's earned paid sick time law.

An employer that currently offers any type of paid leave policy (such as a PTO policy) that provides at least the same amount of leave and allows employees to use leave for the purposes required by the law is not required to provide additional paid sick time.

*Employers with existing paid leave policies that meet or exceed the earned paid sick time law's minimum requirements are not required to provide additional paid sick leave.*

## Eligible Employees

In general, **all employees** working for an Arizona employer are eligible for the accrual and use of earned paid sick time. However, employees who are covered by a collective bargaining agreement (CBA) in force on July 1, 2017, are not covered by the earned paid sick time law until that CBA expires. Also, for CBAs that are entered into, on or after July 1, 2017, the earned paid sick time law's requirements can be waived by the parties to the agreement.

## Accrual of Earned Paid Sick Time

Under the earned paid sick time law, employees must begin accruing earned paid sick time as follows:

| Current Employees   | New Employees   |
|---|---|
| Current employees must begin accruing earned paid sick time <b>on July 1, 2017.</b> | Employees who are hired after July 1, 2017, must begin accruing earned paid sick time <b>upon hire.</b> |

Employees must accrue at least **one hour of earned paid sick time for every 30 hours worked**. Employees who are considered "exempt" under the federal Fair Labor Standards Act (FLSA) are assumed to work 40 hours per week for purposes of earned paid sick time accrual.

However, employers may limit the accrual of earned paid sick time based on their employer size as follows:

- ✓ **Employers with 15 or more employees** may limit employee earned paid sick time accrual and use to no more than **40 hours per year**; and
- ✓ **Employers with fewer than 15 employees** may limit employee earned paid sick time accrual and use to no more than **24 hours per year**.

For this purpose, a "year" is any consecutive 12-month period, as chosen by the employer.

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Employers may choose to provide employees with the full amount of earned paid sick time they are expected to accrue at the beginning of each year to avoid tracking accruals. For example, an employer with 15 or more employees could provide employees with 40 hours of paid sick time at the beginning of the year.

**Legal Challenge:** A group of Arizona businesses, the Arizona Chamber of Commerce and individual citizens have filed a lawsuit challenging the constitutionality of Proposition 206. So far, Arizona courts have refused to halt implementation of the law pending resolution of the legal challenge. This means that the earned paid sick time law is still scheduled to take effect on July 1, 2017. For more information on the status of the legal challenge, see the Industrial Commission of Arizona's [FAQs](#) on Proposition 206.

## Use of Earned Paid Sick Time

Eligible employees must be able to use their accrued paid sick time for **any** of the following reasons:

- 1 An employee's own mental or physical illness, injury or health condition, including the need for medical diagnosis, care or treatment, and preventive medical care
- 2 To care for the employee's family member with a mental or physical illness, injury or health condition, including the family member's need for medical diagnosis, care or treatment, and preventive care
- 3 Closure of the employee's place of business by order of a public official due to a public health emergency or an employee's need to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency
- 4 Time off due to domestic violence, sexual violence, abuse or stalking to allow the employee to obtain for him or herself or the employee's family member:
  - ✓ Medical attention, including psychological or other counseling, for physical or psychological injury caused by domestic violence, sexual violence, abuse or stalking;
  - ✓ Services from a domestic violence program, sexual violence program or victim services organization; or
  - ✓ Legal services or to relocate (or take steps to relocate).

It is important to note that **"family member"** is very broadly defined under the law. Specifically, for purposes of using earned paid sick time, a family member includes:

- ✓ Children of **any age**, including a biological child or adopted child, stepchild, legal ward, child of a domestic partner or child to whom the employee stands *in loco parentis* (whether now or in the past);

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- ✓ Parents, including a biological or adoptive parent, stepparent, legal guardian of the employee, employee's spouse or domestic partner, or person who stood *in loco parentis* when the employee or the employee's spouse or domestic partner was a minor;
- ✓ The employee's spouse or domestic partner;
- ✓ Grandparents, grandchildren, or siblings (biological, foster, adoptive or step relationship) of the employee or the employee's spouse or domestic partner; and
- ✓ Any other individual related by blood or affinity whose close association with the employee is equivalent of a family relationship.

Earned paid sick time is compensated at the same hourly rate as the employee would earn for hours actually worked.

## Permitted Waiting Periods

Employees must generally be allowed to use earned paid sick time as it is accrued. However, an employer may choose to require newly hired employees (those hired after July 1, 2017) to wait **90 days** prior to using any accrued paid sick time.

## Leave Increments

Employers may require paid sick time to be used in the smaller of:

- ✓ Hourly increments; or
- ✓ The smallest increment that the employer's payroll system uses to account for other types of time off.

For example, if an employer's payroll system accounts for absences or use of other time in six-minute increments (a tenth of an hour), an employee may use earned paid sick time in this same increment.

## Employee Notice Requirements

Under the law, earned paid sick time is to be provided upon an employee's request. When the need for sick time is foreseeable, employees are expected to make a "good faith effort" to provide the employer with advance notice of the need for leave (including expected duration, if possible) and schedule the time off in a way that avoids disrupting the employer's operations. If an employer requires notice of the need to use earned paid sick time when it is **not** foreseeable, it must establish a written policy that includes procedures for employees to provide the notice.

## Documentation of Earned Paid Sick Time Use

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An employer may require reasonable documentation to verify that earned paid sick time was used for a permitted reason only when an employee uses paid sick leave for **three or more consecutive days**.

Documentation that is signed by a health care professional and indicates sick time is necessary is considered to be reasonable. An employer may not require that the documentation explain the nature of the health condition or the details of the domestic violence, sexual violence, abuse or stalking.

If earned paid sick time is used due to domestic violence, sexual violence, abuse or stalking, the law specifies various forms of acceptable documentation, including a police report, protective order, a signed statement from an attorney or advocacy organization, or a signed statement by the employee.

## Carryover, Termination and Rehire Requirements

With respect to unused earned paid sick time, employers must either:

- ✓ Allow employees to carry over unused earned paid sick time into the following year; or
- ✓ Pay out unused paid sick time to employees at the end of the year.

### Carryover

If the employer allows employees to carry over unused earned paid sick time, the employee may still be subject to limits implemented by the employer, depending on its size, for use of earned paid sick time each year.

### Pay Out

If an employer chooses to pay out unused paid sick time, the employer must then provide employees with at least the minimum amount of earned paid sick time required (that is, at least 40 hours for employers with 15 or more employees and at least 24 hours for employers with fewer than 15 employees) for immediate use as of the beginning of the subsequent year.

Employers are **not** required to payout unused earned paid sick time when an employee terminates employment. However, if an individual is **rehired within nine months** of the separation, the employee is entitled to all previously accrued, unused paid sick time. The rehired employee is also entitled to use the reinstated paid sick time upon the recommencement of employment.

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## Employee Protections

**Under the earned paid sick time law, an employer is prohibited from:**

- ✓ Interfering with or denying an employee his or her rights to earned paid sick time;
- ✓ Retaliating against an employee for using earned paid sick time;
- ✓ Requiring an employee to find a replacement to cover for the employee's earned sick time absence; and
- ✓ Counting earned sick time absences against an employee under the employer's attendance policy.

Employers must keep all the details they obtain regarding an employee's (or family member's) health condition or use of earned paid sick time due to domestic violence, sexual violence, abuse or stalking **completely confidential**. Information may not be disclosed to any other individual other than the affected employee, unless the employer has permission from the affected employee to disclose the information.

**Noncompliance/Penalties:** An employer that violates the law's recordkeeping, posting or other requirements is subject to a civil penalty of at least \$250 for the first violation and at least \$1,000 for each subsequent or willful violation. Special monitoring and inspections may also be imposed.

## Employer Notification Requirements

The new law requires employers to provide written notice of earned paid sick time rights as follows:

- ✓ Employers must provide **current employees** with written notice of earned paid sick time rights by July 1, 2017 (the effective date of the law).
- ✓ All **new employees** hired after July 1, 2017, must receive written notice upon hire.

The Industrial Commission of Arizona (Commission) has provided a [model notice](#) for employers to use.

Employers will also be required to **notify employees each pay period** of their available earned paid sick time, the amount of earned paid sick time used by the employee to date and the amount of earned sick time pay the employee has received to date in the year. This information must be included either on the employee's regular paycheck or in an attachment to the employee's paycheck.

## Recordkeeping Requirements

Employers must maintain records of earned paid sick time paid to all employees for a period of **four years**. Failing to maintain these records will create a presumption that the employer did not pay earned paid sick time, unless the employer can prove otherwise.



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## More Information

The Commission has issued a set of [frequently asked questions](#) (FAQs) regarding Proposition 206, including the earned paid sick time requirements.