

Eye On Washington State and Local Updates



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Timely, topical insights on a variety of payroll and reporting issues.

Leave

Michigan Establishes Paid Sick Leave Effective Date

The Michigan legislature passed and the Governor signed Senate Bill 1175, which established a paid sick leave law. However, Senate Bill 1175 was scheduled to take effect 90 days after adjournment of the legislature. At the time of publication, the Michigan legislature had not yet adjourned, so the effective date could not be determined. The Michigan legislative website (link below) indicates that the provisions of Senate Bill 1175 will become effective on **March 29, 2019**. In September 2018, Michigan had originally enacted legislation that was scheduled to take effect on March 1, 2019.

[https://www.legislature.mi.gov/\(S\(m0uikvj4iy3jnrhz2eeb4lyn\)\)/mileg.aspx?page=getObject&objectName=2018-SB-1175](https://www.legislature.mi.gov/(S(m0uikvj4iy3jnrhz2eeb4lyn))/mileg.aspx?page=getObject&objectName=2018-SB-1175)

Senate Bill 1175 significantly amends Michigan's Earned Sick Time Act, which was originally approved by the legislature in September. Among other things, Senate Bill 1175:

- Renames the law the Paid Medical Leave Act
- Includes greater restrictions on who is eligible
- Changes the accrual rate and decreases the number of hours that can be accrued
- Limits the reasons for which employees may take leave
- Narrows the definition of covered family members
- Revises rules regarding pay during leave
- Amends employer and employee notice requirements
- Removes a provision related to rules about finding replacement workers
- Eases recordkeeping requirements

Employee Eligibility:

Under the amended law, to be eligible for paid medical leave, employees must have worked, on average, 25 or more hours during the previous calendar year for an employer with 50 or more employees.

Certain types of employees aren't eligible for paid medical leave, including but not limited to:

- Employees who are classified as exempt from overtime
- A "variable hour employee" as defined by the Affordable Care Act
- Individuals employed for 25 weeks or fewer in a calendar year for a job scheduled for 25 weeks or fewer

By contrast, the measure approved in September would have generally applied to all employers and employees who work in the state.

Accrual and Carryover:

Under Senate Bill 1175, eligible employees are entitled to accrue one hour of paid medical leave for every 35 hours worked, up to a maximum of 40 hours of paid medical leave per benefit year. (Under the measure approved in September, the accrual rate would have been one hour for every 30 hours worked, up to a maximum of 72 hours.) Employers may limit accrual to one hour of paid medical leave in a calendar week. Employees are entitled to begin accruing paid medical leave on their date of hire or the effective date of the law, whichever is later.

Employees are generally entitled to carry over up to 40 hours of unused paid medical leave to the following benefit year. However, if an employer provides at least 40 hours to an eligible employee at the beginning of the benefit year, no carryover is required. For employees hired during the benefit year, Senate Bill 1175 allows employers to pro rate the amount of leave provided.

Use:

Employers may make employees wait until they have been employed for 90 days before they can use accrued paid medical leave. Employers may limit use to 40 hours of paid medical leave per benefit year. Employees are entitled to use paid medical leave for:

- The employee's or a family member's mental or physical illness, injury, or health condition;
- The employee's or a family member's medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition, or preventive medical care;
- For medical care, counseling, obtaining legal services, or participating in a civil or criminal proceeding when the employee or a family member is a victim of domestic violence or sexual assault; and
- The closure of the employee's primary workplace due to a public health emergency, the closure of their child's school or place of care due to a public health emergency, or when a healthcare provider has determined that the employee's or a family member's presence in the community would jeopardize the health of others.

Senate Bill 1175 removes a provision that would have allowed eligible employees to use such leave to attend meetings at their child's school.

As amended, the law defines a family member as:

- A child, stepchild, legal ward, or a child to whom the employee stands in place of a parent;
- Grandchild;
- Grandparent;
- Parent or spouse's parent;
- Sibling; and
- Spouse.

Senate Bill 1175 removes from the definition references to domestic partners and individuals related by blood or affinity.

Pay During Leave:

During the leave, employers must pay eligible employees a rate at least equal to the greater of either their normal hourly or base wage or the applicable minimum wage. For the purposes of paid medical leave, employers are permitted to exclude overtime, holiday pay, bonuses, commissions, supplemental pay, piece-rate pay, and gratuities from the calculation of an eligible employee's normal hourly wage or base wage.

Replacement Workers:

Senate Bill 1175 removes a provision that would have expressly prohibited employers from requiring an employee to find a replacement worker as a condition for using the leave.

Employee Notice and Documentation:

Under Senate Bill 1175, employees requesting paid medical leave must comply with their employer's usual and customary notice, procedural, and documentation requirements for requesting leave. Employers must give employees at least three days to provide documentation.

Note: The law has specific rules for requesting documentation when the leave is related to domestic violence and sexual assault.

Employer Notice:

Senate Bill 1175 retains a requirement for employers to display a poster about the law, but it removes a requirement for employers to give employees written notice by April 1, 2019. Senate Bill 1175 also removes a requirement that the notice be given in Spanish and other languages.

Recordkeeping:

Employers must keep records documenting the hours of work and paid medical leave taken by employees for at least one year (instead of the three years that would have been required under the measure approved in September).

Relationship to Other Leave Policies:

Senate Bill 1175 establishes that there is a "rebuttable presumption" that an employer is in compliance with the law if the employer provides at least 40 hours of paid leave (such as paid vacation) to eligible employees each benefit year. Employers may want to consult legal counsel to determine if and how this provision may apply to their existing policies.

For a copy of Senate Bill 1175, please click on the link provided below.

<https://www.legislature.mi.gov/documents/2017-2018/publicact/pdf/2018-PA-0369.pdf>

Washington State Launches Family and Medical Leave Insurance Program Website

On July 5, 2017, Washington State Governor Jay Inslee signed into law Substitute Senate Bill 5975 (S5975), which creates the Family and Medical Leave Insurance Program effective January 1, 2020.

The Paid Family and Medical Leave Program will provide everyone in the workforce with up to 12 weeks of paid medical leave, and up to 12 weeks of paid time off to care for a new child or an ailing family member. That leave is capped at 16 weeks if the employee needs both types of time off in a one-year period. Women who experience pregnancy complications may receive an additional two weeks of leave.

Employers with 50 or more employees — and their employees — both began making contributions to the program, beginning on January 1, 2019. The premium for 2019 is 0.4 percent of an employee's gross wages, up to the Social Security taxable wage base of \$132,900. Employers may elect to pay all of their employees' share of the premium, or may split the cost of the program by withholding up to 63.33 percent of the premium from employees' paychecks. The employer is responsible for paying the other 36.67 percent and remitting total premiums to the Washington Employment Security Department (ESD) on a quarterly basis starting in April 2019. Employers with fewer than 50 employees will collect and remit employee premiums through withholding and will report employee wages, hours worked, and more on a quarterly basis to the ESD.

Depending on earnings, employees will receive up to 90 percent of their wage or salary or up to \$1,000 per week during their leave. Employees become eligible for the program after working 820 hours.

Businesses with fewer than 50 employees will not be required to pay the employer share of the premium, but those businesses can still opt in. Businesses with fewer than 150 employees who pay into the program are eligible for grants of \$1,000 to \$3,000 each to cover the cost of an employee on leave.

Website:

The Washington ESD has launched a new website to provide guidance to employers, workers, and healthcare providers on the new Paid Family and Medical Leave Program. The website includes frequently asked questions (FAQs) for employers and workers, links to an employer webinar, and a premium calculator.

Some examples of the FAQs provided may be found below:

Is participation in the program mandatory?

Generally, yes. Nearly everyone who works in Washington will participate in the program.

Exceptions include workers who are:

- Federal employees
- Employed by a federally recognized tribe
- Subject to a collective bargaining agreement (CBA) that was in existence on or before Oct. 19, 2017
- Self-employed

Am I eligible for benefits?

Paid Family and Medical Leave benefits will be available starting Jan. 1, 2020.

To qualify for Paid Family and Medical Leave, you must work 820 hours or more in the qualifying period. The qualifying period is the first four of the last five completed calendar quarters starting from the day you intend to take leave.

This benefit cannot be taken without a qualifying event. Leave events can be either Family or Medical.

Family Leave:

- o Care and bond after a baby's birth or the placement of a child younger than 18
- o Care for a family member experiencing an illness or medical event
- o Certain military-connected events

Medical Leave:

- o Care for yourself in relation to an illness or medical event

Important details:

- o Self-employed people may opt in to gain access to the benefit.
- o Employees covered under a CBA that was in existence on or before Oct. 19, 2017 are not subject to the rights or responsibilities of Paid Family and Medical Leave until the agreement is reopened, renegotiated, or expires. You will not pay premiums or be eligible for leave until the CBA is reopened, renegotiated, or expires.
- o Some employers may choose to offer benefits through a private plan called a voluntary plan. If your employer has an approved voluntary plan, they are required to offer benefits that are equal to or greater than the state plan.

As an employer, what are my responsibilities?

With very few exceptions, employers will have a responsibility to:

1. Report employee wages, hours worked, and other information for all employees.
2. Collect and remit premiums.
3. Post a mandatory poster to notify employees of the program will be available before January, 2020.

How do I report employee hours and wages?

Starting in 2019, employers will be required to report employee information to ESD quarterly. The first report will be due April 30 and you should begin tracking your employees' hours and wages on Jan. 1, 2019.

Reporting fields:

1. Unified Business Identifier (UBI) number
2. Business name
3. Total premiums collected (if any) from employees
4. Name of the report preparer

Then, for each employee:

5. SSN or ITIN
6. Last name
7. First name
8. Middle initial
9. Wages paid in the reporting quarter and the associated hours

Reporting periods follow calendar quarters and are aligned with the reporting periods for Unemployment Insurance.

REPORTING QUARTER	REPORT DUE
January, February, March	April 30
April, May, June	July 31
July, August, September	October 31
October, November, December	January 31

Reporting process:

In April 2019, employers will submit employee hours, wages and more for the first time. The process is currently in development and the state plans to make it like reporting for Unemployment Insurance. However, it will be a separate report from Unemployment Insurance and other state programs. We expect most employers will submit reports online through our customer account management system. Bulk filing and alternative reporting options will both be available.

For a copy of the ESD website, please click on the link provided below.

<https://paidleave.wa.gov/>

For a copy of S5975, please click on the link provided below.

<http://lawfilesextr.leg.wa.gov/biennium/2017-18/Pdf/Bills/Senate%20Passed%20Legislature/5975-S.PL.pdf>

Payroll

Michigan Announces Date of Minimum Wage Increase

The Michigan legislature passed and the Governor had signed into law Senate Bill 1171 that increases the current state minimum wage of \$9.25 per hour to \$9.45 per hour. However, the legislation takes effect 90 days after adjournment of the legislature. At the time of publication, the Michigan legislature had not yet adjourned so the effective date of the increase was not yet known.

On January 2, 2019, Michigan announced that the effective date of the minimum wage increase to \$9.45 per hour will be March 29, 2019. The minimum cash wage required to be paid to tipped employees will increase to \$3.59 on this same date. Until such date, the minimum wage in Michigan will remain at \$9.25 per hour and the cash minimum wage required to be paid to tipped employees will remain at \$3.52 per hour.

For a copy of the announcement, please paste the following into your browser.

<https://www.michigan.gov/lara/0,4601,7-154-59886---,00.html>

Time and Labor

New York State Issues Proposed Regulations on Call-In and Reporting Pay

In December 2018, New York State's Department of Labor issued a far-reaching set of regulations that would impact significantly the ability of employers to schedule nonexempt employees in most industries.

Current New York Law on Call-In Pay

Under current NY law, nonexempt employees of covered employers are entitled to "call-in pay" in the amount of the lesser of four hours or the hours for which the employee was scheduled to work at the applicable minimum wage, if they are required to show up for work, but are then sent home without working. The current rules include an exception for any workweek where the employee's total wages for the week exceed the minimum wage rate and the overtime rate, if applicable, for the number of hours worked, plus the minimum wage rate for any call-in pay otherwise owed.

Summary of Proposed Regulations

Coverage:

The proposed regulations would apply to all nonexempt employees, except:

- Employee covered by the New York Hospitality Industry Wage Order, which regulates restaurants and hotels; or
- Employees covered by the New York Minimum Wage Order for the Building Service Industry, which covers janitors and other building service industry workers.

Summary of Proposed Call-In and Scheduling Pay Requirements:

The proposed regulations will require payment of between two and four hours of "call-in pay" where employers:

- Fail to provide nonexempt employees with 14 days of advance notice of their work shift;
- Cancel employee shifts without at least 14 days of advance notice;
- Require employees to work "on-call";
- Require nonexempt employees to report to work but then send them home; or
- Require employees to be in contact with the employer within 72 hours of the start of a shift to confirm the need to report to work.

Exceptions and Exclusions:

The proposed regulations include several exceptions to and exclusions from its general requirements:

- Weather, Health, Safety – Call-in pay will not be required for employees whose duties are directly dependent on weather conditions, employees whose duties are necessary to protect the health or safety of the public or any person, and employees whose assignments are subject to work orders. Similarly, unscheduled shift and cancelled shift call-in pay would not be required when an employer responds to emergencies, acts of God or situation outside of the employer's control, weather or other travel advisories by offering employees the option to voluntarily reduce or increase their scheduled hours, so that employees may stay home; arrive early or late; depart early or late, etc.
- New Employees, Volunteers and Employee Requests – There are several situations where call-in pay need not be paid for previously unscheduled shifts. Specifically excluded are the following: (1) any new employee during the first two weeks of employment, or (2) any employee (as opposed to any regularly scheduled employee) who volunteers to cover a new shift or a previously scheduled shift. Also, employers would not be required to provide call-in pay when they cancel a shift in response to an employee's request for time off.
- Wages Greater Than 40 Times Minimum Wage – In any week in which an employee's wages exceed 40 times the applicable minimum wage rate, the employee would be exempt from on-call pay requirements, except the call-in pay requirement for reporting to work.
- Collective Bargaining Agreement – Employees covered by a valid collective bargaining agreement that expressly provides for call-in pay would not be entitled to call-in pay under the regulations.

The proposed regulations were subject to public comment until January 11, 2019. It is expected that the New York State Department of Labor will formally adopt them thereafter, likely sometime in the first quarter of calendar year 2019. We will continue to monitor developments.

You can view the proposed regulations at this link:

<https://www.labor.ny.gov/workerprotection/laborstandards/pdfs/employee-scheduling-proposed-rule.pdf>

Philadelphia Passes Fair Workweek Law

On December 8, 2018, the City Council of Philadelphia passed a "Fair Workweek" bill, which was signed into law on December 20 by Philadelphia Mayor Jim Kenney. The law applies to employers in the retail, fast-food, and hotel industries with more than 30 locations and 250 employees. It will require covered employers to:

- Provide employees with a written, good faith estimate of the employee's schedule when hired
- Engage in an interactive process regarding the employee's availability
- Give employees two weeks' advance notice of their schedules
- Provide "predictability pay" if schedules change within 10 days of the schedule being delivered (and increasing to 14 days beginning January 1, 2021) unless an employee consents to the change
 - o If hours are added to an employee's schedule, or the schedule is changed with no loss in hours to the employee, the employer must pay one hour of predictability pay
 - o If hours are reduced, the employer must pay predictability pay at a rate of time and a half for all hours not worked as a result of the change
 - o Some exceptions for extenuating circumstances, such as natural disasters, apply
- Offer available shifts to existing employees before hiring new ones
- Provide employees with at least a nine-hour break between shifts
- Maintain records of their compliance with the law

Any part of the ordinance may be waived in a bona fide collective bargaining agreement.

The law will take effect on January 1, 2020, and will be enforced by Philadelphia's Office of Labor.

A bill has been introduced in the Pennsylvania legislature that would bar cities from passing workplace rules different from those at the state level, but Pennsylvania Governor Tom Wolf has said that he would veto such a measure.

The full text of the law can be found at this link:

<https://phila.legistar.com/LegislationDetail.aspx?ID=3529951&GUID=18AD5BAB-1BFE-4D7D-B1B2-53F0C06A7648>

ADP Compliance Resources

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