

Arizona's Paid Sick Time Law



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Does Prop 206 Apply to Our Business?

- YES.
- The new law applies to all employers regardless of their gross revenue or number of employees.
- Does not apply to State of Arizona or federal government.



The Basics

- Employees accrue 1 hour of PST for every 30 hours worked.
- Applies to all employees, including part-time and seasonal.
- Doesn't apply to independent contractors.



Limits on Accrual and Use

- 15+ employees = employer required to give at least 40 PST hours per year.
- Less than 15 employee = employer required to give 24 PST hours.
- Employer may select higher limits.
- Make sure sick time policy states which cap applies.



Qualifying Reasons for Leave

- **Employee's health care:** the diagnosis, care, or treatment of any mental or physical illness, injury, or health condition, including preventive medical care.
- **Family member's health care:** any family member's health care needs.



Other Qualifying Reasons

- **Legal issues:** closure of employee's place of business or closure of the employee child's school or place of care by a public official for any health-related reason.
- **Violence or stalking:** domestic/sexual violence, abuse, or stalking involving the employee or their "family member."

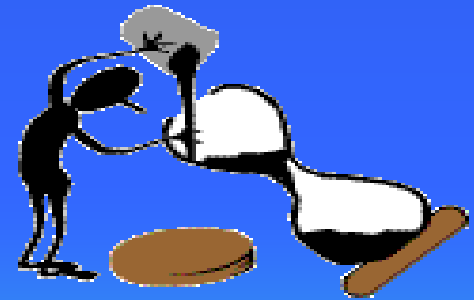


Carryover

- Must allow carry over of up to 24 or 40 hours of unused PST depending on which cap applies.
- But....
 - employees may only use 24 or 40 PST hours per year, and
 - employer not required to pay PST upon separation, regardless of reason.

Incremental Leave

- Leave may be taken in the smallest increments that the employer or their payroll service company can keep track of.



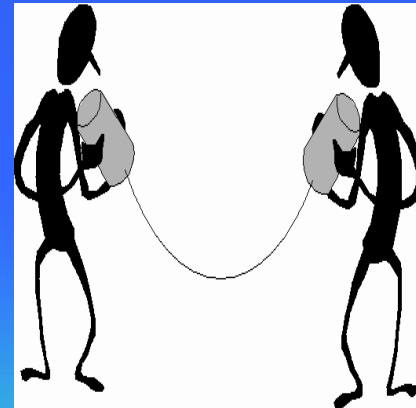
Rate of Pay

- Regular hourly rate.
- Salaried employee = weekly salary divided by 40 hours.
- Presumption that salaried employees work 40 hours per week, unless their normal work week is consistently more or less than 40 hours, in which case PST accrues based upon actual hours worked.



Basis for Request

- Not required to give specific details.
- But, can require employee to provide general basis for request (i.e, that they or a family member have a qualifying healthcare reason).



Documentation

- When employee takes 3+ consecutive days of PST, employer may require medical or legal documentation confirming need for leave.
- Must maintain confidentiality.



Separate Buckets

- If additional PTO offered, should have two separate buckets: (1) PST and (2) PTO.
- If employee has a qualifying healthcare or legal reason, make them use their PST.
- If they don't, make them use PTO.



Loaning of PST

- May loan PST and deduct from future accrual.
- Best practice = PST policy should state that upon separation, employer will deduct any loaned PST from final wages.



Separation of Employment

- Not required to pay unused PST upon separation of employment, regardless of the reason.



Retaliation Prohibited

- Cannot retaliate against employee for exercising protected rights.
- Retaliation = any act that would discourage employee from requesting or using PST.



Protected Rights

- Request or use PST,
- File a complaint with court or agency,
- Inform others of their rights, or
- Participate in an investigation or hearing.

Burden Shifting

- “Taking adverse action against a person within ninety days of a person's engaging in the foregoing activities shall raise a presumption that such action was retaliation, which may be rebutted by clear and convincing evidence that such action was taken for other permissible reasons.”

– A.R.S. § 23-364(B).

\$150 Per Day

- “Any employer who retaliates against an employee or other person in violation of this article shall be required to pay the employee an amount set by the commission or a court sufficient to compensate the employee and deter future violations, but not less than one hundred fifty dollars for each day that the violation continued or until legal judgment is final.
 - A.R.S. § 23-364(G).

Additional Damages

- Mandatory award of attorney fees.
- Lost wages.
- Damages for emotional distress.
- Punitive damages.
 - A.R.S. § 23-364(G).

What About 2017?

- July 1 is the midpoint of the year. We plan to give employees half of the 240 PST hours they will accrue.
- DON'T DO THIS.
- An employee who worked 40 hours/week every week from July 1 through December 31 would earn 34.66 PST hours.
 - $1,040 \text{ hours} \div 30 \text{ hours} = 34.66 \text{ hours}$.

Notice

- Unclear whether employee can call in sick 5 minutes before shift.
- But, employers can require advance notice of foreseeable leave and can deny an untimely request for PST.
- Probably okay to require employee to request PST as soon as they become aware of the need for leave.



Notice

- But be careful.
- Safest course is give PST, despite untimely request.

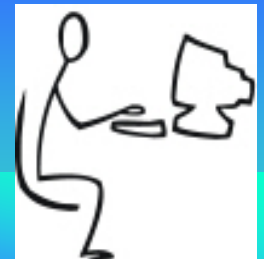


Record Keeping Requirements

- Best practice = keep all records for 4 years after separation of employment.
- Although statute of limitations on a claim under the new PST law is no longer than three years, an employee can seek recovery of minimum wage under the AZ Minimum Wage act dating back to January 1, 2007 if they establish that the violations were a “continuing course of employer conduct.” A.R.S. § 23-364(H).

Paychecks

- “The amount of earned paid sick time available to the employee, the amount of earned paid sick time taken by the employee to date in the year, and the amount of pay the employee has received as earned paid sick time shall be recorded in, or on an attachment to, the employee's regular paycheck.”
A.R.S. § 23-375(C).
- Could also provide this information in an online portal, so long as employee can access this information.



Another Presumption

- If the information is not on their earnings statement, paycheck, or an online portal, it creates a presumption the employer did not properly pay the employee.

Conclusion

- Engage legal counsel to draft a policy.
- Discuss best practices with counsel.
- Be very careful when taking adverse action against an employee within 90 days.

A Conclusion is the place where you get tired of thinking.



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Thanks.

