

## Understanding the Seattle Paid Sick and Safe Time (PSST) Ordinance

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On September 1, 2012, Seattle joined the ranks of only three other cities in the country that require employers with five or more employees to provide paid sick and safe time (PSST) leave to their employees.

**What Employers Are Impacted by this Ordinance?** This ordinance not only impacts employers whose primary place of business is in the City of Seattle, it also

impacts non-Seattle employers who have employees who work at least 240 hours within the city of Seattle, within a calendar year. Work is defined as performing any function other than simply passing through the city. The definition of workplace is equally as broad and may include telecommuting. However, the ordinance will not apply to employees who are on work study, or federal, state or county government employees.

Additionally, employers with employees represented by unions may agree with the union in the applicable collective bargaining agreement to waive the requirements of the PSST ordinance, for the represented employees.

To reduce the burden on small employers, the ordinance establishes different tiers of benefit accrual. Tier 1 employers are those with between 5 and 49 employees; Tier 2 employers are those with between 50 and 249 employees, and Tier 3 employers are those that have at least 250 employees. A determination of the tier in which an employer falls will be based upon the average number of full time equivalent employees paid per calendar week during the preceding calendar year. In order to arrive at this number, an employer must consider *all* compensated hours of *all* employees (including full time, part time and hours worked for the employer by temporary workers regardless of the source of those temporary employees). In arriving at their tier, employers must consider hours regardless of whether the hours were worked in or outside Seattle. Once an employer

has determined the tier in which it falls, the employer will know how many hours of PSST leave it must provide.

The definition of an employer is also more expansive than one might think. An “employer” may include more than one business entity and may be treated differently depending on whether the entity is considered an integrated enterprise. If the multiple businesses are considered an integrated enterprise, they would be treated as a single employer and all employees of the integrated enterprise counted in determining the tier into which it falls. However, if they are not an integrated enterprise, each business stands alone in determining the appropriate tier level under which they are required to provide benefits under the ordinance.

**Special Considerations Regarding New Employers:** New employers are provided a grace period under the ordinance and are not required to comply with the provisions of the law until 24 months after they hire their first employee.

**How Much Leave Are Employees Entitled to Under this Ordinance?** Employees may use leave after 180 days of employment. The amount of PSST leave depends upon the tier in which the employer falls. Tier 1 and 2 employers must provide at least one hour of PSST leave for every 40 hours worked. However, the cap on the accrual is different for the two tiers with Tier 1 maxing out at 40 hours of accrual while Tier 2 maxes out at 56 hours. Accrual for Tier 3 employers is different, requiring that Tier 3 employers must provide 1 hour of PSST leave for every 30 hours worked with a

maximum accrual of 72 hours. If employees do not use the accrued time, the ordinance requires that an employee be permitted to carry the unused time over into the next year with a maximum carry over equal to the annual rate accrual for each tier, except Tier 3 employees with universal leave policies must allow up to a 108 hour carry over. Employers are not, however, required to pay for accrued unused PSST leave if an employee leaves employment. However, if the employee leaves and is reinstated within seven (7) months, the employee’s unused PSST leave must be reinstated.

#### **For What Types of Absences May This Leave Be Used?**

**Sick Time:** Employees may use the PSST leave for their own medical issues or to facilitate preventive care or to care for a family member with a mental or physical injury who needs diagnosis, care or treatment. In order to secure this leave, an employee need only request the leave in a manner that is consistent with the employer’s usual and customary procedures relating to sick leave. If an employee is absent for *any portion* of three (3) or more consecutive days, an employer may require signed medical certification from a health care provider that the leave is necessary. An employer *may not* require that the health care provider explain the nature of the medical condition. If an employer does not provide health care insurance for their employees but wishes to require a medical certification for absences of 3 or more days, the employer must pay one-half (1/2) of any out of pocket expenses incurred by the employee in obtaining the medical certification

(including services of the health care provider and transportation). Time taken as PSST leave may not be counted as an absence for purposes of discipline or under a no fault attendance policy.

**Safe Time:** Employees may also use PSST leave to attend to issues related to sexual assault, domestic violence and stalking including time to receive treatment, time to avail themselves of other necessary services and time to participate in legal proceedings related to these events. The purpose of permitting leave for these activities is to enable the employee to maintain financial independence, achieve safety and minimize both physical and emotional injuries arising out of the domestic violence, sexual assault or stalking.

Employees may also use PSST leave to assist immediate family members, including domestic partners, individuals with whom the employee has a child in common, individuals with whom the employee has either a biological or legal parent child relationship and/or individuals to whom the employee is or has been married or, if the employee is over the age of 16, someone with whom the employee has had a romantic relationship as defined by Washington law who need the employee’s assistance because of sexual assault, domestic violence or stalking.

PSST is also available to employees in the event a public official determines that either the employee’s place of business and/or their child’s school should close to limit exposure to infectious agents, hazardous materials or biological toxins.

**Impact of Ordinance on Universal Leave Programs:** If an employer has a combined sick and vacation leave policy, or PTO policy, the policy must permit use in the amount and for the reasons covered by the PSST ordinance. If it does not, they are required to increase the amount of PTO leave or combined leave so that the amount of leave is adequate to accommodate the maximum hours of leave required by the ordinance. Specifically, Tier 3 employers with universal or combined leave programs are required to provide at least 108 hours of leave and permit up to 108 hours of unused leave to be carried over. Therefore, this ordinance may require the amendment of policies which are currently use it or lose it policies to conform to these requirements.

Employers who are deemed to have a combined policy may not require employees to disclose whether they are using PTO for purposes permitted under the ordinance. However, where the accrual of universal leave is equal to or greater than the amount of PSST leave required by the ordinance, if an

employee exhausts his/her PTO, the employer will not be required to provide additional leave to be used for sick or safe reasons until the next scheduled accrual.

**How Is Pay Calculated?** Compensation for non-exempt employees depends upon when the leave is taken. If the leave is taken when the employee is scheduled to work straight time hours, then the straight time rate applies. If leave is taken during a time when the employee is entitled to overtime and/or a premium rate, then the overtime or premium rate applies. Employees are not entitled to lost tips or commissions during use of paid sick/safe leave.

Pay for exempt employees is determined by dividing the employee's annual salary by 52 weeks to arrive at a weekly salary. Once the weekly salary is determined, then the weekly salary is divided by the actual hours regularly worked in a week not to exceed 40 hours.

**What Happens if an Employer Suspects Abuse?** Although the

ordinance clearly prohibits any form of retaliation for use of leave pursuant to the ordinance, abuse by employees is not sanctioned by the ordinance. Consequently, the regulations permit a requirement for documentation, and presumably discipline for failure to adequately respond, if there is a pattern or clear evidence of abuse. The regulations define abuse as repeated absences, repeated instances of absences which precede or follow regular days off or some other pattern which might be indicia of abuse.

**Conclusion:** Though complicated, careful review of the ordinance, attention to its definitions, and planning should help impacted employers navigate the new leave grid.

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