

Duff on Hospitality Law

## Seattle's Mandatory Paid Sick Leave Requirement -- Ready or Not, it's Here

By Diana Shukis on 9.27.11 | Posted in Employment Law, Food and Beverage

This week, Employment Law partner & Hospitality team member, Diana Shukis, breaks down the effects of Seattle's recently enacted "Sick Leave" requirement. On September 12, 2011 the [Seattle City Council approved an ordinance that requires businesses with five or more employees to provide paid leave for employees when they or their family members are ill or a victim of domestic violence](#). The new leave requirement goes into effect on September 1, 2012. Here are answers to common questions to help guide you as you think ahead toward compliance:

### How much leave is required?

Businesses with fewer than five employees (called "micro-businesses") are exempt. All other employees working in Seattle are entitled to accrue sick and safe leave based on the size of the business where they work. The size of the business is determined by total full-time equivalent employees, based on a 40-hour work week ("FTE"), regardless of where those employees work. For example, if the business has 100 FTEs total, but only 10 work in Seattle, the 10 Seattle-based employees are entitled to earn paid sick and safe days at the Tier 2 accrual rate. **Employer Size Accrual Rate Annual Cap**

Employer Size	Accrual Rate	Annual Cap
Tier 1 5-49 FTEs	1 hour for every 40 hours worked	40 hours (5 days)
Tier 2 50-249 FTEs	1 hour for every 40 hours worked	56 hours (7 days)
Tier 3 Over 250 FTEs	1 hour for every 30 hours worked	72 hours (9 days)

Workers must work in Seattle for at least 240 hours per calendar year in order to be covered by the ordinance.

### How can the leave be used?

Employees may use sick and safe leave for any of the following reasons:

- The employee's own illness or injury, diagnosis, treatment, and preventative care.
- The health needs of an employee's child, spouse, domestic partner, parent, parent-in-law, or grandparent.
- To deal with the consequences of domestic abuse, sexual assault, or stalking.

- The closure of a place of business, a child's school, or a child's place of care due to a public health emergency.

Employers may require documentation of illness if an employee uses three consecutive days of leave. If the employer does not offer health insurance, the employer and employee must share the expense of obtaining such documentation.

#### **When can the leave be used?**

Waiting period to use leave: A Seattle-based employee begins to accrue leave immediately upon starting work, but cannot use the leave until 180 days after starting work.

Carry over: Accrued but unused sick and safe leave carries over to the following year. However, unless allowed by the employer, employees are not entitled to use more leave than the cap amount in any given year. As a practical matter, the carry over will make paid sick and safe leave available for absences early in the year before much leave has been accrued.

No pay out on termination: The ordinance does not require an employer to pay out accrued but unused sick and safe leave upon termination.

#### **Does an existing voluntary paid leave policy fulfill the requirement?**

Employers who already provide paid sick leave or other paid time off to employees do not have to provide additional paid leave as long as the existing leave meets the minimum accrual rates and employees are allowed to use the paid leave for the same reasons and in the same manner as required by the Seattle ordinance. Keep in mind that an existing policy may need some revisions in order to fully comply.

As the compliance deadline approaches, we will provide additional information and answer questions. As always, please [let us know](#) if you have questions or would like more information about this topic.

**Tags:** mandatory sick leave, Seattle City Council, sick and safe leave