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## Philadelphia: The Most Recent City to Adopt Paid Sick Leave Requirements for Some Employers

By Lisa Steele

As of July 1, 2012, certain employers in Philadelphia will have to provide their employees with paid sick leave. A recently enacted ordinance amends Chapter 17-1300 of the Philadelphia Code, titled "Philadelphia 21st Century Minimum Wage and Benefits Standard." The amendment will require certain employers, including the City and some City contractors, to provide up to a maximum of 56 hours, or seven days, of paid sick leave to all full-time, non-temporary, non-seasonal covered employees. The passage of the ordinance follows an unsuccessful effort earlier this year to enact a broader paid sick leave requirement applicable to all Philadelphia employers.

### Philadelphia's Paid Sick Leave Requirements

Philadelphia's paid sick leave requirement applies to the following employers:

- The City of Philadelphia, including all of its agencies, departments, and offices;
- For-profit Service Contractors, that receive or are subcontractors on contract(s) from the City of \$10,000 or more in a 12-month period, and have annual gross receipts of more than \$1,000,000;
- Non-profit Service Contractors, that receive or are subcontractors on contract(s) from the City of more than \$100,000 in a 12-month period;
- Recipients of City leases, concessions, or franchises or subcontractors thereof, that employ more than 25 employees;
- City financial aid recipients; and
- Public agencies that receive contract(s) from the City of \$10,000 or more in a 12-month period.

Covered employers are required to provide one hour of sick leave for covered employees for every 40 hours worked in Philadelphia up to an annual maximum of 32 hours (for employers with 5-11 employees) or 56 hours (for employers with more than 11 employees). For purposes of the paid sick leave requirement, covered employees include full-time, non-temporary, non-seasonal employees who perform work for a covered employer arising directly out of a Service Contract, City financial aid, the grant of a City lease, concession or franchise, or a funding agreement with

a public agency. Pursuant to Chapter 17-1300 of the Philadelphia Code, however, the definition of “employee” also specifically excludes persons employed on a construction project that is covered by federal, state or local prevailing wage requirements. The term “Service Contract” is defined in Chapter 17-1300 as a contract given to any employer by the City for the furnishing of services to or for the City (except where services are incidental to the delivery of products, equipment or commodities) and can include a subcontract if the subcontract assists in performance of a Service Contract or accepts or transfers any right or responsibility set forth in a Service Contract.

In certain circumstances, a covered employer can seek partial or total waiver of the paid sick leave requirement from the Philadelphia Office of Labor Standards. By way of example, if a covered employer contends that it is unable to pay all or part of the paid sick leave or if the paid sick leave is waived by a bona fide collective bargaining agreement, an employer can seek a waiver of the paid sick leave requirement.

Covered employers need to pay attention to their upcoming paid sick leave obligations as the enforcement provisions have “teeth,” providing both a private right of action and several remedies. Covered employees who believe that their employer failed to provide them with the minimum paid sick leave benefit may bring an action against an employer for back pay, compensatory and punitive damages, as well as attorneys’ fees and costs. It is also unlawful for an employer to retaliate or discriminate against a covered employee who claims his or her employer violated Philadelphia’s paid sick leave requirement. Finally, following notice and a hearing, a covered employer found to have failed to comply with Philadelphia’s paid sick leave requirement may be suspended from bidding on or participating in City contracts for up to three years.

## **An Employer’s Next Steps**

Before making any changes to their sick leave policies, employers should determine whether they are covered as an “employer” under the Philadelphia 21st Century Minimum Wage and Benefits Standard. Those providing services to the City, either through a direct contract or a subcontract, will need to consider the size of the contract, the amount of the employer’s gross receipts, and whether the business is a for-profit or non-profit entity. Covered employers should review their leave policies and revise their policies as necessary to provide no less than the amount of paid sick leave required under Chapter 17-1300 of the Philadelphia Code.

## **Other Paid Sick Leave Laws**

Although not as robust as other jurisdiction’s laws, Philadelphia’s paid sick leave ordinance reflects a recent trend at both the state and local level toward heightened obligations for employers to provide paid time off benefits to employees, whether in the form of paid sick leave or paid family leave. Since July 2011, Philadelphia, Seattle, and Connecticut have joined San Francisco and Washington, D.C. in requiring certain employers to provide a paid sick leave benefit.

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