

## Arizona Fair Wages and Healthy Families Act — Paid Sick Time

Effective July 1, 2017, employees are entitled to earned paid sick time at a rate of one hour for every 30 hours worked under the Arizona Fair Wages and Healthy Families Act (Ariz. Rev. Stat. §§ 23-37-23-381). **Paid sick time** (PST) is time that is compensated at the same hourly rate and with the same benefits, including health care benefits, as the employee normally earns during hours worked. If the employer has 15 or more employees, the maximum accrual is 40 hours of PST per year. If the employer has fewer than 15 employees, the maximum accrual is 24 hours of PST per year.

### Covered Employees and Employers

Employees covered by the act are any person who is or was employed by an employer except for those working for a parent or sibling and babysitters. Employees also include recipients of public benefits who are engaged in work activity as a condition of receiving public assistance. However, state employees and federal workers are exempt.

All private employers, including municipalities and school districts, are covered by the act. The state and federal government is not covered by the act.

**Note:** The act does not apply to employees covered by a collective-bargaining agreement that is in effect on July 1, 2017 until its expiration. After July 1, 2017, the earned PST requirements may be waived by the parties, to the extent that such requirements are expressly waived in the collective-bargaining agreement in clear and unambiguous terms.

### Accrual and Caps

Earned PST begins to accrue at the commencement of employment or on July 1, 2017, whichever is later. An employer may provide all earned PST that an employee is expected to accrue in a year at the beginning of the year.

Employees may use earned PST as it is accrued, except that an employer may require an employee hired after July 1, 2017 to wait until the 90<sup>th</sup> calendar day after beginning employment before using the earned PST, unless otherwise permitted by the employer.

### Rate of Accrual

Employees accrue one hour of earned PST for every 30 hours worked and working for an employer with 15 or more employees, with maximum accrual at 40 hours of PST per year. If working for an employer with less than 15 employees the maximum accrual is 24 hours of earned PST per year. A **year** is a regular and consecutive 12-month period as determined by the employer.

Employees who are exempt from the federal Fair Labor Standards Act's (FLSA) overtime requirements (for instance, salaried exempt managers, professionals, administrative employees, or outside salespeople) are presumed to work 40 hours per week for accrual purposes, except for weeks where they work less than 40 hours, in which case their earned PST accrues based on the actual number of hours worked.

### Purposes and Use

Earned PST must be provided to an employee by an employer for the following purposes:

- An employee's own, or care of a family member with, mental or physical illness, injury, or health condition; need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or need for preventative medical care. **Covered family members** include, among other relationships, an employee's child (regardless of age), parent, spouse or registered domestic partner, grandparent, grandchild, and sibling, and any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.
- By order of a public official due to a public health emergency closure of any of the following:
  - The employee's place of business or employee's need to care for a child whose
  - Employee's child's school or place of care and subsequently the employee needs to care for the child.
- Care for self or family member when determined by the health authorities that the person's presence in the community may jeopardize the health of others because of exposure to a communicable disease, whether or not the person has actually contracted the disease.
- Absence necessary due to domestic violence, sexual violence, abuse, or stalking, provided the leave is to allow the employee to obtain for the employee's or a family member's any of the following:
  - Medical attention needed to recover from physical or psychological injury or disability caused by domestic violence, sexual violence, abuse, or stalking.
  - Services from a domestic violence or sexual violence program or victim services organization.
  - Psychological or other counseling.
  - Legal services, including but not limited to, preparing for or participating in any civil or criminal legal proceeding related to or resulting from the domestic violence, sexual violence, abuse, or stalking.

As a condition of taking earned PST, employers may not require employees to search for or find a replacement worker to cover the employee's earned PST hours of absence.

Earned PST may be used in the smaller of hourly increments or the smallest increment that the employer's payroll system uses to account for absences or use of other time.

## Carryover

Earned PST is carried over to the following year, subject to limitations on usage. However, in lieu of carryover of unused earned PST from one year to the next, an employer may pay an employee for unused earned PST at the end of a year and provide the employee with an amount of earned PST that meets or exceeds the legal requirements.

## Lump Sum Method

An employer with 15 or more employees that provides its employees for immediate use at the beginning of each year (lump sum method) forty or more hours of earned paid sick time or forty or more hours of equivalent paid time off is not required to provide carryover or additional accrual.

An employer with fewer than 15 employees that provides its employees for immediate use at the beginning of each year (lump sum method) 24 or more hours of earned paid sick time or twenty four or more hours of equivalent paid time off is not required to provide carryover or additional accrual.

## Terms of Carryover

Unless an employer elects to pay an employee for unused earned paid sick time or equivalent paid time off at the end of a year or meets the lump sum requirements, unused earned paid sick time and equivalent paid time off may be carried over to the next year, as follows:

- Subject to an employer's entitlement to permit greater carryover, an employee of an employer with fifteen or more employees may carry over to the following year up to forty hours of unused earned paid sick time or equivalent paid time off.
- Subject to an employer's entitlement to permit greater carryover, an employee of an employer with fewer than 15 employees may carry 18 hours over to the following year up to 24 hours of unused earned paid sick time or equivalent paid time off.

Carryover does not affect accrual, usage rights, or usage limits under the act.

## Loan of Earned PST

At its discretion, employers may loan earned PST to an employee in advance of accrual.

## Requests for Leave

Earned PST must be provided upon an employee's request which may be made verbally, in writing, by electronic means, or by any other means acceptable to the employer. Additionally, when possible, the request should include the expected duration of the absence.

When the use of earned PST is foreseeable, employees must make a good faith effort to provide notice of the need for leave to an employer in advance of the use of the earned PST and must make a reasonable effort to schedule the use of earned PST in a manner that does not unduly disrupt the operations of the employer. Employers may also require notice when the need for leave is unforeseeable; however, a written policy of such notice requirement must be provided to employees before enforcement.

## Employer Notice Requirements

An employer that requires notice of the need to use earned PST where the need is not foreseeable must provide a written policy that contains procedures for the employee to provide notice. If the employer fails to provide this written policy, then it may not deny earned PST based on noncompliance with such a policy.

Employers must give employees written notice of the following at the beginning of employment or by July 1, 2017, whichever is later:

- Employees are entitled to earned PST and the amount of earned PST.
- The terms of its use is guaranteed under the act.
- Retaliation against employees who request or use earned PST is prohibited.
- Each employee has the right to file a complaint if earned PST is denied by the employer or the employee is subjected to retaliation for requesting or taking earned PST.
- Contact information for the Industrial Commission of Arizona where questions about rights and responsibilities under the act can be answered.

This notice must be in English, Spanish, and any language that is deemed appropriate by the commission. Employers must also provide all of the following information in, or on an attachment to, employees regular paychecks:

- The amount of earned PST available.
- The amount of earned PST taken up to that date per year.
- The amount of pay received as earned PST.

## Documentation

For earned PST of three or more consecutive work days, an employer may require reasonable documentation that the earned PST was used for a permitted purpose. Documentation signed by a health care professional indicating that earned PST is necessary will be considered reasonable documentation. In cases of domestic violence, sexual violence, abuse, or stalking, one of the following types of documentation, as selected by the employee, is reasonable documentation:

- Police report indicating that the employee or a family member was a victim of domestic violence, sexual violence, abuse, or stalking.
- Protective order, injunction against harassment, general court order, or other court-based/prosecuting attorney-based evidence that the employee or family member appeared, or is scheduled to appear, in court in connection with an incident of domestic violence, sexual violence, abuse, or stalking.
- Signed statement from a domestic violence program, sexual violence program, or victim services organization affirming that the employee or family member is receiving services related to domestic violence, sexual violence, abuse, or stalking.
- Signed statement from a witness advocate affirming that the employee or family member is receiving services from a victim services organization.
- Signed statement from an attorney, clergy member, or medical or other professional affirming that the employee or family member is a victim of domestic violence, sexual violence, abuse, or stalking.
- Employee's written statement affirming that he or she or family member is a victim of domestic violence, sexual violence, abuse, or stalking, and that the leave was taken for a permitted purpose. The employee's written statement by itself is reasonable documentation for earned PST purposes and does not need to be in an affidavit format or notarized but must be legible if handwritten and reasonably make clear the employee's identity, and if applicable, relationship to the family member.

Employers may not require that documentation explain the nature of the health condition or the details of the domestic violence, sexual violence, abuse, or stalking.

## Pre-Existing Policy

Employers with a paid leave policy, such as a paid time off policy, who make available an amount of paid leave sufficient to meet the accrual, use, purposes, and conditions as required by the act are not required to provide additional paid sick time.

## Transfer, Reinstatement, or Successor Employer

Employees that are transferred to a separate division, entity, or location (division), but who remain employed by the same employer, are entitled to all earned PST accrued at the prior division and may use all earned PST. Where the employee is separated from employment but rehired within nine months by the same employer, he or she is entitled to reinstatement and use of all his or her previously accrued but unused, earned PST. He or she is also entitled to accrue additional earned PST at the re-commencement of employment.

When a different employer succeeds or takes the place of an existing employer, employees of the original employer who remain employed by the successor are entitled to all earned PST accrued when working for the original employer, and may use earned PST previously accrued.

## Reimbursement

The act does not require financial or other reimbursement to an employee by an employer upon termination of employment, resignation, retirement, or other separation from employment for accrued earned PST that is unused.

## Confidentiality and Nondisclosure

Employers are prohibited from requiring employees to disclose details of the nature of the employee's or family member's health condition or details relating to domestic violence, sexual violence, abuse or stalking, as a condition of providing earned PST. Additionally, if employers possess such health or other earned PST qualifying information, they must treat it as confidential and may only disclose it to the affected employee or with the affected employee's permission.

## Prohibited Retaliation and Discrimination

It is unlawful for any employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under the act. Additionally, employers may not retaliate or discriminate against an employee or former employees because he or she exercised rights protected under the act, including, but not limited to, any of the following:

- The right to request or use earned PST.
- The right to file a complaint with the commission or courts or inform any person about any employer's alleged violation of the act.
- The right to participate in an investigation, hearing, or proceeding, or cooperate with or assist the commission in its investigations of alleged violations of the act.
- The right to inform any person of his or her potential rights under the act.

Employers are also prohibited from implementing an absence control policy that counts earned PST taken as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action. Additionally, protections of the act apply to any person who mistakenly but in good faith alleges violations of the law.

## Posting

With the exception of small employers, every employer subject to the act must place the posters prescribed by the Arizona Labor Department informing employees of their rights under the act in a conspicuous place in every establishment where employees are employed and where notices to employees are customarily placed. Employers must ensure that the notices are not removed, altered, defaced, or covered by other material.

**Note:** A **small employer** is a corporation, proprietorship, partnership, joint venture, limited liability company, trust, or association that has less than \$500,000 in gross annual revenue.

## Recordkeeping

The act requires employers covered by Arizona's Minimum Wage Act to include the following additional information in their payroll records:

- The amount of earned paid sick time available.
- The amount of earned paid sick time taken by the employee to date in the year.
- The amount of pay the employee has received as earned paid sick time.
- The employee's earned paid sick time balance. The employee's **earned paid sick time balance** means the sum of earned paid sick time or equivalent paid time off that is:

- Carried over to the current year;
- Accrued to date in the current year; and
- Provided to date in the current year.

(See [Ariz. Admin. Code § R20-5-1210.B.13 - 16](#)).

Failure to maintain such records creates a rebuttable presumption that the employer did not pay earned PST.

## Enforcement and Penalties

The Industrial Commission of Arizona enforces the act. No verbal or written agreement or employment contract may waive any rights under the act. As the earned PST provisions are part of the Arizona Minimum Wage Act (AMWA), any person or organization may file an administrative complaint with the commission charging that an employer violated the act as to any employee or other person. After the commission receives a complaint, it has the authority to review all employee records at the implicated worksite in order to protect the identity of any employee identified in the complaint and determine whether a pattern of violations has occurred. The name of any employee identified in a complaint may only be disclosed with the employee's consent. A lawsuit may also be brought by the Arizona Attorney General, county attorney, city attorney, town attorney, or by an affected individual employee or group of employees. However, claims for an earned PST violation must be brought within two years from the date of the last violation. If the violation was willful the statute of limitations increases to three years and is tolled during any investigation by the commission. The AMWA also includes a presumption that within 90 days of an employee's engaging in any protected activity, any adverse action taken against that person is retaliatory, and such a presumption can only be rebutted by clear and convincing evidence that the action was taken for other permissible reasons.

Employers that violate the earned PST law are subject to civil penalties of at least \$250 for a first violation, at least \$1,000 for each subsequent or willful violation, and additional monitoring and inspections. Such employers also must pay affected employees the balance of any earned PST owed, including interest, and an amount equal to twice the amount of previously unpaid earned PST as liquidated damages.

If an employer is found to have retaliated against an individual for exercising his or her rights under the earned PST law, the employer is required to pay the employee at least \$150 for each day that the violation continued or until legal judgment is final. A prevailing plaintiff is entitled to reasonable attorneys' fees and costs.