

LEAVE AND DISABILITY REGULATORY COMPLIANCE

Summary of legislative and regulatory changes

Private employer sector | February 2023

TABLE OF CONTENTS

Arizona	3
R20-5-1202, 1210, 1213 (final rule re: minimum wage and earned paid sick time)	3
California: Long Beach.....	4
Resolution No. 23-0144 (COVID-19 supplemental paid sick leave)	4
Oregon.....	5
OAR 839-007-0060 (final rule re: paid sick leave for union workers).....	5
Pennsylvania: Philadelphia.....	6
Philadelphia Code §9-4100 et seq. (third supplemental COVID-19 leave regulations)	6
Virginia	10
SB 1086 (organ donation leave)	10
Washington	11
WAC 192-179-080 (final rule re: leave of absences and unemployment benefits).....	11



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Arizona

R20-5-1202, 1210, 1213 (final rule re: minimum wage and earned paid sick time)

Enacted Nov. 11, 2022

Effective Feb. 24, 2023

Informational only – Sedgwick does not administer

Arizona’s Fair Wages and Healthy Families Act (the “Act”) establishes a state minimum wage and entitles workers to accrue earned paid sick time. The state has amended the regulations implementing the Act to clarify the meaning of certain terms and eliminate some of the associated recordkeeping requirements.

[The amended regulations](#) clarify that the term “salaried,” as used in the Act, means receiving a fixed amount of pay regardless of how many hours an employee works each week. The term “salary” refers to a fixed compensation paid regularly for employment.

The Act requires employers to maintain and preserve records containing specified information for each covered employee. Under the amended regulations, an employer is no longer required to retain records of each employee’s earned paid sick time balance. The employee’s earned paid sick time balance was defined as the sum of earned paid sick time or equivalent paid time off that is: (1) carried over to the current year; (2) accrued to date in the current year; and (3) provided to date in the current year’s sick time or equivalent paid time off that is: (a) carried over to the current year; (b) accrued to date in the current year; and (c) provided to date in the current year.

Under the amended regulations, the total daily or weekly wages due for hours worked no longer need to be straight-time wages exclusive of premium overtime compensation. In addition, employers are no longer required to retain records of the total premium pay for overtime hours.

California: Long Beach

Resolution No. 23-0144 (COVID-19 supplemental paid sick leave)

Enacted Feb. 14, 2023

Effective Feb. 21, 2023

Informational only – Sedgwick does not administer

The City of Long Beach, California, passed [a resolution](#) declaring that the Supplemental Sick Leave Ordinance will sunset on Feb.21, 2023. Accordingly, the COVID-19 Paid Supplemental Sick Leave Ordinance described in Section 8.100 of the Long Beach Municipal Code has been repealed.

Oregon

OAR 839-007-0060 (final rule re: paid sick leave for union workers)

Enacted Nov. 2, 2022

Effective Jan. 1, 2023

Informational only – Sedgwick does not administer

In 2021, Oregon enacted a law amending the state’s paid sick leave statute to repeal the exemption from paid sick leave coverage for certain unionized workers. That law became effective Jan. 1, 2023, and requires employers that are signatory to multi-employer collective bargaining agreements to provide paid sick leave to the previously exempt workers. Now, the Bureau of Labor and Industries has adopted [a final rule](#) to amend the state’s paid sick leave regulations to align them with the statute.

Prior to its repeal, the exemption applied to employees: (1) whose terms of employment are covered by a collective bargaining agreement; (2) who are employed through a hiring hall or similar referral system operated by a labor organization or third party; and (3) whose employment-related benefits are provided by a joint multi-employer-employee trust or benefit plan. Beginning in 2023, employees fitting the above description are covered by the state’s paid sick leave statute and regulations. Employers with 10 or more employees must provide paid sick leave for covered employees. Employers in Portland, Oregon, with six or more employees are required to provide paid sick leave.

Employees now covered under the paid sick leave law will accrue one hour of paid sick time for every 30 hours worked. Eligible employees already employed on Jan. 1, 2023, will begin accruing paid sick leave on that date and will be able to use their accrued paid sick leave no later than the 91st day of employment. Employees who have already been employed for at least 90 days and who have been accruing sick leave will be eligible to use accrued sick leave immediately and must be paid at their regular rate of pay during their absence. Employees hired after Jan. 1, 2023, will begin to accrue paid sick leave on their first day of employment and are eligible to use accrued paid sick leave after the 91st day of employment.

Pennsylvania: Philadelphia

Philadelphia Code §9-4100 et seq. (third supplemental COVID-19 leave regulations)

Enacted Feb. 28, 2023

Effective Feb. 28, 2023

Informational only – Sedgwick does not administer

Philadelphia, Pennsylvania, has adopted its [Third Supplemental Regulation](#) regarding the three distinct leave benefits provided during a health emergency, including the COVID-19 pandemic: the Accrued Leave Benefit, the Health Care Epidemic Leave Benefit, and the COVID-19 Leave. The Third Supplemental Regulation explicitly supersedes the First and Second Supplemental Emergency Regulations regarding COVID-19. The Third Supplemental Regulation (“the Regulation”) supplements the Base Regulation implementing the Promoting Healthy Families and Workplaces ordinance.

The Regulation provides new definitions for terms relevant to the distinct leave benefits and specifically provides defined terms for the segments of covered employees and employers. The Regulation clarifies that Accrued Leave employers must provide Accrued Leave to Accrued Leave employees; COVID-19 Leave employers must provide COVID-19 Leave to COVID-19 Leave employees; and Health Care Epidemic employers must provide Health Care Epidemic Leave to Health Care Epidemic employees.

The Regulation requires employers to provide notice of all leave benefit types in the form provided by the department in a conspicuous place accessible to all employees, an electronic notice if employees are not working on site, and in a handbook if the employer produces a handbook for employees. The Regulation also requires employees to provide advance notice to the employer of the need to use the leave benefit if known in advance. For other absences, the employee must notify the employer before the start of their scheduled work hours or as soon as practicable.

Accrued Leave

An Accrued Leave employer employs at least 10 employees in Philadelphia for at least 40 weeks in a calendar year or is a chain establishment. An Accrued Leave employee performs work in Philadelphia for at least 40 hours in a calendar year. After their 90th calendar day of employment, Accrued Leave employees have the right to use the Accrued Leave Benefit for the following purposes:

- The employee's or the employee's family member's physical or mental illness, injury or health condition, including obtaining a diagnosis, care or treatment.
- Absence necessary due to the employee or the employee's family member being a victim of domestic abuse, sexual assault or stalking.

For Accrued Sick Leave, the employer may ask for the types of documentation outlined in the Regulation for sick time of more than two consecutive days.

Accrued Leave employees accrue a minimum of one hour of leave for every 40 hours worked in Philadelphia, subject to a maximum of 40 hours of sick time in a calendar year (unless the employer sets a higher limit). Exempt employees will be assumed to work 40 hours a week for purposes of leave accrual. This leave must be carried over to the following calendar year unless the employer provides 40 hours of sick time at the beginning of each calendar, provided the amount of Accrued Leave Benefit that accrues in any calendar year shall not exceed 40 hours.

COVID-19 Leave

A COVID-19 Leave employer employs at least 25 COVID-19 Leave employees. A COVID-19 employee works for a COVID-19 Leave employer in Philadelphia; normally works for the employer in Philadelphia but is teleworking from a different location as a result of COVID-19; or works from multiple locations or a mobile location, provided that at least 51% of the employee's time is in the city. COVID-19 Leave employees can use COVID-19 Leave for a COVID-19 purpose immediately upon employment with a COVID-19 Leave employer, from March 22, 2022, through Dec. 31, 2023 (the sunset date of the provision).

COVID-19 Leave may be used for one or more of the following purposes: being subject to a determination by a public health authority, a health care provider, or direction from the COVID-19 employer related to the public health emergency that is applicable to the type of business/work the employee engages in or that is specific to the employee due to COVID-19 exposure; to care for a family member of the employee due to COVID-19 orders/advice; the employee's need to self-isolate due to COVID-19 symptoms or positive test, or to obtain medical care due to COVID-19; to care for a child whose school or place of care is closed due to COVID-19; the employee's need to obtain a vaccine or booster; or the employee's need to recover from any condition related to such vaccination. For COVID-19 Leave, an employer may only request that the employee submit a self-certified statement asserting that leave was used according to the terms of the Regulation.

A COVID-19 Leave employee who works for 40 hours or more per week is entitled to 40 hours of COVID-19 Leave, unless the employer designates a higher limit. Employees who work less than 40 hours in a week are entitled to a leave in an amount equal to the number of hours the employee is scheduled to work or actually works on average in a 7-day period, whichever is greater. For variable schedule employees, the amount of time worked on average in

a 7-day period shall be calculated by: the average number of daily hours the employee was scheduled over the past 90 days of work, including any hours for which the employee took leave of any time, multiplied by seven. The hours must be paid out at the employee's regular rate of pay at the time the leave was taken, or the state minimum wage for tipped employees.

Health Care Epidemic Leave

A Health Care employer employs at least 10 employees in Philadelphia for at least 40 weeks in a calendar year and engages the services of a Healthcare Epidemic employee either full or part time in circumstances in which the employer or a portion of the employer operates with the primary purpose of providing healthcare services to individuals in an in-person setting. A Health Care Epidemic employee is a pool or health care employee who contracts COVID-19 and worked for the Healthcare Epidemic Leave employer for at least 40 hours in the three months prior to contracting COVID-19.

Health Care Epidemic Leave employees are entitled to use the Health Care Epidemic Leave Benefit immediately upon qualifying as a covered employee for the time period such employee is unable to work due to contracting COVID-19, at a time when a recognized public interest health organization has declared the COVID-19 virus is an epidemic or pandemic, and either the Department of Health or Department of Labor have indicated that such epidemic affects the City of Philadelphia. This leave shall begin on the earlier of the date of the first positive COVID-19 test or the date the employee's isolation begins pursuant to a governmental isolation order or a written isolation recommendation from their employer or healthcare provider. The regulation also provides more nuanced guidance on the priority and effect of Health Care Epidemic Leave on other types of leave and provides a comparison of the availability of these leave benefits under various frequent reasons for leave.

A Health Care Epidemic employee entitled to Health Care Epidemic Leave is entitled to the benefit from each Health Care employer the employee would have worked for if such employee had not contracted COVID-19, and any right to this leave dates back to the date the employee was first symptomatic or the date of the first positive COVID-19 test. A covered employee is entitled to this leave benefit for the number of days the employee is unable to work as the result of the need to isolate or quarantine due to contracting COVID-19 calculated as follows: any scheduled hours not worked as a result of contracting COVID-19, plus the number of workdays the employee would have worked had they not contracted COVID-19 (which shall equal the number of days that employee worked on average per week in the three months prior to contracting the disease). A Health Care Epidemic employee is presumed to be unable to work due to COVID-19 for the time period for isolation recommended by the Philadelphia Department of Public Health. Health Care Epidemic Leave Employees must provide the employer from whom the leave benefit is requested evidence that the employee has contracted COVID-19, or a doctor's note evidencing that such employee must remain out of work for the time period for isolation as a result of the employee's COVID-19 illness.

Additional provisions

Under the Regulation, “generous employers” who provide paid leave that can be used for the same purposes and under the same conditions as the Accrued Leave Benefit and COVID-19 Leave Benefit can satisfy part or all of their obligations under those leave benefits, assuming the paid leave policies meet certain requirements. Further, the caps on the amount of these leave benefits can be exceeded if an employer sets a higher limit. However, Health Care Epidemic Leave is in addition to any other leave benefit Health Care employers provide and no “generous employer” provisions apply to this leave benefit.

In the event an employee separates from employment, employers are not required to provide financial or other reimbursement of Accrued Leave or COVID-19 Leave for any leave benefit that has accrued but not been used. The termination or other involuntary separation of an employee at the time the employee is entitled to use leave constitutes interference with such employee’s leave benefit and shall not extinguish the rights of such employee. Any COVID-19 Leave employee who takes COVID-19 Leave pursuant to this regulation shall be entitled, on return from such leave, to be restored to the position held when leave commenced.

Virginia

SB 1086 (organ donation leave)

Passed House; Passed Senate; To Governor March 2, 2023

If enacted, effective July 1, 2023

If enacted, [this bill](#) will require an employer that employs 50 or more employees to provide eligible employees as defined in the bill, with (1) up to 60 business days of unpaid organ donation leave in any 12-month period to serve as an organ donor, and (2) up to 30 business days of unpaid organ donation leave in any 12-month period to serve as a bone marrow donor. The bill would require the employer to restore the employee's position following the leave, continue to provide coverage for the employee under any health benefit plan during the leave, and pay the employee any commission earned prior to the leave.

Washington

WAC 192-179-080 (final rule re: leave of absences and unemployment benefits)

Enacted Jan. 31, 2023

Effective March 3, 2023

Washington has amended its unemployment benefit eligibility rules to clarify eligibility during and after leaves of absence. Previously, employees on leaves of absence were considered employed and therefore ineligible for unemployment benefits. [The amendment](#) clarifies that when on a leave of absence, an employee may be eligible for unemployment benefits if the employee falls below a certain income threshold during the leave of absence, and if they meet the usual eligibility requirements for receiving unemployment benefits. The income threshold for receiving unemployment benefits is: (1) receiving no remuneration in a week in which the employee did not work; or (2) receiving less than one-third plus five dollars of the weekly benefit amount for a week in which the employee worked less than full time.

The information contained within this document is intended to provide summary level information on proposed or enacted laws related to family and medical leave. It is not intended to provide guidance on the application of these legal requirements or as an update to your company's attendance and/or leave policies. We recommend you consult with Legal Counsel to determine what changes, if any, should be applied to company policy.

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