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Labor and Employment Alert: Pennsylvania Supreme Court Upholds Pittsburgh's Sick Leave Law

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In August 2015, the City of Pittsburgh, Pennsylvania, enacted the Paid Sick Days Act (PSDA). Soon after it was enacted, however, several businesses challenged the PSDA in court. A trial court and appellate court both held that the PSDA was “invalid and unenforceable.” The city appealed to the Pennsylvania Supreme Court. On July 17, 2019, the Supreme Court held that the PSDA was a valid exercise of Pittsburgh’s “express statutory authority to legislate in furtherance of disease control and prevention.” This means the PSDA will take effect – though it is unclear exactly when employers will need to begin to comply.

The PSDA applies to all employers in Pittsburgh. If an employer has 15 or more employees, the employer must provide the employees with 1 hour of paid sick leave for every 35 hours worked, up to 40 hours of paid sick leave annually. If the employer has less than 15 employees, the employer must provide 1 hour of unpaid sick leave for every 35 hours worked, up to 24 hours annually. As written, beginning one year after the law’s effective date, employers with less than 15 employees will have to provide 1 hour of **paid** sick leave for every 35 hours worked, up to 24 hours annually. Because more than three years have passed since the PSDA was enacted, it is unclear whether small employers must immediately comply.

Employers have two options of granting leave under the PSDA. The employer can provide employees with all of their leave at the beginning of each calendar year (either 40 or 24 hours depending on the employer’s size), in which case the employee does not carry over any unused leave to the following year. Alternatively, the employer can allow the employee to accrue leave throughout the year, in which case the employee is permitted to carry over unused leave. Unused leave does not have to be paid out when an employee separates from employment.

Employees are permitted to use leave to care for an employee’s or a family member’s illness or injury or for preventative care; if the employer’s place of business or the school or child care center of an employee’s family member has been closed due to a public health

emergency; or to care for a family member who has a communicable disease.

Employers are prohibited from retaliating against employees who use leave. In fact, the law creates a rebuttable presumption of retaliation if the employer takes adverse action against an employee within 90 days after the employee files a complaint about an alleged violation of the law, informs others of an alleged violation of the sick leave law, cooperates in an agency proceeding, opposes an unlawful practice or policy, or informs another of his or her rights under the law.

Finally, employers must provide employees with written notice that employees are entitled to sick leave, the amount of leave, their rights under the law, retaliation is prohibited, and they have a right to file a complaint with the appropriate agency.

The city will likely issue guidance on the PSDA soon. In the interim, employers doing business in Pittsburgh should contact their Vorys attorney to review their current leave policies to ensure that they comply with the Paid Sick Days' requirements.