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ARIZONA VOTERS INCREASE MINIMUM WAGE AND APPROVE PAID SICK LEAVE

By:

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On November 8, 2016, the Arizona voters passed Proposition 206, which increases the minimum wage to \$12.00 per hour by January 1, 2020 and provides up to 40 hours of paid sick leave for employees working in Arizona. **The minimum wage increases to \$10.00/hour effective January 1, 2017.** The **paid sick leave** requirement is effective beginning **July 1, 2017**, and the Arizona Industrial Commission may make rules further clarifying the paid sick leave requirements.

I. MINIMUM WAGE WILL GRADUALLY INCREASE TO \$12.00/HOUR.

Under Prop 206, the following increases are made to the Arizona minimum wage.

January 1, 2017 - \$10.00 per hour

January 1, 2018 - \$10.50 per hour

January 1, 2019 - \$11.00 per hour

January 1, 2020 - \$12.00 per hour

January 1, 2021 and subsequent years – increased annually commensurate with the cost of living.

II. BEGINNING JULY 1, 2017, EMPLOYEES ACCRUE 1 HOUR PAID SICK LEAVE FOR EVERY 30 HOURS WORKED, UP TO 40 HOURS OF PAID SICK LEAVE

Pursuant to Prop 206, beginning on July 1, 2017, all employees earn 1 hour of paid sick leave for every 30 hours worked. If a company has 15 or more employees, employees accrue and use up to 40 hours of paid sick leave per year. If a company has fewer than 15 employees, employees accrue and may use up to 24 hours of paid sick leave per year. Exempt employees are presumed to work 40 hours per week (unless their actual schedule is fewer hours, then their actual schedule can be used). Unused sick leave rolls over from year to year unless the employer pays for the unused leave. Employers may cap the amount of unused leave at 40 hours for employers with 15 or more employees or 24 hours for those with fewer than 15 employees.

In lieu of an hourly accrual, an employer may give employees all of their sick leave hours up front at the beginning of the year. Additionally, if employers already have a paid time off plan that

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provides at least as much paid time off and allows leave for the same purposes, that plan will satisfy the requirements of Prop 206 and no additional paid leave is required.

Unused sick leave is not required to be paid upon separation of employment. Unused paid sick leave must be reinstated to employees rehired within nine months.

III. EMPLOYEES MAY USE PAID SICK LEAVE FOR THEIR OWN OR A FAMILY MEMBER'S ILLNESS OR ABSENCES DUE TO DOMESTIC ABUSE, SEXUAL VIOLENCE, ASSAULT, OR STALKING.

Companies must allow employees to use their paid sick leave for their own or a family member's mental or physical illness or injury (including diagnosis and treatment) or for preventative care. Leave may also be used if a place of business or child care is closed by order of a public health official or an employee or family member must stay home by order of a public health official due to exposure to a communicable disease, even if the employee or family member does not have the disease.

Leave may also be used for time off needed relating to the employee's or a family member's domestic violence, sexual violence, abuse, or stalking if the leave is for medical attention, counseling services, services from a domestic violence or sexual violence or similar program, legal services, or the relocation or securing safety at an existing home.

The new law defines "family member" very broadly to include children (regardless of age), parents, spouses/domestic partners, grandparents, grandchildren, siblings, etc. Family includes biological, step-, adopted, foster, or similar relationships and also includes "any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship" regardless of whether there is a legal familial relationship.

Employees may request sick leave orally, in writing, electronically, or by other methods if approved by the employer. Employees must try to schedule foreseeable leave when it does not unduly disrupt the company's operations and provide advance notice and include the duration of the leave, if known. Employers can establish written procedures for providing notice relating to unforeseeable leave.

Employers may request certification relating to an absence of three days or more. A simple statement that leave was needed is all that is required and an employer cannot request additional details. All information obtained about an employee or family member's medical condition or history or facts relating to them being a victim of domestic violence, sexual violence, etc. must be treated as confidential.

IV. EMPLOYERS MUST PROVIDE EMPLOYEES WITH NOTICE OF THEIR RIGHTS UNDER THE NEW SICK LEAVE LAW.

Employers will be required to provide employees a notice at the time of hire (or on July 1, 2017 for employees hired prior to that date) that provides details of the employee's rights under the new paid sick leave law. The Industrial Commission is to provide a form notice that can be used by employers to satisfy this requirement. The notice must be provided in English and Spanish or any other language required by the Industrial Commission.

Individual employees must be notified with their regular paycheck how many paid sick leave hours they have accrued, how many they have used (and the pay therefore) and how many they have available. Employers must keep records of this information for four years.

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An employer who fails to provide the required notices can be fined up to \$250 for the first violation and \$1,000 for subsequent or willful violations.

V. RETALIATION OR ADVERSE ACTION BASED ON THE USE OF SICK LEAVE OR ENFORCEMENT OF OTHER RIGHTS IS PROHIBITED.

Employers are prohibited from interfering with, restraining, or denying any employee the exercise of their rights under Prop 206. Employers are also prohibited from retaliating against or discriminating against an employee or former employee because a person exercised their rights, which may include the right to accrue and use sick leave, make a complaint, participate in an investigation of their own or another person's complaint, etc.

Further, an employer cannot use an absence covered by the paid sick leave as an absence that may lead to or result in discipline or termination. Therefore, an employer with a "no fault" attendance policy or a policy based on points would have to modify their attendance policy

VI. EMPLOYERS SHOULD REVIEW THEIR CURRENT LEAVE POLICIES AND RECORDKEEPING SYSTEMS TO PREPARE FOR PROP 206.

Employers should review their current leave policies. Any policies that provide greater leave and rights than required by Prop 206 will satisfy its requirement requirements. If the employer does not already have a paid leave policy, it should work with legal counsel to draft a compliant leave policy to implement by July 1, 2017.

Employers should also review their timekeeping and record keeping systems to ensure that there are programs in place that can track hours worked and sick leave accrual. Additionally, employers need to ensure that they can print the sick leave accrued, sick leave used, and sick leave available on the employee paychecks so that the employer is ready to comply with the notice requirements under Prop 206. This new law adds yet another factor that employers should consider when making decision about employee discipline or termination to minimize the risk of retaliation claims.



Julie Pace's practice handles employment law, handbooks, drug and alcohol policies, I-9 and E-Verify compliance, OSHA, independent contractor and alleged misclassification issues with DES and other government agencies, and defends claims of sexual harassment, employment discrimination, retaliation, whistleblower, and wrongful discharge, and against charges by the EEOC or ACRD. She handles matters involving OSHA, ICE, OFCCP, DOL, NLRB, ADA, FMLA, ERISA, ACA, Davis-Bacon, FAR, SCA, government contracts, and wage and hour laws. She regularly provides training to companies and assists with investigations. Julie can be reached at 602.322.4046 or jp pace@cavanaghlaw.com



Dave Selden's practice focuses on defending employers in employment and commercial litigation relating to the full range of employment issues, including but not limited to wrongful termination, non-competes, independent contractor and alleged misclassification issues with DES and other government agencies, defends claims of sexual harassment, employment discrimination, retaliation, whistleblower, and breach of fiduciary duties, and against charges by the EEOC or ACRD. He handles matters involving OSHA, ICE, OFCCP, DOL, NLRB, ADA, FMLA, Davis-Bacon, FAR, SCA, government contracts, and wage and hour laws. Dave can be reached at 602.322.4009 or dselden@cavanaghlaw.com

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