

Paid Sick/Safe Leave Ordinance Issues and Potential Options

1. Amount of paid leave to be required

Employers would be required to provide 5, 7 or 9 days per year of paid sick and safe leave, depending on the size of the firm. (These totals are based on full-time employees and would be prorated for part-time workers.) Unused time could be carried over from one year to the next, but the carry-over can be limited to the same 5, 7 and 9 day balances that can accrue in any single year. There is an additional requirement that firms with 1,000 or more employees that use a PTO program must offer 18 total days of leave, of which at least 9 must be available per the terms of the ordinance.

Policy interests: Average use of paid sick leave is generally low (~3 days/year), some individuals may suffer one or more prolonged illnesses. Thus, the average number is not the appropriate level to set as a requirement given the policy goals. More generous requirements will help minimize the financial incentives to work when ill, but the specific leave requirements must be weighed against the costs imposed on employers. The data suggests that the ability of firms to afford the costs of such leave increases with firm size.

There are several “sub-issues” that are worth consideration in the context of this larger question:

I) Varying minimum amount of paid leave by firm size.

Potential options include:

- A. Vary leave, as proposed, by number of FTE.
- B. Require a fixed number of days regardless of firm size.

II) Potential to exempt “micro” or “small” businesses.

Potential options include:

- A. Exempt “micro” businesses – those with 4 or fewer FTE.
- B. Exempt “small” businesses – those with 10 or fewer FTE.

III) Number of days to require.

Potential options include:

- A. Maintain 9 days as maximum required by ordinance.
- B. Provide an increasing number of days, but cap at 7 rather than 9 days.
- C. Cap requirement at 5 days for all businesses.

IV) Leave requirements for “Major Employers” (those with 1,000+ employees) with a PTO program.

Potential options include:

- A. Maintain current requirement of 18 days, of which 9 must satisfy ordinance’s leave requirements.
- B. Eliminate additional requirement for “Major Employers” and establish 9 days of leave, including PTO, as the maximum paid leave required under the ordinance.

2. *Applicability threshold for workers based outside of Seattle*

As drafted, employees who work 80 or more than hours in Seattle are eligible for the paid leave benefit.

Policy interests: Establish paid sick leave as broadly as possible, but not unduly burden businesses with record-keeping requirements.

Potential options identified in committee include:

- A. Retain 80 hour threshold.
- B. Increase threshold to 250 hours (or some other number, but tied to hours worked).
- C. Set threshold as a percentage of time worked in Seattle – the specific option here is that workers would be eligible to accrue leave if they work at least 25% of their time in the city.

3. *Initial accrual of paid leave*

As proposed, employees begin to *accrue* sick leave on the date hire but are *eligible to use* leave after 90 days (for Tier 3) or 180 days (for Tier 1 and 2) of employment.

Policy interests: Provide robust benefits, but provide incentives for workers to stay with employer and also minimize changes to current benefit systems.

Potential options identified in committee include:

- A. Retain proposed system, where accrual begins at date of hire.
- B. Delay initial accrual until after some period of employment, perhaps the same 90 and 180 days that trigger eligibility to take leave.

4. *Initial eligibility for paid leave*

As note immediately above, employees would be eligible to use paid leave after 90 days or 180 days of employment. This period of employment is cumulative not consecutive. So, for example, a seasonal or part-time employee of a Tier 1 or Tier 2 company who works 120 days each year would be eligible for sick leave half-way through his/her second year of employment

Policy interests: Provide seasonal and part-time employees with a fair paid leave benefit, while maintaining incentives for employees to stay with employer, treating full- and part-time employees equitably, and minimizing costs and/or record-keeping requirements.

Potential options identified in Committee include:

- A. Retain proposed system.
- B. Extend period before eligibility to as much as one year.
- C. Define eligibility in terms of cumulative hours worked rather than cumulative days.
- D. Require that initial period of employment, whether measured in days of hours, to occur within a 24 month period. *(This provides leave benefit to some seasonal and temporary workers, but minimizes historic record-keeping requirement for employers. This option is not mutually exclusive of first three.)*

5. *Workers with variable pay*

The legislation does not currently address what rate of “sick” pay should be awarded to workers who do not have fixed wage rates, or whose pay varies with assignments and duties.

Policy interests: Provide a fair rate of compensation, but offer enough flexibility to address situations where workers earn variable pay.

Potential options include:

- A. Allow Office of Civil Rights to resolve through administrative rules.
- B. Set “sick pay” equal to rate earned during previous pay period, or perhaps average over previous 3 months.
- C. Set sick pay rate equal to what would have been earned on the day(s) in question, if the worker had reported.

6. *Breaks in Service*

If a worker is separated from employment and rehired by the same firm within 9 months, they would be immediately eligible for sick leave and have access to any unused leave from their previous period of employment.

Policy interests: Provide employees with a fair paid leave benefit, while maintaining incentives for employees to stay with employer and minimizing costs and/or record-keeping requirements.

Potential options include:

- A. Maintain proposed system.
- B. Retain 9 month period for immediate eligibility, but do not provide for retention of unused leave.
- C. Shorten period over which eligibility and/or leave balances are maintained.

7. *Paying for the costs of medical documentation*

Employers would be allowed to request documentation for absences of more than 3 days. Employers who offer PTO but do not offer health insurance would be required to share in any out-of-pocket costs that employees incur in securing such documentation. Tier 1 and Tier 2 employers would have to pay 50% of the cost; Tier 3 employers 100%.

Policy interests: Avoid the costs of documentation becoming a barrier to taking leave, while not unduly burdening the employer or limiting authority to verify purpose of leave.

Potential options:

- A. Retain proposed requirement.
- B. Decrease Tier 3 requirement to 50%.
- C. Eliminate requirement to pay cost of documentation.

8. *Right to waive paid leave benefit as part of a collective bargaining process*

The proposed ordinance currently allows such waivers.

Policy interests: Remove incentive for employees to work when ill by establishing a paid leave requirement, but not to discourage employees from negotiating for complementary benefits such as healthcare.

Potential options:

- A. Retain ability to waive benefit.
- B. Allow waiver, but require that at least 5 days of paid leave be retained.
- C. Preclude any waiver of prescribed benefit.

(*Note: option of postponing implementation of paid leave requirement until existing collectively bargain contracts expire is identified later under “additional issues”.)

9. *Right of temporary workers to waive paid leave benefits in exchange for premium pay*

Draft currently precludes such waivers at an individual level.

Policy interests: Establish paid sick leave as broadly as possible, but also provide appropriate flexibility for employers and employees.

Potential options:

- A. Retain the prohibition.
- B. Allow waivers for temporary employees only, and establish some minimum premium that must be paid in lieu of paid leave.

(*Note: the need to fully define premium pay is identified later under “additional issues”.)

10. *Shift swapping for Tier 3 firms (Tier 3 = 250+ FTE)*

The proposed ordinance includes shift-swapping provisions that apply to Tier 1 and Tier 2, but not Tier 3 firms. The swap provisions require that:

- Swaps are purely voluntary – the employer is not obligated to offer a substitute shift and employees are not obligated to accept a substitute shift.
- If an employee accepts a substitute shift, the time off will still be deducted from their balance of earned leave.

Note that the standard employee-to-employee swaps that occur now would be permitted without restriction (assuming employer approves).

Policy interests: Avoid incentives for employees to work when ill, but provide flexibility for employers and employees. Swap provision achieve both goals.

Proposed Option:

- A. Extend shift swapping to Tier 3 firms.

11. Points requiring further clarification in proposed ordinance

- a. Accrual of paid leave is not retroactive before effective date of ordinance.
- b. Clarify how ordinance applies to interns and work study “employees”.
- c. Wages to be paid during sick leave do not include tips or commission.
- d. If premium pay option is provided and a minimum premium is established, need to define what base wage to measure premium from (starting salary for position in question seems like obvious choice).
- e. Define the out-of-pocket costs that would be subject to re-imburement if medical documentation is requested by an employer that does not provide health insurance.
- f. Provide clarity about what it means to “provide” health insurance and address situations where an employee has declined to take available coverage.
- g. Clarify who is included in definition of “Health care professional”.

12. Implementation and enforcement issues

- a. Can employers receive clarification, in advance, that their benefit program satisfies the terms of the ordinance? ~~Can such firms be exempted from the ordinance?~~
- b. Establish that voluntary programs for sharing sick leave among employees – for example donating time to someone in need of extended leave – are not precluded by the ordinance.
- c. Need to implement a significant education program for employers and employees before implementation.
- d. Need to implement significant outreach and education for non-English speaking employers and employees.
- e. Need to clarify enforcement mechanisms.
- f. Are there ways to incentivize positive behavior?

13. Additional Issues

- a. Potential to delay implementation until after existing collective bargaining agreements have ended/expired.
- b. Potential to define employer size (e.g. Tier 1, 2 or 3) based only on FTE working in Seattle, rather than businesses total FTE count. Also how to address potential for

- businesses to “split” themselves into smaller entities for purposes or ordinance.
- c. Address issues specifically related to temporary and “on-call” employment. For example: if workers not “on assignment” they should not be able to take leave?
 - d. Address relationship between short-term disability benefit offered by some employers and proposed paid leave requirement.
 - e. Potential to extend “new business” exemption to new branches of existing businesses.
 - f. Potential to extend “statute of limitations” for lost leave to three years, from the current two.
 - g. Encourage and develop use of external cooperative models as alternative approach (workers’ compensation program).
 - h. Potential to add an “abuse by employee” provision.
 - i. Potential to financially incentivize employers to ease cost of compliance.