



**Your Irreplaceable Workforce Management Partner**

# Today's Presenter:

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# Today's Roadmap:

## Allegheny County and City of Pittsburgh Paid Sick Leave Ordinances

- Why NOW?
  - Strict Enforcement
  - Target Industry
- Resources/Guidance
- Covered Employers
- Covered Employees
- Accrual rate and timing
- Rate of Pay
- Reasons for Use
- Definition of Family Member
- Employee Notice
- Increments for Leave and Documentation
- Existing PTO/Vacation/Sick Time/CBA
- FMLA
- Enforcement and Anti-retaliation
- Real Life



## **Why Now? (These acts have been around for two plus years.)**

- City of Pittsburgh announced new stance on this issue – “strict enforcement” – and announced it publicly.
- City of Pittsburgh announced it will target certain industries – food.
  - Conducted webinar – tons of Q&As



**Resource:**

**Allegheny County Paid Sick Leave Ordinance (“PSL”)**

FAQs:

<https://www.alleghenycounty.us/administrative/paid-sick-leave-faqs.aspx>

Guidance:

[https://www.alleghenycounty.us/uploadedFiles/Allegheny\\_Home/Dept\\_-\\_Content/Administrative/Docs/Paid%20Sick%20Leave%20-%20Guidelines.pdf](https://www.alleghenycounty.us/uploadedFiles/Allegheny_Home/Dept_-_Content/Administrative/Docs/Paid%20Sick%20Leave%20-%20Guidelines.pdf)

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**Resource:**

**City of Pittsburgh Paid Sick Days Act (“PSDA”):**

[Pittsburgh Paid Sick Leave Guidelines | pittsburghpa.gov](https://pittsburghpa.gov)

## Covered Employers:

### Which employers are covered?

- Allegheny County: Must have 26 or more employees with at least one spending some time in Allegheny Co.
- City of Pittsburgh: Employer with 15 or more employees with at least one spending some time in the City of Pittsburgh = max 40 hours accrual for employees; Employer with under 15 employees with one spending time in Pittsburgh = Max 24 hour accrual for employees.

### How does an employer determine if it how many employees?

**City of Pittsburgh:** Employer should count all Employees, excluding the owner(s). If the number of Employees employed at any one time has varied over the last twelve (12) months, the Employer should use the highest number of workers employed at any one time in the preceding year. An Employer should count part-time Employees as one Employee rather than as a fraction of an Employee. Employees should be counted whether or not they are Covered Employees.

**Allegheny County:** For purposes of calculating the number of Employees of an Employer to determine whether the Employer meet the threshold of 26 or more Employees, the Employer should count all Employees, excluding the owner(s). If the number of Employees employed at any one time has varied over the last twelve (12) months, the Employer should use the highest number at any one time. An Employer should count part-time Employees as one Employee rather than as a fraction of an Employee. Employees should be counted whether or not they are an Employee as defined in the County's Sick Leave Ordinance.

## Examples:

For purposes of counting the 15/26 it does not matter where the employees are located.

Example: ABC Corp has 75 employees total. 70 employees work exclusively in Butler County. Only 5 employees are work in Allegheny County/Pittsburgh ABC Corp IS a covered employer under the PSL and PSDA

Example: ABC Corp is headquartered in Washington County and maintains its only office there. It has 100 employees. Because of the pandemic, ABC allows all employees to work from home. Two of the employees live in Allegheny County but not the City of Pittsburgh - and the rest live in Washington County. The two employees in Allegheny County are remote workers. ABC IS covered by the PSL but not the PSDA.

It does not matter if the employees are part-time of full-time

Example: ABC Corp has thirty part-time employees, all of whom work in Allegheny County/Pittsburgh and who each work 20 hours a week. EACH part-time employee counts as “one” employee. They are not counted as “fractions” of employees. ABC IS covered by the PSL/PSDA.



Example: ABC Corp has 5 employees – 1 in Allegheny County who is also in the City of Pittsburgh, one in Allegheny County not City of Pittsburgh and three in Butler County. Covered by PSDA (24 hour max) not PSL.

## Covered Employers (con't):



- Owners are not counted.
  - Example: ABC Corp. has 25 employees and one owner. They are all in Allegheny County/Pittsburgh. ABC is NOT covered by the PSL. ABC is covered by PSDA.
- Multiple companies – with common ownership - generally do not aggregate employees.
  - County FAQ: **If an individual owns multiple businesses in the County, must the individual consider all businesses as one consolidated entity for determining a count of Employees for determining the threshold of 26 or more employees requiring Paid Sick Time under the Ordinance?** Answer: Not necessarily. ... If an individual's assets include separate entities constituting multiple Employers, each Employer's Employees would be counted separately for purposes of compliance with the Ordinance.
  - City of Pittsburgh Guidance: If an individual owns multiple businesses in the City of Pittsburgh, must the individual consider all businesses as one consolidated entity for determining a count of employees? Not necessarily. Under Section 626.2 of the Act, an Employer is defined as a "person, partnership, limited partnership, association, or unincorporated or otherwise, corporation, institution, trust, government body or unit or agency, or any other entity situated or doing business in the City and that employs one (1) or more persons for a salary, wage, commission or other compensation. If an individual's assets include separate entities constituting multiple Employers, each Employer's employees would be counted separately for purposes of the act.

## Covered Employers (con't):

- Do not count independent contractors or Seasonal Employees.
  - Example: ABC Corp. has 20 employees in Allegheny County/Pittsburgh. It also utilizes the services of 10 independent contractors and 30 Seasonal Employees. ABC Corp. is NOT covered by the PSL. It is covered by the PSDA.
- Critical Caveats:
  - Be certain that an independent contractor is an independent contractor and not a misclassified employee. If misclassified, the PSL/PSDA will be the least of your worries.
    - New U.S. Department of Labor (DOL) test for independent contractors.
  - Seasonal Employee must meet the definition found in the PSL/PSDA.
    - PSL: Receives written notice of seasonality start/end dates at inception of employment; less than 16 weeks. Don't forget other labor laws – not a guarantee of employment.
    - PSDA: A person who has been hired for a temporary period of not more than sixteen weeks during a calendar year and has been notified in writing at the time of hire that the individual's employment is limited to the beginning and ending dates of the employer's seasonal period, as determined by the employer
    - Unanswered – employees from temporary agencies.

## Covered Employees:

- Critical Concept: “Geographical Boundaries”
- Only employees that work 35 or more hours within Allegheny County’s “geographical boundaries” in a 12 month period are entitled to accrue or use PSL.
- City of Pittsburgh – maintains a list of zip codes to define its borders.
  - The 12 month period is set by the employer and need not be a calendar year. Consider FMLA implications – what is your FMLA year?
  - Example: Emily Employee works out of the Beaver County headquarters 4 days a week. Every Friday she works in ABC Corp.’s Allegheny County/Pittsburgh office. She works 8 hours a day. ONLY those hours worked in Allegheny County/Pittsburgh will count for accrual purposes.
  - Example: Butler County company has a delivery driver who works all over SWPA. Usually on Tuesday and Thursdays he spends 4 hours each morning in Allegheny County/Pittsburgh making deliveries. Only those 4 hours on the 2 separate days, will count. Consider how you track this. (Remember this employer is covered based on this intermittent contact.)
    - Can have employee track hours – but employer responsibility to maintain record.
    - Note: Truck drivers who drive through Allegheny County/Pittsburgh without any required stops, are not counted.



## Accrual Rate/Timing:

- New employees start accruing on date of hire.
  - New employees may be prohibited from using PSL/PSDA until 90 days after inception of employment.
    - Consider how this compares with any probationary period you may have.
- Employees must work 35 hours in Allegheny County/Pittsburgh to start accruing time. Time is accrued at one hour per every 35 hours worked up to 40 (or 24) hours in a 12 month period.
- Hours (up to 40 or 24) carryover to next 12 month period but only 40 hours can accrue in any given 12 month period.
  - Incentive for employee to use them every 12 month period.
- Employer can always be more generous and offer more than 40 hours.
- Exempt employees are automatically presumed to work 40 hours a week.
- You can “front-load” hours. Give all 40 (or 24) hours at the start of the 12 month period.
  - Simplifies recordkeeping
  - CAN do it for some and not others (within same category)

## Rate of Pay:

- Generally the hourly wage or salary the employee typically earns with associated benefits.
- Tipped/Commission employees will not earn tips or commissions but must be paid at least minimum wage.
- Piece Rate. For a Covered Employee paid partially or wholly on a piece rate basis (i.e. - paid for each unit of production at a fixed rate), dividing the total earning by the total hours worked in the most recent work week in which the employee performed identical or substantially similar work to the work the employee would have performed had the employee not used Paid Sick Time.
- Fluctuating Pay. For an Employee whose hourly rate of pay fluctuates:
  - Where the Employer can identify the hourly rates of pay for which the Covered Employee was scheduled to have worked, a calculation equal to the scheduled hourly rates of pay the employee would have earned during the period in which Paid Sick Time is used.
  - Where the Employer cannot identify the hourly rates of pay which the Covered Employee would have earned if the employee worked, a calculation based on the employee's average hourly rate of pay in the current and preceding 30 days, whichever yields the higher hourly rate.

## Reasons for Use:

- An employee's mental or physical illness, injury or health condition; an employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition; an employee's need for preventive medical care;
- Care of a family member with a mental or physical illness, injury or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition; care of a family member who needs preventive medical care; or
- Closure of the employee's place of business by order of a public official due to a public health emergency or an employee's need to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency, or care for a family member when it has been determined by the health authorities having jurisdiction or by a health care provider that the family member's presence in the community would jeopardize the health of others because of the family member's exposure to a communicable disease, whether or not the family member has actually contracted the communicable disease.

## Definition of Family Member:

- A biological, adopted or foster child, stepchild or legal ward, a child of a domestic partner, or a child to whom the employee stands in loco parentis;
  - Critical caveat: “In loco parentis” - WHD Fact Sheet #28 (“The FMLA does not restrict the number of parents a child may have.”)
- A biological, foster, adoptive, or step-parent, or legal guardian of an employee or an employee's spouse or domestic partner or a person who stood in loco parentis when the employee was a minor child;
- A person to whom the employee is legally married under the laws of any State;
- A grandparent or spouse or domestic partner of a grandparent;
- A grandchild;
- A biological, foster, or adopted sibling;
- A domestic partner;
- Any individual for whom the employee has received oral permission from the employer to care for at the time of the employee's request to make use of Sick Time.



## Employee Notice of Need for Leave:

- Need a written policy.
- Cannot require written advance notice – verbal is sufficient.
- Foreseeable Leave:
  - No more than seven days in advance.
  - Employee must make a “reasonable effort” to schedule so as not to unduly interrupt employer operations.
- Unforeseeable Leave:
  - As soon as practical. Preferably one hour before shift start, if possible. if employee can’t make these notice requirements, s/he still gets to use time.

BUT if employee can’t make these notice requirements, s/he still gets to use time.

## Increments for Leave:

PSL: An Employee may use accrued Paid Sick Time 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.

PSDA: A Covered Employee may use accrued Sick Time in the smallest increment that the Employer's payroll system uses to account for absences or use of other time.

Consider implications of FMLA which generally requires use in the smallest increment available under the timekeeping system (often 15 minutes).

## Documentation:

Only if absence is longer than 3 days. Can only require generic notice and cannot require health condition specifics.

- No system to require clarification
- No system to challenge need for leave

Note that this does not affect FMLA certifications or the right to clarification/2<sup>nd</sup> or 3<sup>rd</sup> opinions.

## Current PTO/Vacation/Sick/CBA policies:

Can be used to satisfy the PSL/PDSA – BUT ensure that they encompass all of the reasons for leave and “family members” that could trigger a qualifying leave. These policies likely are not this broad. If you need to tweak your CBA leave provision, consult labor counsel.

## FMLA:

- FMLA is a different story.
  - “Reasons for Leave” are not as broad as the PSL/PSDA. Neither is the definition of family member.
  - Likely to be “Catch 22” – if FMLA Certification is vague and needs clarification. You may have a situation where the individual qualifies for PSL/PSDA but FMLA is challenged.
  - Example: Emmett Employee has 40 hours of PSL/PSDA accrued. He goes out on leave. The leave is more than 3 days and the employer asks for a note. Emmett submits a note from a healthcare provider and it says he has a health condition and is entitled to leave. Emmett also submits an FMLA certification which says he should have leave of an “unknown duration” and that the length of the condition is “unknown.” The certification is from an express care provider. The employer challenges that certification (either through seeking clarification or second/third opinion.) FMLA may ultimately be denied but leave for PSL/PSDA would be approved.



## **Enforcement/Retaliation:**

- In particular, the County/City supplied posters must be displayed (perhaps in multiple languages in every worksite with a covered employee). \$100 “per violation.”
  - Timekeeping/accrual should already have started.
    - Company responsibility to keep time records that demonstrate accrual/use.
      - Must be available to employees. Must be available to agencies.
      - CTR can help with this.
    - In the absence of such timekeeping, there is a presumption that the employer violated the PSL/PSDA.
- Failure to respond/cooperate = presumption of noncompliance. (PSDA)
- Prohibition on retaliation for use of PSL/PSDA.
  - Watch the e-mails
  - Watch/train first-level supervisors
  - Consider whether EPLI provides any coverage
  - PSDA – Adverse action within 90 days is presumed to be retaliatory.



## Real Life:

Emily works in the City of Pittsburgh full time. She has been with this employer for 5 years. She is a good employee. Employer has 30 full time employees and 25 part-time employees.

Emily Employee tells her manager and close friend that she is suffering from back problems and lifting the boxes at work are killing her. She's seeing a chiropractor next Monday.

What issues do we have?

Not a CTR Time Client? Contact [sales@ctrhcm.com](mailto:sales@ctrhcm.com) to review options on how we can set up your time tracking today!

Thank you for attending!