



The Fair Wages and Healthy Families Act – Earned Paid Sick Time - Updated with 05/23/17 changes

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Please note – visit www.azica.gov for the latest rules! Updated through 05/23/17

The Industrial Commission of AZ is still writing rules, regulations and interpretations of this act. This presentation is updated through 05/23/17 only and changes may occur that will affect your business. Updated areas are in bold.



The Fair Wages and Healthy Families Act – Earned Paid Sick Time

Effective accrual date begins July 1, 2017

All Arizona employers are subject to the act except the State of Arizona and the US Government. There are no other exemptions!

Even if an employer is exempt from the minimum wage portion of the act, an employer will be subject to the earned paid sick time portion.



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Employees begin accruing sick time on July 1, 2017 or at the commencement of employment, whichever is later.

Earned Paid Sick Time accrued is compensated at the same hourly rate and with the same benefits, including health care benefits, as the employee normally earns.



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Employers with 15 or more employees must accrue a minimum of one hour of earned paid sick time for every 30 hours worked, but an employee may not **accrue or use** more than 40 hours per year, unless the employer provides more.



The Fair Wages and Healthy Families Act – Earned Paid Sick Time

Employers with fewer than 15 employees must accrue a minimum of one hour of earned paid sick time for every 30 hours worked, but an employee may not **accrue** **or use** more than 24 hours per year, unless the employer provides more.



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ACCRUE OR USE – very important concept.

An employee may accrue or carryover far more time than the employer is required to allow them to use in a year.

UPDATE 05/23/17 – Proposed rule would limit carryover to 24/40 at end of year to address large carryover that can't be used.



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How to count the number of employees?

15 or more employees for some portion of a day in each of 20 different calendar weeks in the current or preceding year. Must count temporary and part-time as well.

Weeks do not need to be consecutive.

What happens if you meet the requirement mid year???



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Employer must establish a “regular and consecutive 12-month period” for its year.

Could use a calendar year or fiscal year.

Appears you cannot use employee’s anniversary year. It must be the same year for all employees.

If other than July through June, will require additional accrual for short period.



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UPDATE - 5/23/17

For a short period, accrue at one hour for every 30 worked. End the short period at employee's pro-rata total accrual for the period.

The employer is allowed to prorate accrual and usage caps to a short year based on days. (i.e. 184 days, accrual and use = 12.1/20.2 hours)



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No requirement to accrue for time worked before 07/01/2017.

Employees hired on or before 07/01/2017 may take the time as soon as it is accrued.

Employer can, at their option, require employees hired after 07/01/2017 to wait 90 days before using sick time, but must accrue from date of hire.



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Accrual calculations:

All employees for all employers accrue at 1 hour of sick time for every 30 hours worked.

Exempt employees (not paid hourly) are presumed to work 40 hours unless their regular workweek is less. If less, use the regular workweek hours.



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Maximum Accruals:

Employers with less than 15 employees will accrue a maximum of 24 hours of sick time per employee per year.

Employers with 15 or more employees will accrue a maximum of 40 hours of sick time per employee per year.



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Example:

Jane works for a large employer. She works 25 hours per week. Jane will reach the full accrual of 40 hours of sick pay after 48 weeks of work.

If she works for a small employer, she will reach 24 hours after 28.8 weeks of work.



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Employers have the option to “front-load” time instead of accruing – i.e. provide 24/40 hours at start of the year.



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Rate of pay required for paid sick time –

Not addressed in the proposition, but the Industrial Commission recommends:

1 - actual wage the employee would have been paid, if known, or

2 – average hourly rate of paid wages for past 90 days (likely for commissioned piece rate employees)



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Rate of pay required for paid sick time –

UPDATE 05/23/2017

Tips are not included in the rate of pay calculation, but all sick pay must be paid at a rate that is at least minimum wage.



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An employer can opt to loan the employee earned paid sick time at employer's discretion. It is not required.

Sick pay must be allowed to be used in the smallest increment in which the employer tracks time – i.e. tenths of an hour or actual minutes.



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Carryforward provisions:

Two options:

1 – Pay out all unused sick pay time at the end of the year AND provide full amount of allowable time for the next year on the first day of that year – i.e. pay out balance of 24/40 hours on 6/30 and accrue 24/40 on 7/1.



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Carryforward provisions:

Two options:

2 – Carry forward unused earned paid sick time to the next year and accrue 1 hour for every 30 worked. Note, employee is still limited to **using** 24/40 hours in the next year. i.e. – employee has 17 hours on 06/30 and accrues 40 more by 12/31. He is limited to using 40 hours in the year.



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Carryforward provisions:

There is no requirement that the employer pay out earned paid sick time upon termination of employment, whatever the reason.

However, if the employee is rehired within 9 months, unearned sick pay is reinstated.



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Covered absences under the Act:

- An employee's mental or physical health care, whether treatment or preventative
- A family member's mental or physical health care, whether treatment or preventative



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Covered absences under the Act:

- Closure of the business, a school, care center or quarantine of employee or family member under order from a public health agency
- Domestic violence, sexual violence, abuse of, or stalking of employee or family member, including legal, shelter, counseling, relocation etc. to ensure safety



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Employer must pay earned paid sick time upon the request of employee either orally, in writing, by electronic means or any other means agreeable to employer.

Employee must make a good faith effort to provide notice of the need to use earned paid sick time, including expected duration.



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UPDATE 05/23/2017

The ICA will not pursue enforcement when an employer, in good faith, designates and pays out earned paid sick time when an employee is absent for an event allowable under the act, even if the employee has not specifically requested the paid leave.



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Employers cannot require employees to find a substitute worker.

Employer can require reasonable documentation that the leave is covered under Arizona law for leaves of 3 or more days.

Employers cannot require that an employee explain the nature of the health condition or the details of abuse or stalking.



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Written notice is required by July 1, 2017 or at hire, if a later date:

See Appendix A for official poster. THIS POSTER REFLECTS MINIMUM REQUIREMENTS ONLY.

Available at

<https://www.azica.gov/sites/default/files/AZ%20Earned%20Paid%20Sick%20Time%20Poster%202017.pdf>



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Employer must provide employees, either on paycheck or attachment to paycheck, the following information:

- Amount of earned paid sick time available.
- The amount of time taken to date in the year in hours.
- The amount of time taken to date in the year in dollars.



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Record keeping – retain records for four years.

- Must post notices in the workplace.
- Must provide all employer contact information in writing upon hire.
- Provide notice that informs employee of all rights and responsibilities under the Act.
- Maintain payroll records that meet statutory requirements.



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Implementation:

- Review policies in existence. If only a PTO plan, may need to revise and adopt a separate plan for earned paid sick time. Compliance with a combined plan is difficult. Carryovers, calculations based on years of service, pay out on termination, tracking for compliance all are complicated with a combined plan. ICA has stated that if an employee uses all PTO for vacation and then needs sick time, employer must pay as if accrued up to 24/40 hours.



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UPDATE - 05/23/17

Contrary to prior advice, a PTO plan may qualify, even if the employee uses all the time for vacation and has no earned paid time remaining for illness. A PTO plan must meet or exceed all provisions of the law.



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Implementation:

- Develop procedures and a form for requesting earned paid time off. You need documentation that the employee requested the paid sick time.
- Review all manuals, FMLA policies, etc. for conflicts and compliance issues. Employees cannot be retaliated against for taking earned paid sick time.



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Implementation:

- Develop procedures for exempt employees to comply with the use of earned paid sick time to prevent accruals from building. Part day absences can be paid through earned paid sick time until used up if you have a written plan.



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Implementation:

- Review set up in current payroll system. You must provide information with each paycheck.
- See Appendix B for sample set up in QuickBooks
- Stub may not meet requirements on its own.



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Implementation:

- If you use a payroll service or PEO/leasing company, review your set-up and policies with the service to ensure compliance.
- Consider getting professional assistance with your policies. It is a good time to fix any other issues.



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Challenges:

- Still a lot of questions on implementation.
- Software really doesn't handle accrual and available amounts well.
- Additional time to do payroll and communicate with employees.



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Resources:

<https://www.azica.gov/frequently-asked-questions-about-wage-and-earned-paid-sick-time-laws>