



# Is Proposition 206 Making You Sick? Preparation Is The Cure!

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# Minimum Wage Requirements

- ▶ Proposition 206 requires annual increases to the State minimum wage:
  - ▶ January 1, 2017: \$10.00/hour
  - ▶ January 1, 2018: \$10.50/hour
  - ▶ January 1, 2019: \$11.00/hour
  - ▶ January 1, 2020: \$12.00/hour
  - ▶ Subsequent years: indexed to the federal consumer price index
- ▶ Note: Minimum wage may be up to \$3 per hour less for tipped workers if the tips received make up the difference.

# “Employees” Who Get PST

- ▶ Includes:
  - ▶ Private employees
  - ▶ Municipal employees
  - ▶ School District employees
  - ▶ Part-time employees
  - ▶ Non-profit employees
  - ▶ Minors
- ▶ Does not include:
  - ▶ Federal government employees
  - ▶ State of Arizona employees
  - ▶ Those working for a parent or sibling and babysitters

# Amount of PST?

Effective July 1, 2017, employers must provide employees 1 hour of PST for every 30 hours worked:

- ▶ <15 employees: up to 24 hours per year
- ▶ ≥15 employees: up to 40 hours per year
- ▶ Includes full-time, part-time, and temporary employees.
- ▶ “Year” is as-determined by the employer.
- ▶ An employer has 15 or more employees if it maintained 15 or more employees on the payroll for some portion of a day in each of 20 different calendar weeks (the weeks do not have to be consecutive) in the current or preceding year.

# Accrual

- ▶ PST begins to accrue on the first day of employment.
- ▶ Employees hired after July 1, 2017, may be required to wait 90 days to use PST.
- ▶ Exempt employees are presumed to work at least 40 hours per week, unless it can be shown otherwise.

# Carry over or pay out?

- ▶ Unused sick time carries over to the next year, unless:
  - ▶ The employer pays the employee for unused PST at the end of the year and
  - ▶ Provides the employee with the full amount of annual PST for the employee's immediate use the beginning of the next year.
- ▶ Which option should we choose?
  - ▶ PST does not have to be paid out upon termination and
  - ▶ Employee is entitled only to use 24 or 40 hours
  - ▶ So, it makes most financial sense to carry over.

# Use of PST

- ▶ An employee's or a "family member's"
  - ▶ mental or physical illness, injury, or health condition
  - ▶ need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition
  - ▶ need for preventive medical care
- ▶ Closure of the employee's place of business, child's school or place of care, or health care facility of "family member" due to a public health emergency.
- ▶ Certain circumstances involving domestic violence, sexual violence, abuse, or stalking and the employee or the employee's "family member."

# Who Is A “Family Member”?

- ▶ Children of any age (including biological, adopted, or foster children, legal wards, children of a domestic partner, or children for whom the employee stands *in loco parentis*)
- ▶ Parents (including biological, foster, stepparents, or adoptive parents or legal guardians of the employee or the employee’s spouse or domestic partner, including persons who stood *in loco parentis* when the employee or employee’s spouse or domestic partner was a minor child)
- ▶ Spouses or domestic partners
- ▶ Grandparents, grandchildren, or siblings (including foster, adoptive, or step relationships) of the employee or the employee’s spouse or domestic partner
- ▶ Any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship

# What in the \*P\*S\*T\* is "affinity?"

- ▶ Arizona Court of Appeals recently discussed the definition of affinity as used in the Arizona Victim's Bill of Rights. *Allen v. Sanders*, 237 Ariz. 93 (Ct. App. 2015).
- ▶ Statute allowed "any other person related to the [deceased victim] by consanguinity or affinity to the second degree" to be treated as the victim.
- ▶ Court adopted the common-law definition of "affinity":
  - ▶ Relationship between one spouse and the other spouse's blood relatives
  - ▶ Affinity relationship does not exist between the blood relations of one spouse and the blood relations of the other spouse.

# Requesting PST

- ▶ Employees may request PST 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.
- ▶ If employer requires notice of need to use PST where unforeseeable, employer must have a written, disseminated policy so saying.
- ▶ Use may not be conditioned upon employee's finding coverage during absence.
- ▶ Confidentiality requirements

# Termination of Employment

- ▶ **Termination**: There is no requirement that an employer pay PST upon termination.
  - ▶ *Recommendation*: If sick time is not to be paid upon termination, employers should clearly state that it includes PST in their policies.
- ▶ **Reinstatement**: All accrued PST must be reinstated if employee is re-hired within nine months. Employee must be permitted to use PST upon reinstatement.

# Good Things To Know...

- ▶ The law contains an anti-retaliation provision.
  - ▶ Presumption (rebuttable only by clear and convincing evidence) that adverse action within 90 days of protected activity constitutes retaliation.
- ▶ The provisions of the law cannot be waived by the employee.
- ▶ The law does not apply to a collective bargaining agreement ("CBA") in effect on July 1, 2017, until the CBA expires. After July 1, 2017, the PST requirements can be waived by clear and unambiguous language in a CBA.

# The Devil is in the Details: Record-Keeping, Tracking, & Notice

- ▶ Employers must give employees written notice of the following at the commencement of employment or by July 1, 2017, whichever is later that:
  - ▶ Employees are entitled to PST;
  - ▶ The amount of PST that employees are entitled to accrue;
  - ▶ The terms of use guaranteed by Arizona's PST laws;
  - ▶ Retaliation is prohibited;
  - ▶ Employees have the right to file a complaint if earned PST is denied or the employee is subjected to retaliation; and
  - ▶ Contact information for the Industrial Commission.

The notices must be in English and Spanish. Model notices are available on the Industrial Commission website.

# Notice

An employer must also provide employees either in, or on an attachment to, the employee's paycheck:

- ▶ The amount of PST available to the employee;
- ▶ The amount of PST taken by the employee to date in the year; and
- ▶ The amount of pay time the employee has received as PST.

# Recordkeeping

- ▶ Employer may require documentation only for absences of three or more consecutive days.
- ▶ Employers must to maintain records of all accrued and used PST. Failure to do so creates a rebuttable presumption the employer did not comply with the law.
- ▶ Employers must keep records of this information for four years.

# Next Steps

## 1. Check your policies.

- ▶ Ensure that policies and practices appropriately reflect rules regarding:
  - ▶ accrual
  - ▶ timing of use
  - ▶ reasons for use
- ▶ Ensure that your policies indicate whether all forms of sick leave are paid out upon termination.
- ▶ Determine whether you want to have a waiting period (up to 90 days) for use of PST.
- ▶ Ensure that your policies contain a cap on the amount of PST that may be used in a year (24 or 40 hours, depending on size).
- ▶ Review call-in, tardiness, and absence policies so that they properly verify the need for an employee to use PST, do not impose an undue burden on the employee's right to use PST, and do not penalize an employee for use of PST (e.g., a "no-fault" attendance policy or policy based on points).
- ▶ Ensure part-time employees are included in PST policies.

# Next Steps

## 2. Review your payroll records.

- ▶ Ensure that the records reflect:
  - ▶ the amount of earned PST available to the employee;
  - ▶ the amount of PST taken by the employee to date in the year; and
  - ▶ the amount of pay time the employee has received as earned paid sick time.
- ▶ If necessary, modify payroll records by July 1, 2017.

# Next Steps

3. **Conduct training for HR staff and management on:**
  - ▶ Recognizing when PST events are triggered.
  - ▶ How this law will interact with and is different from the FMLA.
    - ▶ No “serious health condition” requirement for PST
    - ▶ Employer cannot require employee to disclose the nature of the health condition.
    - ▶ “Family member” is far more inclusive than FMLA’s “parent, spouse, son or daughter”.
  - ▶ If the FMLA does not apply to your workforce, the new world of legally required sick leave.

# Next Steps

4. Communicate the changes to your employees.
  - ▶ Post the Industrial Commission's model notices.
  - ▶ Communicate the changes made to any policies and have employees acknowledge those changes in writing.