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# Washington State Senate

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**Senator Curtis King**  
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March 9, 2018

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ATTORNEY GENERAL  
STATE OF WASHINGTON  
CSE/ACT/MP/IA

RE: Interpretation of Washington State's New Paid Sick Leave Law

Dear Mr. Ferguson:

I have been contacted by several employers in my district seeking clarification of the new paid sick leave law, codified at RCW 49.46.200-210 and WAC 296-128-600 et. seq. These employers have been working to implement policies to comply with the new requirements; however, there is still confusion.

Below, I have listed several questions, as well as the source of confusion in the law. I ask that your office provide an opinion to clarify these issues.

**Which employees are entitled to paid sick leave under the new law?**

Many employers are confused as to whether the typical wage and hour exemptions apply to the new paid sick leave law.

WAC 296-128-600 indicates that "employee" has the same meaning as RCW 49.46.010(3). Presumably, this means that the exemptions listed in RCW 49.46.010(3)(a)-(p), and interpreted by the Director in WAC 296-128-500 through 540, apply to the new paid sick leave law. Thus, individuals exempt from the Minimum Wage Act (MWA) are not entitled to paid sick leave.

The Frequently Asked Questions portion of the Department of Labor & Industries' website supports this interpretation. See <http://www.lni.wa.gov/WorkplaceRights/LeaveBenefits/Vacay Sick/FAQ.asp> (visited January 9, 2018). However, the Department's sample policies have led to confusion for employers.

The regulations provide that the Department "shall... develop sample notification policies which meet the department's standard for compliance with these rules." WACs 296-128-610, 296-128-760(1)(c). As drafted, the Department's sample policies apply to all employees (without reference to the MWA or non-exempt status), which has employers concerned that the Department's "standard for compliance" will require employers to provide paid sick leave to all employees, without reference to the MWA exemptions.

Please provide clarification as to which employees are entitled to paid sick leave under the new law.

**By what date must employers allow existing employees to use accrued and/or frontloaded paid sick leave?**

The regulations are clear that employees must be allowed to use paid sick leave beginning on the ninetieth calendar day after the commencement of his or her employment. See WAC 296-128-630(3). However, for existing employees (who may have been employed for more than ninety days prior to January 1, 2018), it is unclear whether employers must allow such employees to use sick leave immediately upon accrual. Adding to the confusion: WAC 296-128-760 requires employers to notify existing employees of their paid sick leave rights no later than March 1, 2018. Thus, it would appear that employers are not required to allow existing employees to use accrued leave until at least March 1, 2018.

Please provide clarification as to the date by which employers must allow existing employees to use accrued and/or frontloaded paid sick leave.

**Do RCW 49.46.210(1)(j) and WAC 296-128-620(4)-(5) require employers to carryover up to 40 hours of frontloaded, unused paid sick leave to the following year?**

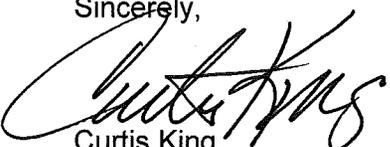
RCW 49.46.210(1)(j) does not appear to differentiate between accrued and frontloaded sick leave; it requires that, "Unused paid sick leave carries over to the following year, except that an employer is not required to allow an employee to carry over paid sick leave in excess of forty hours." However, the plain language of the regulations indicates that only *accrued*, unused sick leave must be carried over. See WAC 296-128-620(4) ("Employers must allow employees to carry over at least forty hours of *accrued*, unused paid sick leave to the following year." (emphasis added)).

Further, the regulations consistently differentiate between the treatment of frontloaded and accrued sick leave, and the definition of "frontloading" presupposes that it is not equated with "accrued" paid sick leave. WAC 296-128-600(7) ("Frontloading" means providing an employee with paid sick leave *before it has accrued* at the rate required by RCW 49.46.210(1)(a)." (emphasis added)).

Thus there is confusion as to whether an employer will be required to carryover up to forty hours of *frontloaded*, unused paid sick leave to the following year.

Please provide clarification.

Sincerely,



Curtis King  
Senator  
14<sup>th</sup> Legislative District