

Electronic Alert

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Upcoming Changes to Washington's Paid Sick Leave & Minimum Wage

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Paid Sick Leave

In the 2023 legislative session, the Washington State Legislature passed Engrossed Substitute Senate Bill 5111 (ESSB 5111) requiring employers with construction workers who have not reached their 90th calendar day of employment to pay accrued but unused sick leave upon separation of employment. The bill was signed into law by the Governor and is effective January 1, 2024. The Washington Department of Labor & Industries (L&I) is currently in the administrative rulemaking process and will hold public hearings on November 7 and 8, 2023, on its proposed rules that will implement the new law.

The requirement broadly applies to employers who have workers covered under the North American Industry Classification System (NAICS) Code 23 construction. The rulemaking specifically defines “construction worker” as “any nonexempt employee covered under NAICS code 23. Employees who work for an employer that performs construction-related work, but who are not engaged in the construction work itself,” are also covered by the rule, including nonexempt administrative staff. Employers engaged solely in residential building construction (under NAICS 236100) are exempt from the requirements.

The proposed rules provide that accrued and unused sick leave may be paid to construction workers under a valid collective bargaining agreement, provided the collective bargaining agreement establishes equivalent sick leave provisions required by law. In addition to the changes relating to construction workers, L&I's proposed rules also clarify that employers are not allowed to force employees to use their accrued, unused paid sick leave when a qualifying purpose occurs.

Minimum Wage

Washington's minimum wage for workers 16 and older will increase from \$15.74 to \$16.28 per hour effective January 1, 2024 (a 3.4% increase). Employers should be mindful of local rules with minimum wages higher than the state minimum. For example, SeaTac's minimum wage for hospitality and transportation employees is increasing to \$19.71 per hour starting in 2024 (up from \$19.06 this year). Tukwila and Seattle also have higher minimum wages, and their minimum wage increases for 2024 are expected to be announced this fall.

Determining the applicable minimum wage and whether an employer is required to pay out accrued and unused sick leave is complex. Washington employers should reach out to their employment counsel to ensure that they remain in compliance with the applicable laws.

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