



ERIC The ERISA Industry Committee

Driven By and For Large Employers

1400 L Street, NW, Suite 350, Washington, DC 20005 • (202) 789-1400 • www.eric.org

Bryan Hum, Retirement & Compensation Policy Associate

June 5, 2017

Steven Welker
Industrial Commission of Arizona
Labor Department
800 W. Washington Street
Suite 303
Phoenix, AZ 85007

RE: Comments Regarding Proposed Rulemaking on the Fair Wages and Healthy Families Act (Proposition 206)

Mr. Welker:

The ERISA Industry Committee (“ERIC”) is pleased to submit comments on the Industrial Commission of Arizona’s proposed amendments to Article 12 (“Proposed Amendments”) in accordance with the Fair Wages and Healthy Families Act (“the Act”).

ERIC is the only national association that advocates exclusively for large employers on health, retirement, and compensation public policies at the federal, state, and local levels. ERIC’s members provide comprehensive paid leave programs that benefit tens of millions of workers and their families. ERIC has a strong interest in proposals, such as these proposed amendments, that would affect its members’ ability to provide quality and uniform paid sick leave benefits.

I. ERIC’S INTEREST IN THE RULEMAKING

ERIC shares the same goal of making sure Arizona workers have access to paid sick leave, but, we strongly encourage Arizona to not adopt any final amendments that would increase administrative and compliance burdens on large employers. Large employers should be able to design their own paid sick leave benefits while still satisfying the intent of Arizona’s underlying laws. Large employers, ERIC members especially, tailor their paid sick leave plans to work within the overall compensation and employee benefits goals of the company, and are tailored to their respective industry, competitive environment, and workforce.

II. ERIC’S COMMENTS ON CARRYOVER

The Proposed Amendments, in accordance with Act, state that employees may carry over a maximum of 40 hours of unused earned paid sick time; or, “in lieu of carry over, an employer may pay an employee for unused earned paid sick time.” While this language mirrors what has been statutorily approved by voters, ERIC hopes that the rules can go further and allow for greater

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flexibility on the part of employers while still ensuring that Arizonans are guaranteed adequate paid sick leave. When large, multistate employers, are forced to carryover employees' unused leave, it impacts the total leave package the employer provides. Paid sick leave is regularly contemplated alongside short and long-term disability programs; thus, a change in one is a change in all three.

ERIC respectfully requests that the Proposed Amendments to Article 12 be modified to allow for a third alternative: *mandating carryover only in instances where the employer does not frontload sick leave*. This alternative serves the underlying purpose of the Act, but does so in a way that provides optimum benefits to the employee without burdening employers.

The Act holds that “an employer may provide all earned paid sick time that an employee is expected to accrue in a year at the beginning of the year.” Thus, Arizona voters decided they wanted a paid sick leave law that provided for both frontloading and the carryover of unused leave, but provided no clear guidance on how they should coincide with one another. Large employers have already been doing this for years, they have the answer. When employers frontload leave, they do so without allowing for carryover; thereby, creating a “use-it-or-lose-it” policy. This type of policy allows employees to use leave on an as-needed basis, rather than waiting for it to accrue over the course of the year. This system creates a great benefit to the employee, without imposing any unnecessary burdens on the employer.

The Proposed Amendments also allow unused leave to be “cashed out” at the employer’s discretion, but this is inconsistent with all other paid sick leave laws across the country (e.g. California, Connecticut, and Washington all mandate carryover of unused leave, with no similar alternative). Employers should not have to choose between altering employees’ leave packages and incurring a financial loss. The former would be sacrificing the employee’s ability to use leave when medically necessary, while the latter essentially amounts to compensating an employee for unused sick leave once employment has ended, something current paid sick leave laws and the Act do not require.

III. ERIC’S COMMENTS ON EXISTING PAID LEAVE POLICIES

There is a disconnect between the Act and the Proposed Amendments when it comes to existing paid leave policies. The Act holds that an employer with an existing policy that “makes available an amount of paid leave sufficient to meet the accrual requirements . . . that may be used for the same purposes and under the same conditions . . . is not required to provide additional sick time.”

Provisions such as these are greatly important to employers that already satisfy the law. It means they can be flexible, consistent, and uniform with their policies. There is, however, no proposed amendment to Article 12 that provides for this. While the Act may have codified this provision, the Proposed Amendments must do the same. In doing so, the Proposed Amendments must make clear the types of policies that are covered (e.g. unlimited paid sick leave, unlimited PTO, universal PTO banks, etc.), and whether employers with sufficient policies are exempt from the Act and relevant aspects of Article 12 or whether the exemption is simply applicable to the leave afforded to each employee.

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ERIC advocates for large employers that operate in multiple states and already provide paid leave policies that satisfy the accrual, use, and ultimately the underlying intent of the law to be wholly exempted from the Act. Employers of this kind are currently being burdened by differing compliance standards from the several other states and cities that have enacted paid sick leave laws. Arizona would only be adding to that patchwork of laws. By first including the provision from the Act on existing paid leave policies and then going further and exempting employers from the Act entirely, you ensure that employers are better able to administer leave to employees that have been enjoying it for years.

IV. CONCLUSION

ERIC appreciates the opportunity to provide comments on the Proposed Amendments. We welcome the opportunity to work with your office in crafting rules that benefits all Arizonans without increasing the compliance burden on employers already satisfying the underlying intent and purpose of the law.

If you have any questions concerning this letter, or if we can be of further assistance, please contact Bryan Hum at bhum@eric.org or 202-789-1400.

Sincerely,



Bryan Hum
Associate, Retirement & Compensation Policy