



## The ERISA Industry Committee: Paid Sick Leave Principles & Guidelines

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The ERISA Industry Committee (ERIC) represents and advocates for the country's largest employers on federal, state and local public policies that allow employers to design benefit plans that are tailored to their unique workforce and industry. Newly adopted and proposed government mandates on paid sick leave or other employee benefits impose significant and unnecessary compliance burdens on large, multistate employers. These one-size-fits-all models even have the potential to force employers to reduce their employee benefits packages to adhere to state and local specific mandates.

In most cases, large employers already offer paid sick leave, unlimited paid leave, or paid time off (PTO) policies that are more generous than what the particular state or local mandate may require. These employers should therefore be allowed to administer benefits without having to navigate compliance requirements that do nothing to enhance the value of the benefits to employees. Thus, if an employer provides sufficient leave hours, use for leave, and notice of leave, then they should be able to decide the procedural details of their policy and not be governed by the proscriptions of the state or local mandate.

To the extent that state and local lawmakers consider adopting paid sick leave laws, ERIC encourages following the guidelines/principles set forth below to minimize unnecessary burdens, lessen the patchwork of conflicting laws, and allow the greatest amount of employer flexibility in designing paid sick leave policies:

- ❖ **Exempt or exclude employers from procedural requirements under the proposed law—such as notice and recordkeeping—if they provide a paid sick leave, unlimited paid leave, or PTO policy that offers equivalent or greater leave than what the law would require. Exempting employers that have sufficient leave policies will dissipate any administrative or compliance burdens, and ensure that generous paid sick leave policies will be consistent and applied uniformly to a company's employees across the country;**
- ❖ **Employers must have the ability to establish maximums for the following: (i) the amount of paid sick leave that an employee may *accrue* beyond a 52-week period; and (ii) the amount, if any, of unused paid sick leave that can be *carried over* from one year to the next;**
- ❖ **Employers should be able to “front-load” all available paid sick leave that an eligible employee would be entitled to accrue over the course of a 52-week period, without being forced to allow for carryover of any unused leave. This institutes a use-it-or-lose-it policy that benefits both the employee and the employer, since employees can use leave whenever medically necessary and employers will not be burdened with tracking leave for thousands of employees;**
- ❖ **Employers should have the power to designate the standard of eligibility for employees to be able to receive paid sick leave benefits, but should not be required to provide benefits to independent contractors or employees employed fewer than 90 days. States must allow employers to designate which classes of its employees should be eligible to receive paid sick leave, because mandating coverage for a larger class of employees could result in employers altering the total rewards or employee benefits package they offer and create arbitrary distinctions for employees across the country;**
- ❖ **Even if an employer is exempt, the employer must allow employees to use paid sick leave to care for his or her own health condition or the health condition of a family member, as defined under the Family and Medical Leave Act of 1993;**

- ❖ Employers that are exempt can satisfy notice requirements by utilizing a reasonable process that adequately informs employees of the employer's paid sick leave policy at the time of hire and throughout the duration of employment, offering an online system or platform through which employees can track the amount of leave they have accrued and used, and retaining records for a period of no less than three years;
- ❖ Employers must not be required to financially reimburse or "cash-out" employees with the equivalent of any unused paid sick leave if and when the employer-employee relationship concludes;
- ❖ Employers should be allowed to require reasonable proof or verification for the use of paid sick leave that lasts longer than three consecutive business days;
- ❖ Bona fide collective bargaining agreements should preempt any state law or rules regarding paid sick leave up and until the agreement expires, but where the agreement is silent the state law or rule should control; and
- ❖ Prohibit political subdivisions—i.e., counties, cities, towns, etc.—from enacting, adopting, or requiring employers to provide more paid sick leave or other employee benefits than what state law requires.