

Rhode Island Employers Take Note: Amend Your Paid Time Off Policy Now

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The much anticipated Rhode Island Sick and Safe Leave Time Law (the “new law”) will go into effect next week and impacts virtually all Rhode Island employers. While the Rhode Island Department of Labor and Training has indicated that they will not enforce fines contained within the statute until January 1, 2019, employers can still be sued by their employees starting July 1, 2018 and thus need to comply now.

Haven't thought about compliance yet? Here are the basics of what you need to know.

- If your company does not provide time off, starting July 1st, it needs to do so. At minimum your company needs to provide 24 hours of time off in calendar year 2018, 32 hours in calendar year 2019, and 40 hours in calendar year 2020 and thereafter (the Total Yearly PTO Minimums). If you have 18 or more employees, the time must be paid; if you have less than 18 employees, the time can be unpaid. If you are on the 18 employee edge, [the final regulations](#) provide details as how to make the determination. Given the complexity of the determination, companies are encouraged to consult with an employment attorney to work through the details.
- If you have a paid time off (PTO) policy of any sort, such as a vacation policy, general PTO policy or sick time policy, there is still a good chance you are going to run afoul of the new law or have to provide additional time off if you did not revise your policies specifically to comply with the new law. Here are common ways PTO policies will not be compliant:
 1. The employer's policies must allow for the time to be taken for the reasons under the new law and must make clear that additional time will not be provided under the new law. To do this, the employer essentially should inform employees in writing that the PTO they currently provide can be used for the enumerated purposes set forth in the statute and state that if the employee decides to use the PTO for other reasons, no additional time will be provided. Without that detail, a court or the Rhode Island Department of Labor and Training may not find the policy to be clear.
 2. For at least the portion of your PTO policy encompassing the Total Yearly PTO Minimums, the PTO policy should not restrict the way time is taken in a manner contrary to the statute or regulations. For example, under the regulations, the employee can take time off to care for an individual who lives with them, such as their roommate, and the employee cannot be required to provide a doctor's note for absences that exceed three days (e.g., the absence must be for four or more days before asking for a note).
 3. The new law applies to all employees, including those commonly excluded by PTO policies — temporary employees, part-time employees and other non-regular employees. Those employees might not ultimately reach the Total Yearly PTO Minimums as the regulations allow the employer to pro-rate the time and lengthen the waiting period before temporary and seasonal employees can take the time. However, exclusion of such employees violates the new law.
 4. The new law requires immediate accrual of the time (although the employee cannot take the time until at least ninety days after the start of employment). Many PTO policies currently start accrual (not just usage) after a probationary period.
 5. Employers should be cautious if they are providing the bare minimum Total Yearly PTO Minimums and are trying to prorate the accrual over the year. The final regulations appear to take an employer-favorable approach to the statute's PTO exemption, rendering a good portion of the statute – the 1 hour for every 35 hour accrual requirement – void; however, a court may take a different view. Additionally, providing the bare minimum amount of total time on a pro-rata basis (with no carryover) may be

considered impermissible because the employee would effectively not be able to use the time accrued towards the end of the year.

- If you use a third party staffing firm, talk to them and amend your contract to make clear who will be paying for this time off. Staffing firms often may not be providing any time off to their employees and their boilerplate contracts might very well require their clients (your company) to pay for the time off.

In addition to getting policies into shape for the impending deadline, employers are encouraged to consult with their employment counsel as to the lawful implementation of the new law. There are several parts of the law that will require many employers to change some of the ways they administer their time off policies that will not be contained in the policy language itself.

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