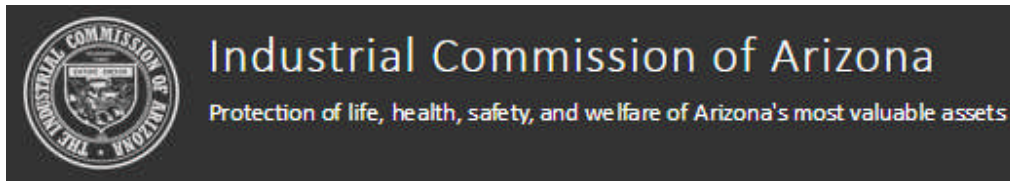


Frequently Asked Questions as published by the **Industrial Commission of Arizona**.



What is earned paid sick time?

Earned paid sick time is sick time accrued by an employee that is compensated at the same hourly rate and with the same benefits, including health care benefits, as the employee normally earns during hours worked.

When can employees begin accruing earned paid sick time?

Employees can begin accruing earned paid sick time at the commencement of employment or July 1, 2017, whichever is later. For more information, see How soon can an employee begin using accrued earned paid sick time?

What can earned paid sick time be used for?

Employees may use earned paid sick time for themselves or for family members (see Arizona Revised Statutes § 23-373 to see who qualifies as a family member) in the following circumstances:

- Medical care or mental or physical illness, injury, or health condition;
- A public health emergency (see Arizona Revised Statutes § 23-373 for more information about what qualifies as a public health emergency) ; and
- Absence due to domestic violence, sexual violence, abuse, or stalking.

Which employers are subject to earned paid sick time laws?

Under The Fair Wages and Healthy Families Act (the “Act”), “employers” are subject to Arizona’s earned paid sick time laws. Earned paid sick time accrual rates, however, differ based on an employer’s number of employees.

Under the Act, “employer” is defined as any corporation, proprietorship, partnership, joint venture, limited liability company, trust, association, political subdivision of the state, individual or other entity acting directly or indirectly in the interest of an employer in relation to an employee, but does not include the state of Arizona, the United States. Notably, this definition differs slightly from the definition of “employer” in the minimum wage context because it has no exemption for “small businesses.” Therefore, even “small businesses” that are exempt from the minimum wage requirements are subject to the Act’s earned paid sick time requirements.

How much earned paid sick time must an employer offer an employee?

For employers with 15 or more employees: Employees must accrue a minimum of one hour of earned paid sick time for every 30 hours worked, but employees are not entitled to accrue or use more than 40 hours of earned paid sick time per year, unless the employer selects a higher limit.

For employers with fewer than 15 employees: Employees must accrue a minimum of one hour of earned paid sick time for every 30 hours worked, but they are not entitled to accrue or use more than 24 hours of earned paid sick time per year, unless the employer sets a higher limit.

How should an employer determine how many employees it has for purposes of the earned paid sick time laws?

The Fair Wages and Healthy Families Act (the “Act”) counts everyone performing work for compensation, whether full-time, part-time, or on a temporary basis, as an employee. For purposes of determining the number of employees, an employer has 15 or more employees if it maintained 15 or more employees on the payroll for some portion of a day in each of 20 different calendar weeks (the weeks do not have to be consecutive) in the current or preceding year.

How does an employer determine the hourly wage rate for earned paid sick time purposes when an employee’s pay rate varies (based on task performed or otherwise)?

Because Proposition 206 does not address this issue, additional legislative, regulatory, and/or judicial guidance may be forthcoming. Absent additional guidance, the Industrial Commission recommends that employers pay an hourly wage rate for earned paid sick time that is based on: (1) the actual wages the employee would have been paid, if known, for the period of time in which sick time is used; or (2) the average hourly rate of all wages paid during the previous 90 days.

How does an employer determine a commissioned employee’s hourly wage rate for earned paid sick time purposes?

Because Proposition 206 does not address this issue, additional legislative, regulatory, and/or judicial guidance may be forthcoming. Absent additional guidance, the Industrial Commission recommends that employers pay commissioned employees an hourly wage for earned paid sick time that is based on the average hourly rate for all wages (including commissions) paid during the previous 90 days.

Is an employer required to provide notice to its employees concerning earned paid sick time rights and responsibilities?

Yes. Employers must give employees written notice of the following at the commencement of employment or by July 1, 2017, whichever is later:

- Employees are entitled to earned paid sick time;
- The amount of earned paid sick time that employees are entitled to accrue;
- The terms of use guaranteed by Arizona’s earned paid sick time laws;

- That retaliation against employees who request or use earned paid sick time is prohibited;
- That each employee has the right to file a complaint if earned paid sick time is denied by the employer or the employee is subjected to retaliation for requesting or taking earned paid sick time; and
- Contact information for the Industrial Commission.

An employer must also provide employees either in or on an attachment to the employee's paycheck:

- The amount of earned paid sick time available to the employee;
- The amount of earned paid sick time taken by the employee to date in the year; and
- The amount of pay time the employee has received as earned paid sick time.

Can an employer loan earned paid sick time to an employee before the employee earns or accrues it?

Yes, at the employer's discretion.

How soon can an employee begin using accrued earned paid sick time?

An employee may use earned paid sick time as soon as it is accrued. However, an employer may require an employee hired after July 1, 2017 to wait 90 calendar days after the start of employment before using accrued earned paid sick time.

Is there a new hire probation period before earned paid sick leave begins to accrue?

No. Employees must accrue earned paid sick leave immediately upon hire. The employer, however, may require that employees hired after July 1, 2017 wait 90 days before they can use earned paid sick time.

How is the accrual of earned paid sick time calculated for exempt employees?

An employee who is exempt under the Fair Labor Standards Act is presumed to have worked 40 hours per workweek, unless the employee's normal workweek is less than 40 hours (in which case accrual of earned paid sick time is based on the employee's normal workweek).

Must an employer carry forward balances of earned paid sick time at the end of a year to the next year?

Yes, unless an employer elects to pay an employee for unused earned paid sick time at the end of the year and provides the employee with an amount of earned paid sick time that meets or exceeds the requirements of the Article that is available for the employee's immediate use at the beginning of the subsequent year. This way, the employer can reduce an employee's unused earned paid sick time balance at the end of a year, provided that the employer gives the employee a year's worth of earned paid time at the beginning of the following year.

Take, for example, an employer with more than 20 employees that has an employee with an 80-hour earned paid sick time balance. If the employer wants to reduce that employee's unused earned paid sick time at year's end, it may pay the employee for unused earned paid sick time as long as it provides the employee with a year's worth of sick time at the beginning of the subsequent year (and the employee can use it at the beginning of the subsequent year).

What happens to accrued earned paid sick time if an employee is relocated or transferred within the same company?

The employee retains all accrued earned paid sick time already accrued at the prior division, entity, or location.

What happens to accrued earned paid sick time if an employee is separated from employment and later rehired?

If rehire occurs within nine months of separation from the same employer, any previously-accrued earned paid sick time that was not used must be reinstated and the employee is entitled to use and accrue earned paid sick time immediately at the commencement of employment.

What happens to accrued earned paid sick time when one employer takes the place of an existing employer?

All employees of the original employer still employed by the successor employer are entitled to previously-accrued earned paid sick time and are entitled to use that earned paid sick time.

If an employer already has a paid-time-off policy, does it have to offer additional earned paid sick time?

If an employer has a paid leave policy that provides an amount of paid leave that meets or exceeds Arizona's earned paid sick time minimum requirements (and can be used for the same purposes and under the same conditions as the statutorily-required earned paid sick time), the employer is not required to provide additional earned paid sick time.

Is an employer required to pay an employee for accrued but unused earned paid sick time at separation?

No.

How does an employee request earned paid sick time?

A request to use earned paid sick time may be made orally, in writing, by electronic means, or by any other means acceptable to the employer. When possible, the request to use earned paid sick time must include the expected duration of the absence.

Must an employee give an employer advance notice of intent to use earned paid sick leave?

When foreseeable, an employee must make a good faith effort to provide notice of the need to use earned paid sick time in advance and should schedule the leave in a manner that does not unduly disrupt the employer's operations.

Can an employer require prior notice of the need to use earned paid sick time when the need is not foreseeable?

Yes, provided that the employer provides a written policy that contains procedures for providing notice. If the employer does not provide an employee with a copy of the written policy, the employer cannot deny the use of earned paid sick time for the employee's failure to follow the policy.

Can an employer require that an employee seeking to use earned paid sick leave search for or find a replacement worker to cover the employee's absence?

No.

What is the smallest increment of earned paid sick time that an employee can use?

Earned paid sick time can either be used in hourly increments or the smallest increment that the employer's payroll system uses to account for absences or use of other time, whichever is smaller. For example, if an employer's payroll system accounts for absences or use of other time in 6 minute increments (a tenth of an hour), an employee may use earned paid sick time in this same increment.

Can an employer require employees to document absences in which earned paid sick time was used?

Yes, but only if an employee uses earned paid sick time on three or more consecutive work days. Where earned paid sick time is used on three or more consecutive work days, an employer can require reasonable documentation that the earned paid sick time was used for purposes permitted by Arizona's earned paid sick time laws. For further information about permitted uses of earned paid sick time, see What can earned paid sick time be used for?

Reasonable documentation includes documentation signed by a health care professional indicating that the earned paid sick time is necessary. In the case of domestic violence, sexual violence, abuse or stalking, the following documents are considered reasonable:

- A police report;
- A protective order, injunction against harassment, general court order, or other evidence from a court or prosecuting attorney;
- A signed statement from a domestic violence or sexual violence program, or victim services organization affirming that the employee or employee's family member is receiving services related to domestic violence, sexual abuse, or stalking;
- A signed statement from a witness advocate concerning services from a victim services organization affirming that the employee or employee's family member is receiving services related to domestic violence, sexual abuse, or stalking;

- A signed statement from an attorney, member of the clergy, or a medical or other professional affirming that the employee or employee's family member is receiving services related to domestic violence, sexual abuse, or stalking ; or
- An employee's legible, written statement concerning status of the employee or the employee's family member as a victim of domestic violence, sexual violence, abuse, or stalking that signals the employee's identity and (if applicable) relationship to the family member.

Can an employer require that an employee using earned paid sick time explain the nature of the relevant health condition or the details of the domestic violence, sexual violence, abuse, or stalking?

Can an employer count earned paid sick time as an absence that may lead to an adverse action (including discipline and discharge)?

No.

What kind of recordkeeping is required by Arizona's earned paid sick time laws?

Unless otherwise exempted from the recordkeeping requirements, employers subject to Arizona's earned paid sick time laws are required to comply with notice, posting, and recordkeeping requirements pertaining to earned paid sick time. The requirements include: (1) posting earned paid sick time notices in the workplace; (2) providing employees with the employer's business name, address, and telephone number in writing upon hire; (3) providing employees with a notice that informs them of their rights and responsibilities under the Fair Wages and Healthy Families Act; and (4) maintaining payroll records in accordance with Arizona's statutes and rules.

How long is an employer required to keep the records under Arizona's earned paid sick time laws?

Four years.