

Virginia Paid Sick Leave for Home Health Workers

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Effective July 1, 2021, Virginia joins the District of Columbia and many other states with paid leave for designated workers ([Virginia's Paid Sick Leave Law](#)), home health workers in this case. Paid sick leave is compensated at the same hourly rate and with the same benefits, including healthcare benefits, as an employee normally earns during hours worked.

In its final form, *the law provides home health workers averaging at least 20 hours per week or 90 hours per month with paid sick leave.* Home health workers are individuals who provide personal care, respite, or companion services to an individual who receives consumer-directed services under the state plan for medical assistance services (Medicaid).

Accrual

Employees begin to accrue this paid sick leave at the start of employment, and they must earn, or accrue, at least one hour of paid sick leave for every 30 hours worked. However, employers can provide all paid sick leave an employee is expected to accrue at the beginning of the year. An employee's accrual of paid sick leave is capped at 40 hours a year, unless employers choose to expand that threshold.

Notices

Employers must provide paid sick leave to an employee at the employee's request. Requests can be made orally, in writing, electronically, or in accordance with another established policy of the employer. In this notice, employees should provide the expected duration of the absence when possible; and if the sick leave is foreseeable, the employee should make a good faith effort to provide notice to their employer and schedule leave to avoid disrupting the employer's operations.

Employers requiring notice of the use of paid sick leave must have a written policy that includes notice procedures. Employers cannot condition paid sick leave on employees finding replacements to cover work hours, nor can they require employees to work alternate shifts to make up hours. Employers can require reasonable documentation from employees who use paid sick leave for at least three consecutive workdays to support the purpose for the leave.

Permitted Uses

Employees can use paid sick leave for the following personal and family reasons:

1. Regarding the employee:
 - a. An employee's mental or physical illness, injury, or health condition;
 - b. An employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or
 - c. An employee's need for preventive medical care; or
2. Regarding the employee's family member:
 - a. Care of a family member with a mental or physical illness, injury, or health condition;

- b. Care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or
- c. Care of a family member who needs preventive medical care.

As with the law of other states, the definition of family members includes individuals beyond an employee's immediate family. Family members are defined as:

1. Regardless of age, a biological child, adopted or foster child, stepchild, legal ward, child to whom the employee stands in loco parentis, or individual to whom an employee stood in loco parentis when the individual was a minor;
2. A biological parent, foster parent, stepparent, adoptive parent, legal guardian of an employee or an employee's spouse, or individual who stood in loco parentis to an employee when the employee or employee's spouse was a minor child;
3. An individual to whom an employee is legally married under the laws of any state;
4. A grandparent, grandchild, or sibling, whether of a biological, foster, adoptive, or step relationship, of an employee or the employee's spouse;
5. An individual for whom an employee is responsible for providing or arranging care, including helping that individual obtain diagnostic, preventive, routine, or therapeutic health treatment; or
6. Any other individual related by blood or affinity whose close association with an employee is the equivalent of a family relationship.

Retaliation

Employers are prohibited from retaliating against employees because they have: (1) requested or used paid sick leave; or (2) alleged a violation of the paid sick leave law.

Next Steps

Businesses employing home healthcare workers should review their current leave policies for congruence with this new paid sick leave requirement. Employers with existing time off policies that: (1) provide an amount of leave sufficient to the requirements of this new law; and (2) that can be used for the same purposes under the same conditions as paid sick leave, do not have to provide additional paid sick leave to employees. If current policies do not provide sufficient leave for similar uses identified in the law, employers should create a new policy and share it with employees.

For more information about this new law and managing leave entitlements for employees, please contact a Jackson Lewis attorney.

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