



## **Paid Leave Ordinance**

*Ordinance effective date: February 1, 2016*

### **Frequently Asked Questions**

#### **For Employees**

**1. How is Paid Leave accrued?**

Employees earn a minimum of one hour of Paid Leave for every 40 worked, up to a total of 24 hours in a calendar year.

**2. For what reasons can I use Paid Leave time under this Ordinance?**

You may use your Paid Leave time for any of the following reasons:

- a. Illness (either yours or a family member's)
- b. When your place of employment has been closed by order of a public official or to care for a child whose schools has been closed by order of a public official
- c. To seek law enforcement or legal help for domestic violence or sexual assault (either for yourself or a family member)
- d. To seek safety from domestic violence, sexual assault, or stalking
- e. For bereavement of a family member

**3. If I don't use all of my accrued Paid Leave time in a year, will it carry over to the next calendar year?**

Yes, the Ordinance allows you to carry over up to 24 hours of unused time to the following calendar year. You can then use a combined total of up to 40 hours of carried over and newly accrued time in the next calendar year.

**4. Does the Ordinance provide for the ability to cash out any unused Paid Leave time?**

No, but Employers are allowed to implement such policies if they choose.

**5. Will the Ordinance apply to workers who are members of collective bargaining units?**

Yes, the Ordinance applies to workers in collective bargaining units unless the

requirements of the Ordinance are expressly and clearly waived in the collective bargaining agreement.

**6. Do I qualify for Paid Leave if I work through a staffing agency?**

Yes, staffing agencies are required to comply with the Ordinance.

**7. My Employer is giving me one hour of leave per pay period instead of for every 40 hours worked. What can I do?**

There is information about the Paid Leave requirements online at [www.cityoftacoma.org/paidleave](http://www.cityoftacoma.org/paidleave) that you can share with your Employer if you feel comfortable talking with them about it. You can also file a charge to be investigated. Information on filing a charge is available online, by phone (253-591-5306), or in person at 733 Market Street, Room 21, Tacoma.

**8. I requested paid leave for an issue related to domestic violence, but my employer didn't pay for the shift I missed. Keeping my personal information confidential is necessary for my safety. If I file a complaint with the City, will my address become a public record?**

State Law allows some exemptions to public records requests, including the following which may apply to you: "information revealing the identity of persons who are witnesses to or victims of a crime... if disclosure would endanger any person's life, physical safety, or property. If at the time a complaint is filed the complainant, victim, or witness indicates a desire for disclosure or non-disclosure, such desire shall govern (RCW 42.56.240)." Be sure to inform us when you make your complaint if you think this exception might apply. Your complaint will not be completely confidential, as we will need to tell your employer who filed the charge in order to properly investigate.

**9. I got sick while I was on vacation. Can I use my Paid Leave instead of my vacation time?**

No, Paid Leave can only be used for scheduled shifts unless your Employer has a more generous policy.

**10. I don't have health insurance. Do I need to get a Doctor's note if I stay home sick but don't need medical treatment?**

The Ordinance doesn't require documentation for using Paid Leave, but your Employer policy might require written documentation. Employer policies must allow one of the options for documentation to be a note written by you that explains why

your absence on a particular date and time qualifies for Paid Leave. Your note does not need to describe your illness in detail.

**11. As a restaurant worker, can I choose to trade shifts when I'm sick so I don't miss out on tips?**

Yes, if you and your Employer both agree to it. The Ordinance allows Employers to establish policies offering Employees substitute shifts so they don't have to miss out on compensation received from tips; however, the Employer may still deduct the amount of time of the missed or substitute shift (whichever is less) from the Employee's accrued Paid Leave.

**12. As a non-restaurant worker, can I choose to trade shifts when I'm sick so I don't miss out on pay?**

Yes, if both you and your Employer agree to it. The Ordinance allows Employers to establish policies offering Employees the option of voluntarily trading shifts so they don't have to use their Paid Leave time.

**13. I work around 50 hours each week. How many of these hours count toward accruing paid leave?**

If you are an employee who qualifies for overtime pay, then all of your hours count toward accruing paid leave. Salaried employees (employees who are exempt from overtime pay under FLSA) who work full-time accrue leave based on a 40-hour work week. If you are an FLSA exempt employee who works less than 40 hours per week, then you accrue leave based on the average number of hours that you typically work. For example, a part-time exempt employee who works roughly twenty hours per week would earn one hour of paid leave during a two-week pay period.

**14. I am sick and can't work my shift, but I don't want to use my paid leave. Can I take unpaid time off?**

The Paid Leave Ordinance provides you with a right to paid time off for health and safety needs; it does not require your employer to provide unpaid time off for illness. You can ask your employer what their policy is on unpaid time off.

**15. When can I start to use my Paid Leave?**

Employees begin earning Paid Leave time on February 1, 2016. Employees who have been with their Employer for at least 180 days may use their leave as they accrue it unless the Employer has a minimum use policy that would require an Employee to accrue a minimum amount before using the leave. If you start a new job after

February 1, 2016, then you will begin to accrue Paid Leave time immediately which you can begin to use 180 days after your start date unless the Employer has a minimum use policy.

### **For Employers**

- 1. Does the Ordinance affect my company if I already offer Employees at least 24 hours or more paid time off?**

No, provided that:

- Employees accrue at least one hour of Paid Leave for every 40 hours worked;
- Paid Leave is limited to no less than 24 hours in a calendar year;
- Use is allowed for the reasons stated in the Ordinance;
- Employees can carry over at least 24 hours of accrued but unused leave to the next Calendar Year; and
- The employer meets the noticing and record keeping requirements in the Ordinance

- 2. How long do I have to implement this policy?**

Businesses must come into compliance with the Ordinance by February 1, 2016.

- 3. Will the Ordinance apply to collective bargaining units?**

Yes, Paid Leave requirements apply to workers in collective bargaining units unless the requirements of the Ordinance are expressly and clearly waived in the collective bargaining agreement.

- 4. How will the Ordinance be enforced?**

Enforcement of the Ordinance is the responsibility of the Director of Finance. Educational opportunities will be provided to help support businesses throughout the year leading up to the Ordinance's effective date to ensure they have the information they need to be compliant with the new law. Employers will be required to certify compliance with the Ordinance when they apply for and renew their business license every year. Other than the annual certification, enforcement of the Ordinance will be complaint based.

- 5. Can I require paid sick leave to be used in blocks of 4-hours at a time?**

Yes, you can establish a policy specifying a reasonable minimum increment of time for use of Paid Leave subject to the Fair Labor Standards Act. If you do not establish a

minimum use policy, accrued Paid Leave time may be used in hourly increments for Employees covered by the overtime requirements of the FLSA.

**6. Are there any restrictions on the use of Paid Leave time?**

Yes, Employers are not required to allow Employees to use any accrued Paid Leave time prior to 180 calendar days after the start of their employment. Employers are not required to allow Employees to use more than 24 hours of Paid Leave in the first calendar year or 40 hours of Paid Leave time in subsequent years if the Employee has carried over unused time. Employers are not required to allow Employees to use Paid Leave for any reasons other than what is specified in the Ordinance.

**7. What if I offer a Premium Pay Program? Am I required to provide additional Paid Leave under this Ordinance?**

Premium Pay Programs (also known as “pay in-lieu of benefits”) programs must be approved by the Finance Director of the City of Tacoma to ensure compliance. Employers with an approved Premium Pay Program may provide extra pay instead of Paid Leave benefits.

**8. Can I choose to front load Paid Leave hours for my Employees rather than using an accrual system?**

Yes, nothing in the Ordinance precludes businesses from front loading Paid Leave hours for Employees and allowing them to use the hours in advance of accrual. Employers who front load hours are still subject to the carry over provision in the Ordinance and must allow carryover of up to 24 hours of Paid Leave at the end of each year. The terms and conditions established by the Employer shall state what happens if the Employee is discharged or terminates employment prior to accruing Paid Leave equal to the amount of Paid Leave time advanced by the Employer.

**9. Do I have to pay Employees for any unused paid sick time?**

No, nothing in the Ordinance requires businesses to allow Employees to cash out unused Paid Leave time, even if their employment is terminated.

**10. What are the requirements for notifying Employees of how much Paid Leave time they have available?**

You may choose any reasonable system for providing notification. One example might be to list available hours on Employees’ pay stubs.

**11. Can I require documentation from Employees to verify the reason they are using their Paid Leave?**

Yes, documentation can be required for use of Paid as long as a written policy is provided and available to Employees outlining the requirements for submitting documentation. Acceptable forms of documentation must include a personally signed statement by the Employee that he or she is using Paid Leave for a qualifying absence.

**12. Is there a certain time period that an Employer can require the documentation to be submitted by the Employee?**

A reasonable amount of time can be established for Employees to submit documentation of their leave (e.g., prior to the end of the pay period the Paid Leave was used) and should be clearly stated in a written policy that is available to Employees.

**13. If an Employee works in multiple cities, including Tacoma, is the Employer required to allow an Employee to use their accrued Paid Leave for a scheduled shift in another city?**

No.

**14. I have an employee who begins at 5pm and works for me as a host through dinner rush. He doesn't have a set end time for his shift. How do I calculate how many hours of paid leave he receives if he is sick and cannot work his shift?**

You have multiple options for estimating the length of the shift and the number of hours to pay: 1. If someone replaced the host for the shift, you could use the number of hours worked by the replacement; 2. You can use the number of hours that a host typically works on that night of the week; or 3. You could use the number of hours that a host would typically work on a night with a similar amount of sales.

**15. I paid out the balance of an employee's accrued paid leave time to them upon separation of employment. Do I have any obligation to reinstate any paid leave time if they are rehired within six months?**

No, you do not have to reinstate accrued leave that has been cashed out; however, the Ordinance requires employers to allow employees to carry over unused time. If you choose to allow payment at separation, your policy must allow employees the option of either cashing out accrued time or leaving their banked hours to potentially be reinstated if they are rehired within six months within the same benefit year.

**16. I own a hotel with a kitchen that prepares food for room service. Do I qualify as an “eating and/or drinking establishment” under the Ordinance?**

Yes, this definition applies to all places where food or beverages are prepared and sold at retail for immediate consumption, either on- or off-site. This might also apply to grocery stores and gas stations that prepare and sell ready-to-eat foods. These establishments may offer, but not require employees to accept, special types of substitute shifts that were intended to allow tipped employees to make up their income from gratuities.

**17. The Rules require that the Employer and Employee both agree when there is a shift swap or substitute shift to make up hours. Do I need to get this agreement in writing?**

No, getting the agreement in writing is not a requirement; however, **should** questions arise about the nature of an arrangement, a signed agreement may serve as an accurate reflection of the interest and intentions of all involved parties

**18. When does the three year period for record keeping begin?**

New records are created when an employee works hours in Tacoma, earns leave, and/or uses leave. Each new record should be kept for three years.

**19. I am considering a Premium Pay Program and would like to offer the extra pay as a monthly bonus. Is that allowed under the Ordinance?**

Yes, Premium Pay Programs that provide extra pay on a monthly basis will be considered. Proposed Premium Pay Programs must be submitted to the Finance Director for review at least 90 days before the intended start date. Premium Pay must meet or exceed the value of the Paid Leave benefit outlined in the Ordinance and be dispersed at regular intervals or front loaded.

**20. I provide a Paid Time Off (PTO) policy that is more generous than the Paid Leave Ordinance. If my employees use all of their accrued time for vacation and do not leave any “cushion” for Paid Leave, will I have to provide additional paid time off if they get sick?**

No, employees can choose to use their paid time off for any reason permitted in an employer’s PTO policy. Once an employee uses all of their paid time off, they do not have a right to additional Paid Leave.

**21. I “front load” and provide 40 hours of Paid Leave to each of my employees at the beginning of each year. Do I have to allow employees to carry over hours that they do not use into the next year?**

Yes, the Ordinance requires employers to allow employees to carry over up to 24 hours of unused Paid Leave into the new benefit year.

**22. How can I determine if someone is an Employee, a contractor, or an Employer?**

The Washington State Department of Labor & Industries can assist you. Visit [www.lni.wa.gov](http://www.lni.wa.gov) to learn more. The Small Business Liaison at Washington State Department of Labor and Industries is an additional resource for answers to questions about small businesses. Call 800-987-0145 or visit [www.SmallBusiness.Lni.wa.gov](http://www.SmallBusiness.Lni.wa.gov).

**23. If an Employee works in multiple cities, including Tacoma and I offer a Premium Pay Program in lieu of Paid Leave, would the premium pay apply to all of the Employee's shifts?**

No, Premium Pay Programs are designed by Employers, and you can design your Premium Pay to apply only to shifts worked in Tacoma.