

EZRA T. CLARK, III
Attorney
Direct Line: 480-844-0039
Facsimile Line: 480-844-0035
E-mail: etc@clarkfirm.com



63 East Main Street, 5th Floor
Mesa, Arizona 85201

MAILING ADDRESS
P.O. Box 31036
Mesa, Arizona 85275-1036

Cassandra Ferrigno-Bren, Paralegal

EMPLOYER ALERT
NOVEMBER 2016

PROPOSITION 206: NEW MINIMUM WAGE AND SICK TIME REQUIREMENTS

On November 8, 2016, Arizona voters passed Proposition 206 -- called the "The Fair Wages and Healthy Families Act." The law was meant to accomplish two goals: (1) raise the state minimum wage; and (2) provide paid sick time benefits to Arizona workers. The full text of the law can be found at: <http://apps.azsos.gov/election/2016/general/ballotmeasuretext/I-24-2016.pdf>

The new minimum wage law goes into effect on **January 1, 2017**. The new paid sick time law goes into effect on **July 1, 2017**.

SUMMARY OF NEW LAW

I. Arizona Minimum Wage

On January 1, 2017, the Arizona¹ minimum wage increases as follows:

Date	Minimum Wage Rate
January 1, 2017	\$10.00
January 1, 2018	\$10.50
January 1, 2019	\$11.00
January 1, 2020	\$12.00

On January 1, 2021, the minimum wage will no longer automatically increase by a pre-determined amount. Instead, the rate will be reviewed annually and increased based on an annual cost of living increase.

The minimum wage for employees *who regularly receive tips* is \$3.00 per hour less than the otherwise applicable minimum wage (*e.g.* \$7.00 p/h on January 1, 2017). The employer must retain records that show that that tipped employees earn at least the full minimum wage for the hours that they work.

¹ Local ordinances may provide a higher minimum wage. For example, Flagstaff voters approved Proposition 414, which raises the minimum wage in Flagstaff to \$12.00 per hour starting in July 2017, and rising to \$15.00 incrementally by 2021. Thereafter, the minimum wage in the City of Flagstaff will increase by the cost of living, and remain at "not less than" the prescribed levels or \$2.00 above Arizona's minimum wage.

II. Paid Sick Time (“PST”)

The Paid Sick Time (PST) part of Proposition 206 is very detailed (covering more than 6 pages). Below is a summary of what you need to know:

Question: *Who is covered?*

Answer: Virtually all employees of private-sector Arizona employers are covered. (State and federal employees are not covered but municipal and school employees are covered.)

Question: *How does an employee receive/earn PST?*

Answer: The employee can accrue PST based on how many hours s/he works, or the employer can give the employee a block of PST to use.

Question: *How much PST must an employee receive or accrue?*

Answer: An employee accrues 1 hour of PST for every 30 hours worked. The amount paid in PST is the same amount as the employee’s regular hourly or salary rate. (Employees who are salaried and non-exempt from the overtime requirements of the federal Fair Labor Standards Act are presumed to work 40 hours per week for accrual purposes.)

Question: *Can an employer put a “cap” or a limit on the maximum amount of PST an employee accrues?*

Answer: Yes. The amount depends on the size of the employer. Below is the amount of the cap² that an employer may put on an employee’s PST:

Size of Employer	Employee’s PST Amount
1-14 employees	24 hours
15+ employees	40 hours

Question: *When does an employee begin to accrue PST?*

Answer: No later than July 1, 2017. An employer may require the employee to wait for up to 90 days to use accrued PST.

Question: *What can PST be used for?*

Answer: The new law is very broad. An employee can use PST for his/her “own mental or physical illness, injury, or health condition” or to care for a family member with those conditions. PST can also be used if a public health emergency causes the employee’s place of business to close or the employee’s child’s school or daycare to close. Employees can also use PST to deal with situations involving domestic or sexual violence, to attend legal proceedings, counseling, or for relocation.

Question: *What happens to unused, accrued PST? Is it carried over to the next year?*

Answer: Yes, unused accrued PST is carried over to the next year, but it will not affect the caps on usage that an employer may establish each year. (In other words, unused PST can roll into the next year, but the employer’s policy can establish a maximum amount an employee can use

² Of course, an employer may provide more PST than the legal minimum.

in that year [e.g., 24 hours or 40 hours depending on the employer's size]). Instead of rolling over the unused accrued PST into the following year, an employer may elect to pay it out.³

Question: *What happens to PST upon termination of employment?*

Answer: PST is not required to be paid out upon termination of employment. But, the employer's policy should say so clearly. However, if an employee is re-hired within 9 months (e.g., reinstatement after short layoff), then the employee's lost PST must be reinstated.

Question: *Does an employer have to provide information to employees about the new law?*

Answer: Yes. The Industrial Commission of Arizona will provide sample notices/posters informing employees of their rights under the new law.

Question: *What obligations do employees have before using PST?*

Answer: For foreseeable situations (e.g., scheduled surgery or medical appointment), an employee is expected to make a "good faith effort" to provide notice of the need to use PST. The law says this "may be made orally, in writing, electronically, or by other means acceptable to the employer." When an employee's use of PST is "unforeseeable," the employee is expected to provide notice and information to the employer consistent with the employer's established policies. An employer cannot require an employee to find a replacement worker before allowing an employee to use PST.

Question: *Can an employer ask for verification to establish the need to use PST?*

Answer: Yes. If the leave is 3 days or longer, the employer can ask for a doctor's note (but cannot inquire further about the condition). When an employee's PST is to deal with domestic violence, the following can establish the need for the leave: police report, court record, community services organization, signed statement from the employee's attorney, clergy, doctor or the employee's own statement.

Question: *What records must an employer keep?*

Answer: Existing Arizona law requires employers to keep payroll records for 4 years. The new law also requires an employer to keep records relating to PST for 4 years. Employers must provide a report of an employee's PST with every paycheck.

Question: *What remedies do employees have if an employer violates the new law?*

Answer: They can file a complaint with the Industrial Commission of Arizona or they can file a lawsuit. (Lawsuits can also be brought by the Attorney General's Office, the County Attorney's Office or the City or Town Attorney.)

Employers are expressly prohibited from taking adverse employment action against employees who complain about their PST rights. In fact, the law creates a presumption that if adverse action is taken against an employee within 90 days of the employee's exercise of his/her rights under the law, then the action was retaliatory. That presumption can be rebutted only by "clear and convincing" evidence of some other reason for the adverse action.

Employers who are found liable for violating the law are subject to civil fines (at least \$250 for the first violation and at least \$1,000 for the second violation) as well as the balance of PST

³ However, reading the law's fine print makes this a poor option for many employers because the law says that if the employer pays out unused accrued PST, the employer must immediately advance to the employee the minimum amount of PST at the beginning of the next year.

owing, plus double that amount (called “liquidated damages”). In an action involving an alleged violation of an employee’s PST rights, a prevailing employee/plaintiff is entitled to his/her reasonable attorney’s fees and costs. The statute of limitations period for an alleged violation of the new law is 2 years from the date of the last violation or 3 years if the violation was willful.

Question: *Are an employer’s existing paid time off or sick time policies valid?*

Answer: Yes – if they comply with the PST and leave requirements of the new law. For example, if you have an existing Paid Time Off policy that allows an employee to take 10 days of PTO for any personal reason of the employee (e.g., vacation, personal time, or to cover sickness or medical issues) then your policy complies with the minimum PST financial requirements. However, it is very important that your policies and practices comply with the other requirements of the new law.

Question: *What steps should an employer take to comply with the law?*

Answer: Review and audit your existing paid time off and paid sick time policies. Do they comply with the requirements of the new law? If not, you should modify them. Review your payroll records. Do they itemize employee paid sick time off benefits? Do they inform employees how much time off they have used, accrued or have left? If not, modify your payroll records by July 1, 2017. Train your HR staff and managers to recognize when PST events are triggered. Review your call-in, tardiness, or absence policies so that they properly verify the need for an employee to use PST and/or do not impose an undue burden on the employee’s right to use PST.

Finally, wage-hour issues can be complex. Thus, we recommend that you work with an experienced employment law attorney who can help you develop sound policies and practices and ensure that evaluations of your compliance efforts are confidential and protected by the attorney-client privilege. If you would like to be proactive about these expected changes, please contact Mr. Clark at (480) 844-0039 or etc@clarkfirm.com.

This newsletter is published by the Clark Law Firm, P.C. Its purpose is to summarize developments and issues in labor and employment law; it is not intended as a substitute for professional consultation and advice in a particular case. If you are not on our mailing list but would like to receive future newsletters, please call Cassandra Ferrigno-Bren at (480) 844-0039 or sign up on our website at www.clarkfirm.com.