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MINIMUM WAGE AND EARNED PAID SICK TIME FAQs: UPDATED CONTENT (REV. JULY 3, 2017)

The Industrial Commission of Arizona (the “Commission”) has updated its minimum wage and earned paid sick time frequently asked questions. This document contains new and revised content. The full FAQs can be found [here](#) and the Notice of Proposed Supplemental Rulemaking can be found [here](#). The following FAQs contain substantial new content (other FAQs may also contain modified content).

Earned Paid Sick Time

What is earned paid sick time?

Earned paid sick time is leave time that is compensated at the same hourly rate (but no less than minimum wage) and with the same benefits, including health care benefits, that an employee would have received for the work hours during which earned paid sick time is used. Generally, employees may use earned paid sick time in the following circumstances:

- Medical care or mental or physical illness, injury, or health condition of the employee or any of the employee’s family members (see the definition of “family member” in Arizona Revised Statutes § 23-371 to see who qualifies as a family member);
- A public health emergency affecting the employee or a family member of the employee pursuant to [Arizona Revised Statutes § 23-373](#); and
- An absence due to domestic violence, sexual violence, abuse, or stalking involving the employee or any of the employee’s family members (see the definition of “family member” in Arizona Revised Statutes § 23-371 to see who qualifies as a family member).

See [Arizona Revised Statutes § 23-373](#) for further detail concerning authorized uses of earned paid sick time.

What is equivalent paid time off?

The Industrial Commission is proposing rules that define “equivalent paid time off” as paid time off provided under a paid leave policy, such as a paid time off policy, that makes available an amount of paid leave sufficient to meet the accrual requirements of the Fair Wages and Healthy Families Act that may be used for the same purposes and under the same conditions as earned paid sick time.

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 earned paid sick time?](#)

What can earned paid sick time be used for?

Generally, employees may use earned paid sick time in the following circumstances:

- Medical care or mental or physical illness, injury, or health condition of the employee or any of the employee's family members (see the definition of "family member" in Arizona Revised Statutes § 23-371 to see who qualifies as a family member);
- A public health emergency affecting the employee or a family member of the employee pursuant to [Arizona Revised Statutes § 23-373](#); and
- An absence due to domestic violence, sexual violence, abuse, or stalking involving the employee or any of the employee's family members (see the definition of "family member" in Arizona Revised Statutes § 23-371 to see who qualifies as a family member).

See [Arizona Revised Statutes § 23-373](#) for further detail concerning authorized uses for earned paid sick time.

Is a service animal a "family member" under the Act?

Absent additional legislative or judicial guidance, the Industrial Commission will not enforce against an employer that does not consider a service animal a "family member" within the meaning of the Fair Wages and Healthy Families Act. However, the loss or incapacitation of a service animal may give rise to a qualifying condition for the use of earned paid sick time (such as a mental or physical illness, injury, or health condition of the employee or the employee's family member).

See [What can earned paid sick time be used for?](#) and [Arizona Revised Statutes § 23-371](#) for the definition of a "family member."

When can an on-call employee use earned paid sick time?

Absent additional statutory or judicial guidance, the Industrial Commission does not intend to enforce against employers who restrict on-call employees' earned paid sick time use to periods of time in which the on-call employee is scheduled to work, or periods of time that the on-call employee would be scheduled to work but for circumstances justifying the use of earned paid sick time.

Example 1. On-call Employee A is scheduled to work for five consecutive days. Assuming circumstances justifying the use of earned paid sick time, Employee A may use available earned paid sick time for all or a portion of the scheduled five-day period.

Example 2. On-call Employee B receives a call from Employee B's employer to work the same day and the following day. Assuming circumstances justifying the use of earned paid sick time, Employee B may use available earned paid sick time for all or any portion of the two days.

Example 3. An employer permits its employees to select periods of work from a posted schedule. Assuming circumstances justifying the use of earned paid sick time, on-call Employee C may use

available earned paid sick time for all or any portion of the work hours that Employee C selects and is assigned.

Can an employer front load earned paid sick time?

Yes. The Fair Wages and Healthy Families Act (the “Act”) permits employers to provide all earned paid sick time that an employee is expected to accrue in a year at the beginning of the employer’s year.

Note: The Industrial Commission’s proposed rules would permit employers to satisfy the Act’s accrual and carryover provisions by annually front loading earned paid sick time. See [Is an employer that front loads earned paid sick time required to provide additional accrual or carryover?](#)

How does an employer front load earned paid sick time for a new hire?

The Fair Wages and Healthy Families Act (the “Act”) permits employers to provide all earned paid sick time that an employee is expected to accrue in a year at the beginning of the employer’s year. The Industrial Commission’s proposed rules specify that an employer who hires an employee after the beginning of the employer’s year is not required to provide additional earned paid sick time during that year if the employer provides the employee - for immediate use on the employee’s ninetieth calendar day after commencing employment - an amount of earned paid sick time that meets or exceeds the employer’s reasonable projection of the amount of earned paid sick time that the employee would accrue from the date of hire through the end of the employer’s year at a rate of one hour for every 30 hours worked. If the projection of earned paid sick time turns out to be less than the employee would have accrued based on hours actually worked during the employer’s year, the employer must immediately provide an amount of earned paid sick time that reflects the difference between the employer’s prior projection and the amount of earned paid sick time that the employee would have accrued for hours actually worked in the year.

Example. Employer A has 15 or more employees who work 40-hour weeks. It hires a new employee with twelve 40-hour weeks remaining in its year. Employer A may reasonably project that the employee will work 480 hours in the remainder of the year (12 weeks x 40 hours = 480 hours), which would entitle the employee to 16 hours of earned paid sick time ($480 \text{ hours} \div 30 = 16$). If Employer A provides the new employee with 16 hours of earned paid sick time that the employee may use beginning on the ninetieth calendar day after the employee commences employment, Employer A is not required to provide additional accrual unless the employee actually works more than the 480 projected hours. If, for example, the employee actually works 540 hours, Employer A will have to provide two additional hours of earned paid sick time ($60 \text{ additional hours} \div 30 = 2$).

If an employer’s selected “year” ends less than 365 days after the Fair Wages and Healthy Families Act’s earned paid sick time effective date (July 1, 2017), can that employer prorate its employees’ annual earned paid sick time accrual and usage entitlements in the first partial year after July 1, 2017, based on the number of days remaining in the employer’s “year?”

Absent additional statutory and judicial guidance, the Industrial Commission will not enforce against an employer whose selected “year” ends less than 365 days after the Fair Wages and Healthy Families Act’s (the “Act”) earned paid sick time effective date (July 1, 2017) and prorates employees’ annual earned

paid sick time accrual and usage entitlements in the first partial year after July 1, 2017, based on the number of days remaining in the employer's "year." Prorated accrual and usage entitlements should be rounded up to the nearest hour or the smallest increment that the employer's payroll system uses to account for absences or use of other time (see [What is the smallest increment of earned paid sick time that an employee can use?](#) for more information on this topic), whichever is smaller. An employee's *accrual rate*, however, may not be prorated during the first partial year after July 1, 2017, meaning that an employee may still accrue at a rate of 1 hour per 30 hours worked. See [What is a "year" for earned paid sick time purposes?](#)

Example 1: Employer A's selected "year" runs from January 1 through December 31, 2017. The employer will have 184 days remaining between the Act's earned paid sick time effective date (July 1, 2017) and the end of the employer's selected "year." Employer A may prorate the amount of earned paid sick time that its employees are entitled to accrue and use during the first partial year after July 1, 2017, at a rate of .504 ($184/365 = .504$). Assuming that Employer A has 15 or more employees and the smallest increment that the employer's payroll system uses is one-tenth of an hour, employees of Employer A would be entitled to accrue and use at least 20.2 hours of earned paid sick time ($.504 \times 40$ hours, rounded up to nearest tenth of an hour) in the 184 days following July 1, 2017 (the remainder of the employer's "year").

Example 2: Employer B's selected "year" runs from June 1, 2017, through May 31, 2018. The employer will have 335 days remaining between the Act's earned paid sick time effective date (July 1, 2017) and the end of the employer's selected "year." Employer B may prorate the amount of earned paid sick time that its employees are entitled to accrue and use during the first partial year after July 1, 2017, at a rate of .918 ($335/365 = .918$). Assuming that Employer B has fewer than 15 employees and the smallest increment that the employer's payroll system uses is half of an hour, employees of Employer B would be entitled to accrue and use at least 22.5 hours of earned paid sick time ($.918 \times 24$ hours, rounded up to the nearest half of an hour) in the 335 days following July 1, 2017 (the remainder of the employer's "year").

Is an employer with employees outside of Arizona required to include those employees when calculating its total employees for earned paid sick time purposes?

The Fair Wages and Healthy Families Act's minimum wage and earned paid sick time provisions apply only to Arizona employees. Therefore, in the absence of further statutory or judicial guidance on the issue, the Industrial Commission will not enforce against an employer who does not count its non-Arizona employees in its total employee count for earned paid sick time purposes.

Example: Employer A has ten California employees, three Colorado employees, and four Arizona employees. Though Employer A has 17 total employees across three states, it has just four employees for earned paid sick time purposes. Because Employer A has fewer than 15 employees in Arizona, its four Arizona employees are entitled to accrue and use 24 hours of earned paid sick time per year (whereas an employee of an employer with 15 or more employees in Arizona would be entitled to accrue and use 40 hours of earned paid sick time per year). See [How much earned paid sick time must an employer offer an employee?](#)

May an employer prorate earned paid sick time accrual and usage entitlements for partial-year employees or employees hired after the first day of an employer's year?

No. The Fair Wages and Healthy Families Act does not draw a distinction between year-round and partial-year employees. An employee's accrual and usage entitlements are based solely on the size of the employer and are not based upon whether an employee works a full or partial year.

Example. Employer A has 42 employees and hires a new employee three months into its year. Employer A plans to keep the new employee on staff for six months. The employee is entitled to accrue one hour of earned paid sick time for every 30 hours worked and remains subject to a usage and accrual entitlement of up to 40 hours. Employer A cannot prorate the new employee's usage and accrual entitlement on the basis that the employee was hired after the start of Employer A's year or because Employer A only plans to keep the new employee for a six-month period.

See [How much earned paid sick time must an employer offer an employee?](#) for more information.

How does an employer determine hourly rates for earned paid sick time payment purposes?

The Industrial Commission is proposing rules consistent with the following methods for determining hourly rates. In no case may the hourly rate paid for earned paid sick time be less than minimum wage.

- **For employees with a single hourly rate.** The same hourly rate that the employee would have earned for the period of time in which earned paid sick time is used, but in no case less than minimum wage.

Example. If an employee's hourly rate is \$15 per hour, the employer would be required to pay the employee \$15 for each hour of earned paid sick time used.

- **For employees with multiple hourly rates.** The hourly rate the employee would have earned, if known, for each hour of earned paid sick time used. If this is not known, an employer should use the weighted average of all hourly rates of pay during the previous pay period.

Example 1. Rates of pay known. Employee A uses eight hours of earned paid sick leave. Employer B knows that Employee A would have earned \$12 per hour for the first 3 hours and \$14 per hour for the last five hours of the leave. Under these circumstances, Employer B would be required to pay Employee A \$106 for the earned paid sick time used ($[\$12 \times 3 \text{ hours}] + [\$14 \times 5 \text{ hours}] = \106).

Example 2. Weighted average. A multiple-hourly-rate employee worked 80 hours the previous pay period. Employee B earned \$12 per hour for 50 hours, and \$14 per hour for 30 hours. The employer can calculate the weighted average of Employee B's hourly rates by dividing the total dollars earned in the previous pay period by the total number of hours worked in that pay period. In this case, Employee B earned \$1,020 ($[\$12 \times 50 \text{ hours}] + [\$14 \times 30 \text{ hours}] = \$1,020$) for 80 hours of work. Dividing \$1,020 by 80 hours provides a weighted average rate of pay of \$12.75 per hour. Thus, Employee B would be entitled to earned paid sick time at a rate of \$12.75 per hour.

- **For salaried employees.** The wages an employee earns during each pay period covered by the salary divided by the number of hours agreed to be worked during each pay period, if the number of hours to be worked during each pay period was previously established. If unknown, the wages an employee earns during each workweek covered by the salary in the current year divided by 40 hours. The Industrial Commission will consider an acknowledged policy concerning the number of hours to be worked during each pay period adequate evidence of an agreement between employee and employer. Note: No additional pay is due when the employee's use of earned paid sick time results in no reduction in the employee's regular salary during the pay period in which the earned paid sick time is used.

Example. Employer A has not previously established the number of hours its salaried employees work in each pay period. Employee B earns \$2,000 per workweek. Employee B's hourly rate, for earned paid sick time purposes, is \$50 per hour ($\$2,000 \div 40$ hours). If Employee B's receives no reduction in salary as a result of the use of earned paid sick time, however, Employer A would not be required to offer Employee B additional pay.

- **For employees paid on a commission, piece-rate, or fee-for-service basis.** Such employees' hourly rates should be determined in the following order of priority:
 - The hourly rate of pay previously agreed upon by the employer and the employee as: (1) a minimum hourly rate for work performed; or (2) an hourly rate for payment of earned paid sick time. The Industrial Commission will consider an employee-acknowledged policy concerning the hourly rate of pay adequate evidence of an agreement between employee and employer.
 - The wages that the employee would have been paid, if known, for the period of time in which earned paid sick time is used, divided by the number of hours of earned paid sick time used.
 - A reasonable estimation of the commission, piece-rate, or fee-for-service compensation that the employee would have been paid for the period of time in which the earned paid sick time is used, divided by the number of hours of earned paid sick time used.
 - The hourly average of all commission, piece-rate, or fee-for-service compensation that the employee earned during the previous 90 days, if the employee worked regularly during the previous 90-day period, based on: (1) hours that the employee actually worked (if known); or (2) a 40-hour workweek.

Example 1. Employer knows the hours worked in the previous 90 days. Employer A did not previously establish an hourly rate for Employee B's earned paid sick time or a minimum hourly rate for work performed and it does not know and cannot reasonably estimate the wages that the employee would have made for the period of time when the earned paid sick time is used. Employee B worked 480 hours over the previous 90

days, earning \$7,680. Employee B's earned paid sick time hourly rate is \$16 per hour ($\$7,680 \div 480 \text{ hours} = \16 per hour).

Example 2. Employer does not know the hours worked in the previous 90 days.

Employer A did not previously establish an hourly rate for Employee B's earned paid sick time or a minimum hourly rate for work performed and it does not know and cannot reasonably estimate the wages that the employee would have made for the period of time when the earned paid sick time is used. Employee B worked 13 weeks in the previous 90 days ($90 \div 7$, rounded), earning \$6,240. Employee B's earned paid sick time hourly rate is \$12 per hour ($\$6,240 \div [13 \text{ weeks} \times 40 \text{ hours}] = \12). Had Employee B's average hourly rate fallen below minimum wage, Employee B's earned paid sick time hourly rate would be minimum wage.

- The hourly average of all commission, piece-rate, or fee-for-service compensation that the employee earned during the previous 365 days, based on: (1) hours that the employee actually worked (if known); or (2) a 40-hour workweek.

Example 1. Employer knows the hours worked in the previous 365 days. Employer A did not previously establish an hourly rate for Employee B's earned paid sick time or a minimum hourly rate for work performed; it does not know and cannot reasonably estimate the wages that the employee would have made for the period of time when the earned paid sick time is used; and Employee B did not work regularly in the last 90 days. Employee B worked 1040 hours over the previous 365 days, earning \$14,560. Employee B's earned paid sick time hourly rate is \$14 per hour ($\$14,560 \div 1040 \text{ hours} = \14 per hour).

Example 2. Employer does not know the hours worked in the previous 365 days.

Employer A did not previously establish an hourly rate for Employee B's earned paid sick time or a minimum hourly rate for work performed; it does not know and cannot reasonably estimate the wages that the employee would have made for the period of time when the earned paid sick time is used; and Employee B did not work regularly in the last 90 days. Employee B worked 52 weeks in the previous 365 days ($365 \div 7$, rounded), earning \$37,440. Employee B's earned paid sick time hourly rate is \$18 per hour ($\$37,440 \div [52 \text{ weeks} \times 40 \text{ hours}] = \18).

NOTE: Shift differentials and premiums meant to compensate an employee for work performed under differing conditions (such as hazard pay or a shift differential for working at night) must be included when computing an employee's hourly rate. Overtime, holiday pay, bonuses, other types of incentive pay (which do not include shift differentials and premiums meant to compensate an employee for work performed under differing conditions), tips, and gifts do not need to be included in an hourly wage rate determination. Pursuant to the Fair wages and Healthy Families Act, in no case may an employer pay less than minimum wage per hour of earned paid sick time.

Must an employer include shift differentials and hazard pay in calculating an employee's hourly rate for earned paid sick time purposes?

The Industrial Commission is proposing rules consistent with the following:

Shift differentials and premiums meant to compensate an employee for work performed under differing conditions (such as hazard pay or a shift differential for working at night) must be included when computing an employee's hourly rate for earned paid sick time purposes. On the other hand, overtime, holiday pay, bonuses, other types of incentive pay (which do not include shift differentials and premiums meant to compensate an employee for work performed under differing conditions), tips, and gifts do not need to be included in an hourly rate determination.

Must an employer include bonuses, overtime, and holiday pay in calculating an employee's hourly rate for earned paid sick time purposes?

The Industrial Commission is proposing rules consistent with the following:

Overtime, holiday pay, bonuses, other types of incentive pay (which do not include shift differentials and premiums meant to compensate an employee for work performed under differing conditions), tips, and gifts do not need to be included in an hourly rate determination. On the other hand, shift differentials and premiums meant to compensate an employee for work performed under differing conditions (such as hazard pay or a shift differential for working at night) should be included when computing an employee's hourly rate.

Must an employer pay an employee for unused earned paid sick time at the end of each year or at separation?

No, but an employer may choose to pay out unused earned paid sick time at the end of the employer's year or at separation. The Fair Wages and Healthy Families Act does not require an employer to pay employees for unused earned paid sick time at the end of each year or at separation. An employer who elects to pay an employee for unused earned paid sick time at the end of the employer's year must comply with the requirements of Arizona Revised Statutes § 23-372(D)(4).

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

Yes. Employers must provide 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.

The Industrial Commission's 2017 model earned paid sick time notice can be found [here](#).

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

Note: The Industrial Commission is proposing rules that would define these terms as follows:

- "Amount of earned paid sick time available to the employee" means the amount of earned paid sick time that is available to the employee for use in the current year.
- "Amount of earned paid sick time taken by the employee to date in the year" means the amount of earned paid sick time taken by the employee to date in the current year. Where an employee has used available equivalent paid time off for either the purposes enumerated in Arizona Revised Statutes § 23-373 or other purposes, the employer may count that usage towards the "amount of earned paid sick time taken by the employee to date in the year."
- "Amount of pay the employee has received as earned paid sick time" means the amount of pay the employee has received as earned paid sick time to date in the current year. Where an employee has received pay for equivalent paid time off for the purposes enumerated in Arizona Revised Statutes § 23-373 or other purposes, the employer may count that pay towards the "amount of pay the employee has received as earned paid sick time."
- "Employee's regular paycheck" means a regular payroll record that is readily available to employees and contains the information required by Arizona Revised Statutes § 23-375(C), including physical or electronic paychecks or paystubs.

Can an employer satisfy the earned paid sick time notice requirements by posting the Industrial Commission's model earned paid sick time notice?

Yes. An employer can satisfy the Fair Wages and Healthy Families Act's notice requirements by posting in the workplace the Industrial Commission's model earned paid sick time notice, or a separate notice that meets the notice requirements in [Arizona Revised Statutes § 23-375](#).

See [Is an employer required to provide notice to its employees concerning earned paid sick time rights and responsibilities?](#)

Can an employer donate or loan earned paid sick time to an employee?

Yes, subject to the employer's allowance of such practices.

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

An employee may use earned paid sick time as it is accrued or otherwise available for use. 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.

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

The Fair Wages and Healthy Families Act (the “Act”) provides that earned paid sick time must be carried over to the following year, subject to usage limitations based on employer size. Carry over does not affect accrual or use rights under the Act.

Example 1. Employer with 15 or more employees. Employee A accrues 40 hours of earned paid sick time in Year 1 and does not use any of the accrued time. The proposed rule would allow Employee A to carry forward the 40 hours of accrued but unused earned paid sick time to Year 2 (unless the employer exercises its buy back option pursuant to Arizona Revised Statutes § 23-372(D)(4)). Assuming the employer did not buy back hours pursuant to Arizona Revised Statutes § 23-372(D)(4), Employee A remains entitled to accrue another 40 hours of earned paid sick time in Year 2 (for a maximum balance of 80 hours). If, at the end of Year 2, Employee A has 80 hours of unused earned paid sick time and the employer does not exercise its buyback option pursuant to Arizona Revised Statutes § 23-372(D)(4), Employee A is entitled to carry forward only 40 hours of earned paid sick time into Year 3 (though they may accrue another 40 hours in the course of Year 3). NOTE: Subject to the employer’s agreement to be more generous than the Act requires, Employee A may only use 40 hours of earned paid sick time in any given year.

Example 2. Employer with fewer than 15 employees. Employee B accrues 24 hours of earned paid sick time in Year 1 and does not use any of the accrued time. The proposed rule would allow Employee A to carry forward the 24 hours of accrued but unused earned paid sick time to Year 2 (unless the employer exercises its buy back option pursuant to Arizona Revised Statutes § 23-372(D)(4)). Assuming the employer did not buy back hours pursuant to Arizona Revised Statutes § 23-372(D)(4), Employee B remains entitled to accrue another 24 hours of earned paid sick time in Year 2 (for a maximum balance of 48 hours). If, at the end of Year 2, Employee B has 48 hours of unused earned paid sick time and the employer does not exercise its buyback option pursuant to Arizona Revised Statutes § 23-372(D)(4), Employee B is entitled to carry forward only 24 hours of earned paid sick time into Year 3 (though they may accrue another 24 hours in the course of Year 3). NOTE: Subject to the employer’s agreement to be more generous than the Act requires, Employee B may only use 24 hours of earned paid sick time in any given year.

Alternatively, in lieu of carry over, an employer may pay an employee for unused earned paid sick time pursuant to Arizona Revised Statutes § 23-372(D)(4). Because the Act permits employers to provide paid leave policies that are more generous than the requirements of the Act, the Industrial Commission is proposing rules consistent with the following, subject to permissible restrictions on a new hire’s use of earned paid sick time:

- An employer with 15 or more employees that provides its employees for immediate use at the beginning of each year 40 or more hours of earned paid sick time or 40 or more hours of equivalent paid time off is not required to provide carryover or additional accrual.

- An employer with fewer than 15 employees that provides its employees for immediate use at the beginning of each year 24 or more hours of earned paid sick time or 24 or more hours of equivalent paid time off is not required to provide carryover or additional accrual.

See May an employer offer more generous earned paid sick time policies than those required by the Act?; see also How does an employer front load earned paid sick time for a new hire?

Is an employer that front loads earned paid sick time required to provide additional accrual or carryover?

Because annually front loading earned paid sick time is more generous than the Act's carryover and accrual requirements, the Industrial Commission is proposing rules consistent with the following:

1. An employer with 15 or more employees that provides its employees for immediate use at the beginning of each year 40 or more hours of earned paid sick time or 40 or more hours of equivalent paid time off is not required to provide carryover or additional accrual.
2. An employer with fewer than 15 employees that provides its employees for immediate use at the beginning of each year 24 or more hours of earned paid sick time or 24 or more hours of equivalent paid time off is not required to provide carryover or additional accrual.

Should a front-loading employer revert to a standard accrual and carryover methodology, it must provide its employees at the beginning of its first standard accrual year an amount of carryover that equals or exceeds the amount of unused earned paid sick time each employee would have been entitled to carry over, subject to usage limits, had the employer utilized an accrual method during the period of the employees' employment.

If an employee carries into a subsequent year the maximum amount of earned paid sick time that the employee can use in the subsequent year, will the employee still accrue additional earned paid sick time?

Yes. The Industrial Commission is proposing rules that provide that carry over does not affect accrual, usage rights, or usage limits under the Fair Wages and Healthy Families Act. This means that, subject to front-loading or payout pursuant to [Arizona Revised Statutes § 23-372\(D\)\(4\)](#), an employee retains the right to accrue additional earned paid sick time in a subsequent year, regardless of the amount of earned paid sick time carried over to the subsequent year. Carried over earned paid sick time, however, may remain subject to yearly usage limits. See May an employer offer more generous earned paid sick time policies than those required by the Act? See also Is an employer that front loads earned paid sick time required to provide additional accrual or carryover?

Example 1. Employer with 15 or more employees. Employee A accrues 40 hours of earned paid sick time in Year 1 and does not use any of the accrued time. The proposed rule would allow Employee A to carry forward the 40 hours of accrued but unused earned paid sick time to Year 2 (unless the employer exercises its buy back option pursuant to Arizona Revised Statutes § 23-372(D)(4)). Assuming the employer did not buy back hours pursuant to Arizona Revised Statutes § 23-372(D)(4), Employee A remains entitled to accrue another 40 hours of earned paid sick time in Year 2 (for a maximum balance

of 80 hours). If, at the end of Year 2, Employee A has 80 hours of unused earned paid sick time and the employer does not exercise its buyback option pursuant to Arizona Revised Statutes § 23-372(D)(4), Employee A is entitled to carry forward only 40 hours of earned paid sick time into Year 3 (though they may accrue another 40 hours in the course of Year 3). NOTE: Subject to the employer's agreement to be more generous than the Act requires, Employee A may only use 40 hours of earned paid sick time in any given year.

Example 2. Employer with fewer than 15 employees. Employee B accrues 24 hours of earned paid sick time in Year 1 and does not use any of the accrued time. The proposed rule would allow Employee A to carry forward the 24 hours of accrued but unused earned paid sick time to Year 2 (unless the employer exercises its buy back option pursuant to Arizona Revised Statutes § 23-372(D)(4)). Assuming the employer did not buy back hours pursuant to Arizona Revised Statutes § 23-372(D)(4), Employee B remains entitled to accrue another 24 hours of earned paid sick time in Year 2 (for a maximum balance of 48 hours). If, at the end of Year 2, Employee B has 48 hours of unused earned paid sick time and the employer does not exercise its buyback option pursuant to Arizona Revised Statutes § 23-372(D)(4), Employee B is entitled to carry forward only 24 hours of earned paid sick time into Year 3 (though they may accrue another 24 hours in the course of Year 3). NOTE: Subject to the employer's agreement to be more generous than the Act requires, Employee B may only use 24 hours of earned paid sick time in any given year.

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, unused earned paid sick time must be reinstated and the employee is entitled to use and accrue earned paid sick time immediately at the re-commencement of employment.

But see If an employer voluntarily pays an employee for unused earned paid sick time at separation from employment, is the employer required to reinstate the employee's accrued but unused earned paid sick time if the employee is rehired within nine months?

If an employer voluntarily pays an employee for unused earned paid sick time at separation from employment, is the employer required to reinstate the employee's unused earned paid sick time if the employee is rehired within nine months?

Absent additional statutory or judicial guidance, the Industrial Commission will not enforce against an employer that voluntarily pays an employee for unused earned paid sick time at separation from employment and does not reinstate earned paid sick time if the employee is rehired within nine months, provided that the employee accepted the payment for the unused earned paid sick time.

Can an employer offer a single bank of paid time off that may be used for earned paid sick time or other purposes (such as vacation, bereavement, and holiday leave)?

Yes, provided that the paid time off meets or exceeds the requirements of the Fair Wages and Healthy Families Act.

When an employer's paid leave policy either meets or exceeds the requirements of the Fair Wages and Healthy Families Act, can the employer carve out a specific bank of time that only applies to earned paid sick time?

Yes. The Fair Wages and Healthy Families Act does not prohibit tracking earned paid sick time separately from other forms of leave.

If an employer's paid leave policy either meets or exceeds the requirements of the Fair Wages and Healthy Families Act, can an employer count time that was accrued and/or used before the effective date of the Act (July 1, 2017)?

No. Because the Fair Wages and Healthy Families Act mandates that earned paid sick time begins to accrue at the commencement of employment or on July 1, 2017, whichever is *later*, there is no statutory basis for counting leave time accrued or used before July 1, 2017. The Industrial Commission has, however, provided methods for prorating the remainder of an employer's year if an employer's year ends less than 365 days after July 1, 2017. See If an employer's selected "year" ends less than 365 days after the Fair Wages and Healthy Families Act's earned paid sick time effective date (July 1, 2017), can that employer prorate its employees' annual earned paid sick time accrual and usage entitlements in the first partial year after July 1, 2017 based on the number of days remaining in the employer's "year?"

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.

When leave is not foreseeable, an employer may require an employee to follow a written policy that contains procedures for the employee to provide notice. An employer that has not provided to the employee a copy of its written policy for providing such notice may not deny earned paid sick time to the employee based on non-compliance with such a policy. See Can an employer require notice of the need to use earned paid sick time when the need is not foreseeable?

The Fair Wages and Healthy Families Act gives different options for requesting earned paid sick time (orally, in writing, by electronic means, or by any other means acceptable to the employer). Can an employer decide which of these options an employee must use to make a leave request?

No, unless the leave is unforeseeable and the employer has provided a written policy concerning unforeseeable leave. The Fair Wages and Healthy Families Act permits an employee to use any available option (orally, in writing, by electronic means, or by any other means acceptable to the employer) when requesting earned paid sick time. An employer is not permitted to interfere with an employee's right to use any of the available options. When leave is not foreseeable, however, the employer may require an employee to follow a written policy that contains procedures for the employee to provide notice. An employer that has not provided to the employee a copy of its written policy for providing such notice may not deny earned paid sick time to the employee based on non-compliance with such a policy. See Can an employer require notice of the need to use earned paid sick time when the need is not foreseeable?

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

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.

When leave is not foreseeable, an employer may require an employee to follow a written policy that contains procedures for the employee to provide notice. An employer that has not provided to the employee a copy of its written policy for providing such notice may not deny earned paid sick time to the employee based on non-compliance with such a policy. See [Can an employer require notice of the need to use earned paid sick time when the need is not foreseeable?](#)

What is an employer's recourse if an employee fails to provide notice in accordance with an employer's written policy when earned paid sick leave is not foreseeable?

Absent additional legislative or judicial guidance, when leave is not foreseeable, the Industrial Commission will not enforce against an employer who elects not to designate an employee's leave as earned paid sick time when the employee fails to provide notice in accordance with the employer's written policy, provided that: (1) that employer provided to the employee a copy of the written policy; (2) the written policy does not discriminate against employees using earned paid sick time; and (3) the employee does not have a reasonable justification (such as an emergency situation or the employee's own incapacitation) for failing to follow the written policy.

Can an employee's family member, medical provider, friend, or other person submit a request for earned paid sick time on an employee's behalf?

The Fair Wages and Healthy Families Act (the "Act") states that "[e]arned paid sick time shall be provided upon the request of an employee. Such request may be made orally, in writing, by electronic means or by any other means acceptable to the employer." The Act is silent as to whether an employee's family member, medical provider, friend, or other person may submit a request on the employee's behalf. Because the Act authorizes the use of earned paid sick time for conditions that may render an employee unable to make requests, authorized individuals may request earned paid sick time for an employee in appropriate circumstances.

What is an employer's recourse if an employee uses earned paid sick time for purposes that are not enumerated in the Fair Wages and Healthy Families Act?

Absent additional legislative or judicial guidance, the Industrial Commission will not enforce against employers who elect not to designate leave time used for purposes other than those enumerated in the Fair Wages and Healthy Families Act (the "Act") as earned paid sick time.

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.

The Industrial Commission has proposed rules that define the “smallest increment that the employer’s payroll system uses to account for absences or use of other time” as the smallest increment of time that an employer utilizes, by policy or practice, to account for absences or use of other paid time off.

Can an employer require that an employee document an absence of fewer than three consecutive work days where federal law permits?

Yes. The Fair Wages and Healthy Families Act (the “Act”) provides that nothing in the Act may be interpreted or applied so as to create a conflict with federal law.

Is withholding perfect attendance bonuses because of earned paid sick time usage a violation of the Act?

Absent additional legislative or judicial guidance, the Industrial Commission does not intend to enforce against employers who deny perfect attendance bonuses to employees who utilize earned paid sick time, provided that employees who have used other leave types are similarly disqualified from perfect attendance bonuses.

What kind of posting and recordkeeping is required by Arizona’s earned paid sick time laws?

Unless otherwise exempted from the posting and 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. For more information about which employers are subject to Arizona’s earned paid sick time laws, see [Which employers are subject to earned paid sick time laws?](#)

The Industrial Commission’s 2017 model earned paid sick time notice can be found [here](#).

Note: The Industrial Commission is currently proposing rules that would exempt small employers (defined as a corporation, proprietorship, partnership, joint venture, limited liability company, trust, or association that has less than \$500,000 in gross annual revenue) from the Act’s posting requirements.

The Industrial Commission is also proposing rules that would require employers to keep the following earned paid sick time records:

- 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;
- The amount of pay the employee has received as earned paid sick time; and
- The employee’s earned paid sick time balance. “The employee’s earned paid sick time balance” means the sum of earned paid sick time or equivalent paid time off that is: (1) carried over to

the current year; (2) accrued to date in the current year; and (3) provided to date in the current year pursuant to A.R.S § 23-372(D)(4) or A.A.C. R20-5-1206(F), (G), or (H).

The Industrial Commission is proposing rules that would define these terms as follows:

- “Amount of earned paid sick time available to the employee” means the amount of earned paid sick time or equivalent paid time off that is available to the employee for use in the current year.
- “Amount of earned paid sick time taken by the employee to date in the year” means the amount of earned paid sick time or equivalent paid time off taken by the employee to date in the current year. Where an employee has used available equivalent paid time off for either the purposes enumerated in Arizona Revised Statutes § 23-373 or other purposes, the employer may count that usage towards the “amount of earned paid sick time taken by the employee to date in the year.”
- “Amount of pay the employee has received as earned paid sick time” means the amount of pay the employee has received as earned paid sick time or equivalent paid time off to date in the current year. Where an employee has received pay for equivalent paid time off for the purposes enumerated in Arizona Revised Statutes § 23-373 or other purposes, the employer may count that pay towards the “amount of pay the employee has received as earned paid sick time.”

The Industrial Commission will update this FAQ as the rulemaking process progresses.

What information must be recorded in, or on an attachment to, the employee's regular paycheck?

The Fair Wages and Healthy Families Act (the “Act”) requires that the following information be recorded in, or on an attachment to, the employee's regular paycheck (see [What qualifies as an employee's regular paycheck?](#) For more information about the Industrial Commission's proposed definition of an “employee's regular 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 the employee has received as earned paid sick time.

Note: The Industrial Commission is proposing rules that would define these terms as follows:

- “Amount of earned paid sick time available to the employee” means the amount of earned paid sick time or equivalent paid time off that is available to the employee for use in the current year.
- “Amount of earned paid sick time taken by the employee to date in the year” means the amount of earned paid sick time or equivalent paid time off taken by the employee to date in the current year. Where an employee has used available equivalent paid time off for either the purposes enumerated in Arizona Revised Statutes § 23-373 or other purposes, the employer

may count that usage towards the “amount of earned paid sick time taken by the employee to date in the year.”

- “Amount of pay the employee has received as earned paid sick time” means the amount of pay the employee has received as earned paid sick time or equivalent paid time off to date in the current year. Where an employee has received pay for equivalent paid time off for the purposes enumerated in Arizona Revised Statutes § 23-373 or other purposes, the employer may count that pay towards the “amount of pay the employee has received as earned paid sick time.”

When an employer’s paid leave policy either meets or exceeds the requirements of the Fair Wages and Healthy Families Act, and an employee uses accrued leave for reasons unrelated to earned paid sick time (such as vacation), how does the employer account for this time on the employee’s regular paycheck?

The Industrial Commission is proposing rules that permit an employer to count equivalent paid time off (see [What is equivalent paid time off?](#)) used for either the purposes enumerated in Arizona Revised Statutes § 23-373 or other purposes (such as vacation) towards the “amount of earned paid sick time taken by the employee to date in the year” and the “amount of pay the employee has received as earned paid sick time.” In other words, when an employee uses equivalent paid time (for earned paid sick time, vacation, or another reasons) the employer may count that time as “taken” and “received” on the employee’s regular paycheck. See [What information must be recorded in, or on an attachment to, the employee's regular paycheck?](#) for definitions of these terms.

What qualifies as an employee’s regular paycheck?

The Industrial Commission is proposing rules that define an “employee’s regular paycheck” as a regular payroll record that is readily available to employees and contains the information required by Arizona Revised Statutes § 23-375(C), including physical or electronic paychecks or paystubs.

How do collective bargaining agreements affect earned paid sick time obligations and rights?

The Fair Wages and Healthy Families Act’s (the “Act”) earned paid sick time requirements do not apply to employees covered by a valid collective bargaining agreement, provided that such requirements are expressly waived in the collective bargaining agreement in clear and unambiguous terms. Additionally, the Act’s earned paid sick time provisions do not apply to employees covered by a collective bargaining agreement in effect on the July 1, 2017 until the stated expiration date in the collective bargaining agreement.

How do commonly-owned entities account for earned paid sick time?

Absent addition legislative or judicial guidance, the Industrial Commission will consider multiple entities as a single employer for purposes of the Act’s earned paid sick time provisions when sufficient commonality exists between the entities. The Industrial Commission will consider various factors, including the following, when determining whether multiple entities constitute a common employer:

- Who owns the employers (*i.e.*, one employer owns part or all of the other or they have common owners);

- Whether the employers have any overlapping officers, directors, executives, or managers;
- Whether the employers share control over operations (*e.g.*, hiring, firing, payroll, advertising, overhead costs);
- Whether the employers' operations are intermingled (*e.g.*, there is one administrative operation for all employers, or the same person schedules and pays the employees regardless of which employer they work for);
- Whether one employer supervises the work of the other;
- Whether the employers share supervisory authority for the employee;
- Whether the employers treat the employees as a pool of employees available to all;
- Whether the potential joint employers share clients or customers; and
- Whether there are any agreements between the employers.

Violations of Proposition 206 - The Fair Wages and Healthy Families Act

What recourse does an employee have against an employer that is not paying minimum wage or earned paid sick time?

Employees who believe that their employer is violating the Fair Wages and Healthy Families Act may file a complaint with the Labor Department of the Industrial Commission or file a civil lawsuit. To file a complaint online concerning underpayment of minimum wage, click [here](#). To file a complaint online concerning underpayment of earned paid sick time, click [here](#). To file a claim in writing, send the completed claim form to:

Industrial Commission of Arizona, Labor Department
800 W Washington St.
Phoenix, AZ 85007

What is an “adverse action” within the meaning of the Fair Wages and Healthy Families Act?

The Fair Wages and Healthy Families Act (the “Act”) does not define “adverse action.” Absent additional legislative or judicial guidance, the Industrial Commission will defer to established case law when determining whether an employee has been subjected to an adverse action.