

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:

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- A public health emergency affecting the employee or a family member of the employee pursuant to [Arizona Revised Statutes § 23-373](#); and
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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.

Does the Fair Wages and Health Families Act exempt any professions or salary ranges from its earned paid sick time provisions?

No. The Fair Wages and Healthy Families Act does not exempt any professions or ranges of salary from the earned paid sick time provisions.

If an Arizona employer’s employees work outside of Arizona, are those employees entitled to earned paid sick time?

Because the Fair Wages and Healthy Families Act does not address this issue, additional legislative and/or judicial guidance is possible. Absent additional guidance, the Industrial Commission does not intend to enforce the Act against employers whose employees work outside of Arizona.

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

For employers with 15 or more employees: Employees are entitled to 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 are entitled to 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.

See [Is an employer with employees outside of Arizona required to include those employees when calculating its total employees for earned paid sick time purposes?](#)

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 hours ÷ 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 additional hours ÷ 30 = 2).

What is a "year" for earned paid sick time purposes?

Under the Fair Wages and Healthy Families Act, a "year" is defined as a regular and consecutive 12-month period as determined by the employer. An employer may, therefore, designate its "year" as it sees fit (e.g., calendar year, fiscal year, year from an employee hire date, etc.).

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").

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.

See [Is an employer with employees outside of Arizona required to include those employees when calculating its total employees for earned paid sick time purposes?](#)

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?](#)

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.

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

No. Employees are entitled to accrue earned paid sick time 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 federal Fair Labor Standards Act is presumed to work 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 hours in a normal workweek).

Can an employer designate leave time as earned paid sick time when an employee has not requested to use earned paid sick time?

Absent additional legislative or judicial guidance, the Industrial Commission will not pursue enforcement when an employer designates an employee's time off from work as earned paid sick time, provided that the employer has a good faith belief that the absence meets the requirements of earned paid sick time usage. If an employer who has, in good faith, designated leave time as earned paid sick time learns that it did so in error, it must take prompt action to correct the error.

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

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

Four years.

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

Who can file an administrative complaint?

Any person or organization may file a complaint with the Labor Department of the Industrial Commission alleging a minimum wage or earned paid sick time violation.

When must an administrative complaint be filed?

An administrative complaint concerning minimum wage must be filed within one year of the date the wages were due. The Industrial Commission is proposing rules that would require administrative complaints concerning unpaid earned paid sick time to be filed within one year of that the date that the earned paid sick time was due.

As concerns claims for minimum wage retaliation, an administrative complaint must be filed with the Labor Department of the Industrial Commission within one year from the date the alleged violation occurred or when the employee knew or should have known of the alleged violation.

Note: the Industrial Commission is proposing rules that would require a person or organization alleging earned paid sick time retaliation, discrimination, or a violation of Arizona Revised Statutes § 23-377 to file a complaint with the Labor Department within one year from the date the alleged violation occurred or when the employee knew or should have known of the alleged violation.

Who can file a lawsuit to enforce the Fair Wages and Healthy Families Act and when must it be filed?

A civil action to enforce the Fair Wages and Healthy Families Act (the “Act”) may be filed by a law enforcement officer (which means the attorney general, a city attorney, a county attorney, or a town attorney) or by any private party injured by a violation of the Act. The civil action must be filed no later than two years after a violation last occurs, or three years in the case of a willful violation. The civil action may include all violations that occurred as part of a continuing course of employer conduct regardless of the date of the violation.

Can an employer retaliate against an employee for asking questions about not being paid minimum wage or for asserting any rights under the Fair Wages and Healthy Families Act?

No. The Fair Wages and Healthy Families Act (the “Act”) prohibits an employer from discriminating or retaliating against an employee or other person for asserting any right under the Act. Additionally, if an employer takes an adverse action against an employee within 90 days of the employee asserting a right under the Act, retaliated against the employee will be presumed. This presumption can only be overcome if the employer shows by clear and convincing evidence that the action taken against the employee was for a permissible reason.

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.

What can an employee do if an employer retaliates against the employee for asserting a right under the Fair Wages and Healthy Families Act?

An employee may file an administrative complaint with the Labor Department of the Industrial Commission or file a civil lawsuit.

What remedies are available to an employee for violations of Arizona’s minimum wage and earned paid sick time laws?

An employer who fails to pay minimum wage or earned paid sick time will be required to pay the employee the wages owed with interest and an additional amount equal to twice the underpaid wages.

An employer who retaliates against an employee is required to pay penalties sufficient to compensate the employee and deter future violations, but not less than \$150 for each day that the violation continued or until legal judgment is final.

The Commission and courts also have the authority to order other appropriate legal or equitable relief for violations of the Fair Wages and Healthy Families Act.

Will the Labor Department of the Industrial Commission keep an employer's payroll records confidential?

Payroll information provided to the Labor Department of the Industrial Commission will be kept confidential except as necessary to prosecute violations under the Fair Wages and Healthy Families Act.

Can an employee's identity be kept confidential after an administrative complaint is filed with the Labor Department of the Industrial Commission?

The Labor Department of the Industrial Commission will keep the name of an employee identified in an administrative complaint confidential for as long as possible. If the Industrial Commission determines that an employee's name must be disclosed in order to conduct a further investigation, it may do so only with the employee's consent.

What happens if an employer violates the Fair Wages and Healthy Families Act's recordkeeping, posting, or other requirements?

An employer who violates the Fair Wages and Healthy Families Act's recordkeeping, posting, or other requirements is subject to a civil penalty of at least \$250 for the first violation and at least \$1000 for each subsequent or willful violation. Special monitoring and inspections may also be imposed. Additionally, if an employer fails to maintain required records, it will be presumed that the employer did not pay the required minimum wage or earned paid sick time. An employer has the right to rebut this presumption with evidence that the employer paid the employee the required minimum wage.