













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 at least 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 at least 40 hours of earned paid sick time per year). See [How much earned paid sick time must an employer offer an employee?](#)

**Are earned paid sick time accrual and usage caps prorated for partial-year employees? In other words, is an employee who works part of a year entitled to accrue and use the same amount of leave available to a year-round employee?**

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 caps are based solely on the size of the employer and are not based upon whether an employee works a full or partial year. See [How much earned paid sick time must an employer offer an employee?](#) for more information.

**How does an employer determine hourly wage rate for earned paid sick time purposes?**

In the absence of statutory and judicial guidance, the Industrial Commission is proposing rules consistent with the following methods for determining hourly wage rate:

- **For employees with a single hourly rate.** For employees paid on the basis of a single hourly rate, an employer is required to pay the employee the same hourly rate that the employee would have earned for the period of time in which sick time is used. For example, if an employee's hourly rate is \$15 per hour, the employer is required to pay the employee \$15 for each hour of earned paid sick time.
- **For employees with multiple hourly rates.** If known, an employer is required to pay a multi-rate employee the actual hourly wages that the employee would have been paid for the period of time in which sick time is used. If unknown, an employer must pay an hourly rate equivalent to the weighted average of all hourly rates of pay during the previous pay period.
- **For salaried employees.** Employers must pay a salaried employee an hourly rate equal to the employee's total wages earned during the pay period covered by the salary divided by the number of hours agreed to be worked in the pay period for which the salary is intended to compensate. If a salaried employee's hours of work vary from work week to work week, for the purpose of calculating the same hourly rate to be used for the payment of earned paid sick time, the employee is presumed to work 40 hours per workweek.
- **For commissioned, piece-rate, or fee-for-service employees.** Such employees' hourly rates are determined in the following order of priority:
  1. The hourly rate of pay agreed upon by the employer and the employee, if an hourly rate of pay was previously established.
  2. The wages that the employee would have been paid, if known, for the period of time in which earned paid sick time is used.
  3. A reasonable estimation of the wages that the employee would have been paid for the period of time in which the earned paid sick time is used.
  4. The weighted average of all hourly rates of pay during the previous 90 days, if the employee worked regularly during the previous 90-day period.

**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) shall be included when computing an employee's hourly rate. Additionally, overtime, holiday pay, bonuses, other types of incentive pay, tips, and gifts do not need to be included in an hourly wage rate determination. Pursuant to the 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?**

In the absence of statutory and judicial guidance, 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) should be included when computing an employee's hourly rate. On the other hand, overtime, holiday pay, bonuses, other types of incentive pay, 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 ?**

In the absence of statutory and judicial guidance, the Industrial Commission is proposing rules consistent with the following:

Overtime, holiday pay, bonuses, other types of incentive pay, 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.

### **Can an employer designate leave time as earned paid sick time when an employee has not requested to use 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 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 should take prompt action to correct the error.

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

The Fair Wages and Healthy Families Act provides that earned paid sick time shall be carried over to the following year, subject to usage limitations based on employer size. Alternatively, in lieu of carry over, an employer may pay an employee for unused earned paid sick time pursuant to A.R.S. § 23-372(D)(4). Absent statutory or judicial guidance, the Industrial Commission is proposing rules consistent with the following:



An employee of an employer with 15 or more employees may carry over to the following year a maximum of 40 hours of unused earned paid sick time. An employee of an employer with fewer than 15 employees may carry over to the following year a maximum of 24 hours of unused earned paid sick time. Alternatively, in lieu of carry over, an employer may pay an employee for unused earned paid sick time pursuant to A.R.S. § 23-372(D)(4). Carry over shall not affect accrual or use rights under the Act. See May an employer offer more generous earned paid sick time policies than those required by 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 A.R.S. § 23-372(D)(4)). Assuming the employer did not buy back hours pursuant to A.R.S. § 23-372(D)(4), Employee A remains entitled to accrue another 40 hours of earned paid sick time in Year 2 (for a maximum 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 A.R.S. § 23-372(D)(4), Employee A may only carry forward 40 hours of earned paid sick time into Year 3 (though they may accrue another 40 hours in the course of Year 3). NOTE: 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 A.R.S. § 23-372(D)(4)). Assuming the employer did not buy back hours pursuant to A.R.S. § 23-372(D)(4), Employee B remains entitled to accrue another 24 hours of earned paid sick time in Year 2 (for a maximum 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 A.R.S. § 23-372(D)(4), Employee B may only carry forward 24 hours of earned paid sick time into Year 3 (though they may accrue another 24 hours in the course of Year 3). NOTE: Employee B may only use 24 hours of earned paid sick time in any given year.

**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?**

Because The Fair Wages and Healthy Families Act (the “Act”) does not address this issue, additional legislative and/or judicial guidance is possible. In the absence of additional guidance, the Industrial Commission is proposing rules that provide that carry over shall not affect accrual or use rights under the Act. This means that, regardless of the amount of earned paid sick time carried over to a subsequent year, an employee retains the right to accrue additional earned paid sick time in the subsequent year. Accrued earned paid sick time, however, remains subject to yearly usage limits. See May an employer offer more generous earned paid sick time policies than those required by 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 A.R.S. § 23-372(D)(4)). Assuming the employer did not buy

back hours pursuant to A.R.S. § 23-372(D)(4), Employee A remains entitled to accrue another 40 hours of earned paid sick time in Year 2 (for a maximum 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 A.R.S. § 23-372(D)(4), Employee A may only carry forward 40 hours of earned paid sick time into Year 3 (though they may accrue another 40 hours in the course of Year 3). NOTE: 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 A.R.S. § 23-372(D)(4)). Assuming the employer did not buy back hours pursuant to A.R.S. § 23-372(D)(4), Employee B remains entitled to accrue another 24 hours of earned paid sick time in Year 2 (for a maximum 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 A.R.S. § 23-372(D)(4), Employee B may only carry forward 24 hours of earned paid sick time into Year 3 (though they may accrue another 24 hours in the course of Year 3). NOTE: Employee B may only use 24 hours of earned paid sick time in any given year.

**What happens to accrued earned paid sick time when one employer takes the place of an existing employer?**

All employees of the original employer still employed by the successor employer are entitled to previously-accrued earned paid sick time and are entitled to use that earned paid sick time. The Industrial Commission will follow existing Arizona case law concerning liability assumption in asset-only transactions.

**May an employer offer more generous earned paid sick time policies than those required by the Act?**

Yes. Pursuant to Arizona Revised Statutes § 23-378, nothing in Arizona's earned paid sick time provisions should be construed to discourage or prohibit an employer from adopting or retaining an earned paid sick time policy that is more generous than that required by the Fair Wages and Healthy Families Act (the "Act"). Additionally, the provisions of the Act do not diminish an employer's obligation to comply with any contract, collective bargaining agreement, employment benefit plan, or other agreement that provides more generous paid sick time to an employee than that required by the Act.

**If an employer already has a paid-time-off policy, does it have to offer additional earned paid sick time?**

If an employer has a paid leave policy that provides an amount of paid leave that meets or exceeds Arizona's earned paid sick time minimum requirements (and can be used for the same purposes and under the same conditions as the statutorily-required earned paid sick time), the employer is not required to provide additional earned paid sick time. See also [May an employer offer more generous earned paid sick time policies than those required by the Act?](#)

**When an employer's paid leave policy either meets or exceeds the Fair Wages and Healthy Families Act's requirements, and an employee uses accrued leave for reasons unrelated to**

earned paid sick time (such as vacation), is the employer required to provide the employee additional leave for earned paid sick time purposes?

No. The Fair Wages and Healthy Families Act (the “Act”) provides that “an employer with a paid leave policy . . . who makes available an amount of paid leave sufficient to meet the accrual requirements of this section that may be used for the same purposes and under the same conditions as earned paid sick time under this article is not required to provide additional paid sick time.” Arizona Revised Statutes section 23-372(E). Therefore, provided that an employer’s equivalent paid leave policy provides paid leave that may be used for the same purposes and under the same conditions enumerated in the Act, it need not offer additional leave when an employee utilizes the available time for purposes other than those enumerated in the Act. See also [May an employer offer more generous earned paid sick time policies than those required by the Act?](#)

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. 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.

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 leave 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 will update this FAQ as the rulemaking process progresses.

## **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 of Arizona or file a civil lawsuit. To file a complaint with the Labor Department online, please click [here](#). To file a claim in writing, send the completed claim form (available [here](#)) 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 that the wages were due. In the absence of statutory and judicial guidance, the Industrial Commission is proposing rules that would also 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 payment 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. In the absence of statutory or judicial guidance, the Industrial Commission is proposing rules that would permit a person or organization alleging minimum wage or earned paid sick time retaliation, discrimination, or a violation of A.R.S. § 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.