

HENDERSON BROTHERS UPDATE

UPDATED: Pittsburgh Temporary COVID-19 Sick Time Benefit | HBI Q&As *Revised Q&As #10 and #11* Date: January 20, 2021

Pittsburgh's City Council unanimously passed a temporary COVID-19 Paid Sick Leave Ordinance that went into effect December 9, 2020. The new Ordinance, that supplements the existing Pittsburgh Paid Sick Days Act (PSDA), requires Pittsburgh employers with 50 or more total employees to provide up to 80 hours of paid "COVID-19 Sick Time" in addition to any leave already provided, with some exceptions. The following Q&As summarize key components of the new Ordinance and are based on information provided in the legislative text. We may need to modify some of the information we are providing below when formal guidance is released by the city of Pittsburgh.

Q#1 What employers are required to provide the Pittsburgh COVID-19 Paid Sick benefits?

Employers within the city of Pittsburgh with 50 or more Employees. This benefit supplements the Pittsburgh Paid Sick Days Act (Chapter 26) that went into effect in March 2020.

Q#2 Who is considered an Employee for purposes of this requirement?

An Employee is an individual who:

- Is currently working, including anyone who is teleworking, in the City of Pittsburgh;
- normally works in the City of Pittsburgh but is teleworking from another location as a result of COVID-19, or spends 51% or more of their time working in the City of Pittsburgh.

Q#3 How do we determine whether Employees have worked 51% or more of their time working in the City of Pittsburgh?

At this point there is no guidance, so we are not certain exactly what time-frame will be used to determine "51% or more". For now, since the Ordinance directs employers to use a 90-day look-back period to determine the amount of leave to which employees whose hours fluctuate are entitled, and the Ordinance requires employees to be employed 90 days to be eligible for the leave, it would make sense that it would apply a 90-day look-back period to determine if employees spend 51% or more of their time working in the City.

Q#4 We have a few Employees that travel into the city to work on projects. Is it possible that some of these Employees will be entitled to Pittsburgh Paid Sick Days (PSDA) and Pittsburgh COVID-19 Paid Sick benefits, while others will be entitled to PSDA only (they do not satisfy the 51% threshold for COVID-19 benefits)?

Yes. While in some ways the COVID-19 Sick Time is more generous (e.g., no need to accrue time), in other ways, the PSDA may provide coverage where the COVID-19 Paid Sick Leave Ordinance may not. The definition of covered "Employee" for this new Ordinance is slightly different than the definition of [covered Employee for purposes of the PSDA benefits](#) that went into effect March 15, 2020.

HENDERSON BROTHERS UPDATE

Q#5 Our headquarters is located in the city, but we have a large number of employees that work remotely from the suburbs that come into the city to work for a day or two each year. Does this COVID-19 benefit apply to them?

The COVID-19 Sick Leave Ordinance would not apply to those employees since eligibility is based on where the employees work (or, for employees temporarily working remotely, where they usually work), not where the employer is based.

Q#6 What Employees are entitled to this Pittsburgh paid COVID-19 Sick Time benefit?

Any Employee who has been employed for at least 90 days and is unable to work (or telework) for any one of the qualifying reasons. In addition, for new hires that experience a qualifying reason for COVID-19 time off before they have worked 90 days, the Ordinance requires employers to make “the maximum amount” of paid sick time under the PSDA (40 hours) immediately available to employees upon hiring if an employee’s requested use “arises directly from COVID-19.” This provision means that if a covered employer uses the calendar year as its leave year for purposes of the PSDA, beginning January 1, 2021, employees are entitled to use up to 40 hours of PSDA paid sick time for COVID-19 reasons even if they have not yet accrued the time.

Q#7 What is the paid Sick Time benefit?

- Employees working 40+ hours per week: 80 hours.
- Employees working less than 40 hours: a benefit equal to the amount of time the Employee is scheduled to work or actually works on average during a 14-day period (whichever is greater).
- Variable hour workers: When an Employee’s schedule varies each week, the Employer may use a number (paid hours) equal to the average number of hours the Employee was scheduled to work over the past 90 days of work, including hours the Employee took for other leave of any type.

Q#8 May we limit the time employees take to 4-hour increments?

Employers must permit Employees to use paid sick time intermittently and in the smallest increment that the Employer’s payroll system uses to account for absences or use of other time.

Q#9 May we require Employees to use other sick time first?

No. Employees may elect to use the Pittsburgh COVID-19 Paid Sick time benefit before using any Pittsburgh Paid Sick Days, and Employers may not require an Employee to use regular PTO, sick or vacation days first.

REVISED *Q#10 Are Employees that have used all their FFCRA paid sick time entitled to more paid sick time under the Pittsburgh Ordinance?*

New Pittsburgh Q&A guidance (specially Q&A# 6 in [new COVID-19 Emergency Paid Sick Leave FAQ](#) guidance posted on the city’s website) illustrates the following:

HENDERSON BROTHERS UPDATE

#6 I have previously allowed employees to use (X) hours of paid time off via the Federal FFCRA Act, do I need to provide additional time off?

Under Section M of the City's Emergency Act, "Employers may substitute leave under the federal or state law for its obligations under this Ordinance." The Families First Federal Coronavirus Response Act (FFCRA) is an applicable Federal law under the City's Act, and may be used to satisfy the requirements of this Act up to eighty (80) hours of time off. If an Employer has allowed less than eighty hours of paid time off under the FFCRA, they are still responsible for making available the remainder of the mandatory time under the City's Emergency Act.

HBI comments: We are revising our initial interpretation of the ordinance, specifically the guidance we provided previously on whether an employee that has already used 80 hours of FFCRA paid sick leave will be entitled to another 80 hours of Pittsburgh COVID-19 Sick time after 90 days of employment. While the COVID-19 Sick Leave Act is far from clear, given the vague answer to FAQ # 6 that the city has posted to its website, and the fact that the COVID-19 Sick Leave Act permits employers to count any additional leave they provided to employees voluntarily after March 13 against the 80 hours of leave they must give employees under the COVID-19 Sick Leave Act, we believe employers can count all leave taken under the FFCRA, provided the leave qualifies as COVID-19 related leave under the Pittsburgh COVID-19 Sick Leave Act. In general, any FFCRA taken before December 9, 2020 that is a qualifying reason under the Pittsburgh ordinance can be counted against the 80 hours of Pittsburgh benefit.

Remember that the employee will still have 40 hours of leave under the Paid Sick Days Act assuming that the company uses the calendar year as its calendar year under the Paid Sick Days Act. The employee does not need to have accrued all of the time if the employee is using it for COVID-19 related reasons.

UPDATED Q#11 - Since FFCRA Paid Sick Leave expired December 31, 2020, the Q&A below no longer applies.

Q#11 If an Employee needs COVID-19 sick time that qualifies for the new Pittsburgh benefit and FFCRA paid sick time is still available as well, how many hours of paid sick time will the Employee receive?

According to the legislative text, when a federal or state law requires Employers to provide COVID-19 paid sick time, Employers are permitted to substitute leave under the federal or state regulations to satisfy its obligations under the Pittsburgh Ordinance to the extent the benefits coincide, and concurrent use of the benefits is permitted. This means that if an Employee working 40+ hours per week qualifies for FFCRA paid sick time and Pittsburgh paid COVID-19 Sick Time, the Employer may limit the paid sick time benefit to 80 hours in total.

Note: The FFCRA emergency paid sick (and paid family leave) benefit will expire December 31, 2020 unless new federal legislation extends the benefits.

HENDERSON BROTHERS UPDATE

Q#12 What are the qualifying reasons an Employee would be entitled to Pittsburgh COVID-19 Paid Sick days?

1. Determination by a public official or public health authority, a health care provider, or an Employee's Employer that the employee's presence on the job or in the community would jeopardize the health of others because of the Employee's exposure to COVID-19 or because the individual is exhibiting symptoms that might jeopardize the health of others, regardless of whether the individual has been diagnosed with COVID-19;
2. An Employee's need to: (a) self-isolate and care for oneself because the Employee is diagnosed with COVID-19; (b) self-isolate and care for oneself because the Employee is experiencing symptoms of COVID-19; or (c) seek or obtain medical diagnosis, care, or treatment if experiencing symptoms of an illness related to COVID-19; or
3. Care of a family member of the Employee due to a determination by a public official or health authority, a health care provider, or the family member's Employer that the presence of the family member on the job or in the community would jeopardize the health of others because of the family member's exposure to COVID-19 or a determination by the Employer that the Employee is a danger to the health of others because they are exhibiting symptoms that might jeopardize the health of others, regardless of whether the family member has been diagnosed with COVID-19;
4. Care of a family member who: (a) is self-isolating due to being diagnosed with COVID-19; (b) is self-isolating due to experiencing symptoms of COVID-19; or (c) needs medical diagnosis, care, or treatment if experiencing symptoms of an illness related to COVID-19.

Q#13 How does the FFCRA paid leave benefits differ from the Pittsburgh COVID-19 Paid Sick time?

According to Littler Mendelson P.C., the Pittsburgh Ordinance is more expansive in some ways.

- Unlike the FFCRA, the Pittsburgh Ordinance entitles an Employee to Paid Sick time who has a need (or is caring for a family member who has a need) to seek a diagnosis, care or treatment for COVID-19 related symptoms, regardless of whether the employee (or family member) has taken any steps to seek a diagnosis, care, or treatment for such symptoms.
- The Pittsburgh Ordinance deems an employer's determination as to whether an employee's presence on the job would jeopardize the health of others because of the employee's exposure to COVID-19 or because the individual is exhibiting symptoms of COVID-19, to be a qualifying reason for leave. With this requirement, a covered employer could be automatically required to provide employees with COVID-19 Sick Time if the employer, for example: (a) sends an employee home if the employee exhibits certain COVID-19-related symptoms, or (b) has a policy in place that prevents employees from working if they had any exposure to COVID-19.

Q#14 Are Employers entitled to a tax credit for the Pittsburgh benefit?

No.

Q#15 Are there any notice or documentation requirements?

The Ordinance does not address whether there are Employer notice obligations or what documentation an Employer may request from Employees seeking COVID-19 Sick Time.

HENDERSON BROTHERS UPDATE

The legislative text does state Employers “shall conform to the requirements, procedures and regulations” of the PSDA, except where the Ordinance expressly differs.

While there is no requirement at this time to provide a specific Notice, HBI has developed a communication Employers may use to notify Employees of this new benefit.

Email slherrle@hb1893.com or keramicone@hb1893.com if you would like a copy.

Q#16 When is this Pittsburgh requirement to provide COVID-19 Paid Sick time expected to end?
The provisions will expire when the Pennsylvania COVID-19 Declaration of Emergency or the Pittsburgh COVID-19 Declaration of Emergency ends, whichever is sooner.

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