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Court Ruling May Necessitate Overhaul of Paid Sick Time Policies and Practices

The *Arizona Fair Wages and Healthy Families Act (the "Act"), requires all employers to provide employees a certain amount of paid sick time depending on the number of employees. An employer with at least 15 employees must provide at least 40 hours of paid sick time to employees each year. The Act requires employers to follow certain notice requirements, including posting the* [Earned Paid Sick Time Poster](#) *and providing employees with pay stubs that include the amount of paid sick time available, the amount taken to date in the year, and the amount of pay received as sick time. Even if the employee exhausts paid sick time, employers must take care in taking any adverse employment action within 90 days of the employee's last use of paid sick time. An Arizona Court of Appeals case has highlighted the importance of implementing and following a comprehensive policy for paid sick time.*

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A little bit about the case.

Papias worked for a manufacturing company, which had implemented policies on paid sick time (PST), paid time off (PTO), and attendance. Its employment practices deviated from these policies in several respects.

For example, the policy stated that Papias could use PST for limited reasons, but he was permitted to use PST for reasons beyond permissible uses. He was also paid more than his allotted PST. In his second year, Papias continued to request time off without explicitly indicating it was for sick time, yet his employer classified the hours as PST.

Eventually, Papias sought to use PST for illness. After missing a week of work, Papias returned to work with a doctor's note, at which time, his supervisor expressed skepticism that Papias had been ill and explained that Papias's services were no longer needed.

Papias sued the company for retaliation. The company believed that since Papias had received more PST than required by law or company policy and he did not have PST available at the time of his absences, its actions could not be in retaliation for his request to use PST. The court disagreed, citing the fact that the company had paid him for PST in the past 90 days (even though that payment was in excess of what was required by law or policy). And that this payment of PST within the previous 90 days created a presumption that any adverse employment action was retaliatory. While there is so much more to this ruling, this should be enough information to place employers on high alert that a review of policies and their implementation is necessary. *Here are answers to some questions you may be asking.*

Am I required to have a paid sick time ("PST") policy?

The Act does not require employers to implement a specific policy for compliance. An employer who does implement a PST policy should ensure that the policy complies with the Act and that the policy is implemented as written. Outside of the [FAQs](#) on its website, the Industrial Commission of Arizona ('the "ICA") has provided little guidance since 2017 as to how it will interpret the Act with respect to policy language. One thing is clear, if the ICA determines that the policy violates the Act in any respect, it will assess a penalty against the employer for the technical violation.

What should my PST policy include?

The PST policy should provide comprehensive guidance with respect to accrual, usage, and payment. At the very least, the PST policy should:

- Explain the amount of earned PST the employee will receive and whether the PST will be granted at once or accrued over time.

- State whether the company uses a calendar or anniversary year when calculating accrual and use of PST.

- Provide employees with the permissible uses of PST.

- Explain how to go about requesting PST.

- Note whether unused PST is paid out upon separation.

- Contain the enforcement and contact information for the ICA.

Once this PST policy is implemented, PST should be earned and paid out consistently in accordance with the policy. Deviations from the policy, even in favor of paying the employee more PST than required by the Act could result in potential liability later for retaliation.

Can I combine vacation and sick pay into one PTO policy?

Based on the recent case, employers who implement a combined PTO policy may be doing so at their own peril. The Act creates a rebuttable presumption of retaliation for any adverse employment action taken against any employee who has used PST in the past 90 days. By combining PST and vacation into one PTO bank, employers may have a difficult time demonstrating that the PTO taken by the employee in the past 90 days was not protected PST and will likely have to be prepared to rebut this presumption under the heightened standard of clear and convincing evidence. Separating PTO into distinct vacation and PST banks reduces the chances that PST will have been used in the previous 90 days.

In closing.

The implications of this Court of Appeals decision are so far reaching that additional guidance is necessary in determining the proper course of action for each employer. There is no one-size fits all policy for paid sick time, as different employers and different industries may find certain benefits and processes work better than others. In addition to reviewing policies and practices, employers should confirm with their payroll providers that the paystubs are properly reflecting the information required by the Act. The pay stub must properly reflect the amount of PST earned/accrued, used, and dollar value paid out based on the year (calendar/anniversary) selected by the company.

We encourage employers who have specific questions about the recent decision or other related employment issues to contact Jodi R. Bohr or (602) 255-6082, to ensure your workplace is in compliance with employment laws.