

Summary of what the Ohio Healthy Families Act will mean if enacted

Coverage

The law requires employers with 25 or more employees in Ohio to provide seven days of annual paid sick leave to employees who work 30 or more hours per week and a pro rate amount annually to employees working fewer than 30 hours per week or fewer than 1,560 hours per year. The law provides no guidance on coverage with respect to employers that have more than 25 employees in total but fewer than 25 in Ohio. Similarly, the law does not advise employers how to handle situations in which employment levels creep above or below 25 during the course of a year.

Accrual of Sick Leave

Employees accrue sick days immediately upon employment and thereafter continue to accumulate leave. Employees may begin using their leave on the 91st day of employment. For employees who work a standard 40-hour week, a “day,” presumably, consists of eight hours, with a maximum leave entitlement of 56 hours. For employees who work irregular hours, the amount of sick leave to which the employee is entitled is calculated based on a 12-week average “prior to the beginning of a sick leave period.” Since a “sick leave period” can be as small as one hour (or potentially smaller) this provision seems to suggest the need to do a rolling calculation each time an employee requests leave.

Employees may carry over accrued but unused leave from year to year, but no more than seven days of leave per year. Though the Act is silent on accumulating carried-over leave, this provision should be interpreted such that no employee would ever have more than 14 days of leave in any year.

Qualifying Events

Employers must provide paid sick leave for almost any medical reason, including for *preventative medical care*, for the employee or for the employee to care for a child, parent (including in-laws), or spouse.

Use of Sick Leave

An employee does not need to request leave in writing. Employees must give notice for leave that is foreseeable at least seven days before the leave when it is foreseeable that far in advance and as soon as practical if leave is not foreseeable seven days in advance. They also must make “reasonable efforts” to schedule leave so that it does not “unduly disrupt” employer operations. For periods of leave that are less than a normal workday, employers must count that leave on an hourly basis or, if less than an hour, in the smallest increment that the employer’s payroll system uses to account for absences or use of other leave. Employers cannot require a medical certification unless the leave exceeds three consecutive work days; employees have 30 days to provide certification after it is requested.

Employer Prohibitions

Employers may not:

- interfere with, restrain, or deny the exercise of any right under the OHFA
- discharge or discriminate or retaliate against an employee for taking OHFA leave or for exercising any right under the OHFA
- use paid sick leave as a negative factor in an employment action
- count paid sick leave under a no-fault attendance policy



Any violations of these prohibitions can result in a civil action against the employer for lost wages and benefits (or if none, actual monetary damages up to a sum equal to 10 days of wages), treble damages, reasonable attorney fees, and equitable relief (such as reinstatement).

Recordkeeping and Posting Requirements

Employers must maintain records for three years as to the number of hours worked by employees (with no exception provided for exempt employees) and the amount of paid sick leave taken. Postings are required in conspicuous and accessible places.

Leave Policies

Employers may retain any current policy that provides leave that is at least equivalent to the leave available under the OHFA. No guidance is provided as to how to determine "equivalency." Presumably, a paid-time-off (PTO) policy that provides at least seven days that can be used by the employee at his or her discretion for sick days should be considered equivalent. After enactment of the OHFA, an employer may not eliminate or reduce existing leave to comply with the OHFA.