Engage PEO Client Alert - Pennsylvania

Allegheny County Paid Sick Leave and

City of Philadelphia Marijuana Drug Testing

What's New in Allegheny County and What Employers Should Do: Allegheny County employers with 26 or more full- or part-time employees are required to provide up to five days of paid sick leave to certain workers. Exceptions are outlined below. Covered employers should prepare to notify employees when the law becomes effective, which is expected in the first few months of 2022.

What's New in the City of Philadelphia and What Employers Should Do: Beginning January 1, 2022, City of Philadelphia employers are prohibited from requiring certain prospective employees to undergo marijuana drug testing as a condition of employment. Philadelphia employers should review their pre-hire drug testing policies and take note of the positions not covered by this law.

Allegheny County, PA – Paid Sick Leave

Allegheny County passed the Paid Sick Days Act, which provides certain employees in Allegheny County up to five sick days each year. **An effective date for the new law has not been determined** yet; however, it is **anticipated to take effect sometime in the first few months of 2022** after regulations are drafted and published. A copy of the new ordinance can be found here.

The new law is similar to the City of Pittsburgh's Paid Sick Days Act, which, provides paid sick time at the same accrual rate to full- and part-time employees working in Pittsburgh. Employers with 15 or more employees have been required to provide paid sick time under this law since last year.

The new law provides that eligible employees for **employers with 26 or more employees** will earn **one hour of paid sick time per 35 hours** worked within Allegheny County, **up to 40 hours per year** (exempt employees are presumed to work 40 hours per week).

Employees are eligible to use paid sick time on the **90th day of their employment**. Ineligible employees include seasonal employees, independent contractors, state and federal employees, and members of construction unions covered by a collective bargaining agreement.

Employers that already provide at least one hour of paid time off per 35 hours worked are not required to provide additional paid sick time under the Act if that time can be used for the same reasons and under the same conditions.

Paid sick time under the Act may be used for:

1. The **employee's mental or physical illness, injury or health condition;** need for medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition; or need for preventive medical care;
2. The employee's **need to care for a family member** for the same reasons set forth in paragraph 1; and

3. The **closure of the employee's place of business** by order of a public official due to a public health emergency; to care for a **child whose school or place of care** has been **closed** by order of a public official due to a **public health emergency**; and **to care for a family member** if health authorities or a health care provider have determined that the family member's presence in the community would jeopardize the health of others **because of the family member's exposure to a communicable disease**, whether or not the family member has actually contracted the communicable disease.

Unused paid sick time can be carried over into the next year unless the employer front loads the full 40 hours at the beginning of the calendar year. There is no payout for accrued but unused paid sick time upon the termination of employment, but any balance must be reinstated if the employee is rehired within 6 months.

If employees use three or more consecutive days of paid sick time, employers can require them to provide **reasonable documentation** that the leave was used for a covered purpose. The documentation may not disclose any specific medical condition. Also, employees cannot be required to find a replacement before taking paid sick time.

Covered employers will be required to provide notice of the Act to their employees when it becomes effective after the regulations are drafted and published.

City of Philadelphia, PA – Marijuana Drug Testing

Beginning on **January 1, 2022**, **employers** are **prohibited** from requiring prospective employees to undergo **testing** for the presence of **marijuana as a condition of employment**. This new law is similar to the requirements for New York and Nevada employers where marijuana use is legal for recreational purposes and can be found here.

Exceptions: Specifically, the prohibition does not apply to individuals applying to work in the following positions or professions:

- **Police officer** or other **law enforcement** positions;
- Any **position requiring a commercial driver's license**;
- Any **position requiring the supervision or care of children, medical patients, disabled or other vulnerable individuals**;
- Any position in which the **employee could significantly impact the health or safety of other employees or members of the public**, as determined by the enforcement agency and set forth in regulations pursuant to the bill.

It also **does not apply to drug testing required pursuant to**:

- Any **federal or state statute, regulation, or order that requires drug testing** of prospective employees for purposes of safety or security;

- Any **contract between the federal government and an employer or any grant of financial assistance from the federal government to an employer that requires drug testing** of prospective employees as a condition of receiving the contract or grant; or
- Any applicants whose prospective employer is a party to a valid **collective bargaining agreement** **that specifically addresses the pre-employment drug testing** of such applicants.

All employers should reassess their workplace drug testing practices to be sure they are following existing and soon to be effective laws. Please review Engage's April webinar titled **Current Trends in Marijuana law in the Workplace.** We will continue update employers when major changes in laws happen.

Contact your Engage HR Consultant if you have questions regarding Allegheny County's new paid sick leave law or Philadelphia's ban on marijuana testing of prospective employees.