

MCMAHON BERGER

www.mcmahonberger.com Printed on November 12, 2024

MISSOURI VOTERS APPROVE PAID SICK TIME AND INCREASING THE MINIMUM WAGE

November 11, 2024

Categories: Client Alerts, Family and Medical Leave Act (FMLA), Wage and Hour Issues and Minimum Wage Laws Archive



In the November 5, 2024 General Election, Missouri voters approved Proposition A by a vote of 58% to 42%. With its passage, Proposition A raises the Missouri minimum wage and requires covered employers to provide earned paid sick time (“PST”) to eligible employees. Below is a breakdown of both the minimum wage and PST components of the new law.

I. Increase to Missouri’s Minimum Wage

On January 1, 2025, the state minimum wage will increase from \$12.30 an hour to \$13.75 an

hour, and on January 1, 2026, it will increase to \$15.00 an hour. Beginning in January 2027, the state minimum wage will be adjusted based on changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers (“CPI”). The CPI is a monthly measurement of the average change in prices paid by U.S. urban wage earners and clerical workers for a basket of goods and services.

For tipped employees, the minimum wage will increase from \$6.15 an hour to \$6.88 an hour in 2025, and to \$7.50 an hour in 2027.

II. Paid Sick Time

The PST provision of Proposition A takes effect on May 1, 2025, and requires employers to provide one (1) hour of paid sick time for every thirty (30) hours worked to Missouri employees, subject to the requirements below. Existing sick time policies and benefits which comply with the requirements of Proposition A may be retained, but employers are encouraged to review their current sick time policies to determine compliance with the stringent requirements of the law. The new PST law does not apply to employers engaged in the retail or service business whose annual gross volume of sales made or business done is less than \$500,000.

The PST provisions will not apply to unionized employees so long as such employees were covered by an active collective bargaining agreement on November 5, 2024. Once the collective bargaining agreement expires, the PST requirements will apply to unionized employees. Unions will be permitted to bargain for benefits in excess of the minimum standards established by the law. Additionally, the usage purposes and recordkeeping requirements will still apply to bargaining unit employees.

The law contains ambiguities and the Missouri Department of Labor and Industrial Relations is expected to publish rules and interpretive guidelines resolving such ambiguities. McMahon Berger will provide updates when such rules are published.

A. Requests for Leave

An employee may use PST, upon oral, electronic, or written request, for absences due to the following circumstances:

- Mental or physical conditions or injuries
- Medical care, diagnosis, or treatment
- Preventative medical care
- Care of a family member’s mental or physical conditions or injuries
- Care of a family member who needs care, diagnosis, or treatment, or preventative medical care.

- Closure of the Employer or an employee's child's school by order of government for health emergencies
- Care of self or family member for exposure to or contraction of communicable disease / order from doctor or government to stay home because employee or family member has been exposed to or contracted a communicable disease
- Absence due to domestic violence, sexual assault, or stalking for the employee's or family member's medical treatment, services, psychological counseling, relocation, legal services.

A "family member" is defined more broadly than in the federal Family and Medical Leave Act (FMLA), and includes:

- a child, regardless of age, including a biological, adopted, or foster child, stepchild or legal ward, child of a domestic partner, or child to whom the employee stands or stood in loco parentis;
- a parent, including a biological, foster, stepparent, or adoptive parent or legal guardian of an employee or employee's spouse or domestic partner, or an individual who stood in loco parentis when an employee or an employee's spouse or domestic partner was a minor;
- a spouse or domestic partner, or an individual with whom the employee is in a continuing romantic or intimate relationship;
- a biological, foster, adoptive, or step grandparent of the employee or employee's spouse or domestic partner;
- a biological, foster, adoptive, or step grandchild of the employee or employee's spouse or domestic partner;
- a biological, foster, adoptive, or stepsibling of the employee or employee's spouse or domestic partner; and
- a person for whom the employee is responsible for providing or arranging health or safety-related care.

Employers may establish a procedure for the submission of requests. At this time, it is unclear whether employers may deny requests because an employee failed to use the established procedure. Paid sick time requests should include the expected duration of the absence, but requests may not be denied for this reason. While employers can encourage employees to give advance notice of the need to use PST when its need is foreseeable, it is unclear whether requests can be denied for failure to give such notice.

Employees are required to give notice "as soon as practicable" when the need to use paid sick

time is not foreseeable. Employers will need to distribute a written policy establishing procedures for giving notice when the need to use PST is not foreseeable; otherwise, employers may not deny requests.

Employers are permitted to enact a policy requiring documentation for the use of three (3) or more consecutive workdays of PST. Such documentation may consist of notes from doctors, police reports, court documentation, service provider notes, or an employee's own statement "affirming" they are using paid sick time for domestic violence, stalking, or sexual assault. Employers may not require the employee to provide documentation disclosing the nature of a medical condition or stalking/sexual assault/domestic violence incident. Employees are not required to find replacements to cover their shifts when they request to use PST.

B. PST Accrual and Use

PST benefits take effect on May 1, 2025, for current employees and then at the commencement of employment for new employees. Employees will be entitled to use PST hours as accrued or as frontloaded and currently there is not a probationary period freezing hour usage. Minimum usage increments are determined by the current smallest absence increment used by the employer's payroll system. For example, if an employer allows employees to use 1 hour of PTO currently and that is the smallest permitted absence, then employees will be permitted to use PST in 1-hour minimum increments.

PST hours must be usable immediately regardless of whether the employer uses the frontloading or accrual methods. Under the accrual method, all employees must accrue one (1) hour of PST for every thirty (30) hours worked. Employers are not permitted to cap accrual of PST, but may cap yearly usage. A year is any regular and consecutive twelve-month period, but for 2025, the sick time year begins on May 1, 2025. Hourly and salaried non-exempt employees accrue PST based on the number of hours actually worked. Salaried exempt employees are assumed to work forty (40) hours per work week for the purpose of accrual, but employers are permitted to base their accrual on their normal work week hours if this number is less than forty (40). Frontloading is permitted so long as all employees receive the total number of PST hours they are expected to accrue in a year on May 1, 2025, and then on the first day of each year or upon commencement of employment.

Employers with fifteen (15) or more employees are required to allow employees to use up to fifty-six (56) hours of PST per year. Employers with fifteen (15) or less employees are required to allow employees to use up to forty (40) hours of PST per year. Therefore, employers may lawfully cap use of paid sick time at fifty-six (56) hours or forty (40) per year depending on the number of employees they have. The number of employees an employer has is determined by the number of employees on the payroll for a minimum of twenty-one (21) consecutive weeks in a calendar year. Full-time, part-time, and temporary basis employees are counted in the total employee tally for the purpose of determining usage

obligations.

Employees must be permitted to carry over up to eighty (80) hours of accrued but unused PST hours from year to year; however, this does not entitle an employee to use more paid sick time hours than the applicable fifty-six (56) or forty (40) hour caps, should an employer choose to impose such caps. An employee separated from employment and rehired within nine (9) months will have their accrued PST held at the time of their termination reinstated to their PST balance. The current statutory language is ambiguous, but suggests that unused frontloaded PST must either carry over into the next year subject to the eighty (80) hour cap, or be paid out to the employee. The Missouri Department of Labor will likely weigh in on this issue.

One size does not fit all, and either frontloading or accrual-based PST may be best for your business. If you are unsure, please contact McMahon Berger for counsel on this issue.

C. Payment of PST Hours

PST hours used must be counted as hours worked for the purpose of employment benefits computation. Hourly wage earning and salaried non-exempt employees must be compensated at their same hourly rate of pay for each hour of PST used. "Same hourly rate" means the hourly wage the employee would have been paid during the time the employee was absent from work. For hourly employees earning only a single hourly rate of compensation, this simply means their regular hourly rate. Employees earning multiple hourly rates must either be paid the wages they would have earned had they worked the particular hours they missed, or the weighted average of all hourly rates paid during the previous pay period.

The value of an hour of PST for a salaried exempt employee is determined by dividing the wages of the previous pay period by the total number of hours worked during the previous pay period. If this is a standard salaried exempt employee who is assumed to work forty (40) hours per week and the employer uses a biweekly payroll system, then the value is determined by the quotient of: previous pay period wages / 80 hours. The same formula applies for a salaried exempt employee whose normal work week is less than forty (40) hours, but the hours component of the formula would be the employee's normal work week hours.

Employers are not required to pay out unused paid sick time upon the termination of the employment relationship for any reason.

D. Policy Posting and Recordkeeping Requirements

Employment policies setting forth PST award methods, capping hour usage, and establishing notice procedures for unforeseeable PST should be distributed to employees in advance of the $M\text{e}$, 2025, effective date.

Employers will be required to give employees a written notice on April 15, 2025, informing them: (i) they will accrue one (1) hour of PST for every thirty (30) hours worked or an equivalent frontloaded amount, all of which is usable immediately as described by Missouri law; (ii) employers may not retaliate against employees who request or use PST as allowed by law; (iii) employees have the right to commence a civil action against their employer if paid sick time is improperly denied or they are retaliated against for using it; and (iv) contact information for the Missouri Department of Labor. The notice must be on 8.5 x 11 paper in at least 14-point font. This notice must also be given to new employees within two (2) weeks of the commencement of their employment.

On April 15, 2025, a poster containing the above information must also be posted in a conspicuous and accessible place where employees can see it, if the Missouri Department of Labor makes one available. The Missouri Department of Labor has indicated it will create a model poster and notice but has hinted that it may not be able to produce one if it does not secure the proper funding. In the event that the Missouri Department of Labor does not produce a model poster in advance of the April 15 deadline, McMahon Berger can assist with the creation of such notices.

Employers will be required to make and retain records documenting hours worked by employees and PST used. These records will need to cover consecutive three-year periods going forward. The Missouri Department of Labor may inspect these records for compliance purposes.

E. Effects on Other Paid Time Off Policies

Employers that maintain a paid time-off (PTO) policy that provides for either a frontloaded or accrual-based amount of PTO sufficient to meet the minimum accrual requirements of the new law, and that may be used for the reasons described above, are not required to provide additional PST beyond what is already provided under the employer's PTO policy.

However, employers who do utilize a mixed-use PTO policy are advised to freeze fifty-six (56) or forty (40) hours, depending on the number of employees, of the so-called PTO hours for use only for the reasons outlined above to ensure their compliance with the new PST law.

F. Employee's Right to Sue for Violations

It is unlawful to: improperly pay, deny, or award PST; retaliate or discriminate against employees for using PST; or violate any of the PST requirements imposed by the new PST law. Violation of or failure to comply with PST requirements can lead to awards recovering unpaid earned sick time and fines for willful violations of up to \$500 per day for a continuing violation if the violation is investigated and adjudicated by the Missouri Department of Labor.

Employees may file lawsuits without first filing an administrative complaint with the Missouri

Department of Labor. There is a three-year statute of limitations for PST claims from the date of the alleged violation. Courts may award a wide range of remedies including injunctive relief, payment of unpaid sick time plus actual damages, twice the amount of unpaid sick time as liquidated damages, costs, attorney's fees, reinstatement, backpay, and other legal and equitable relief

The Missouri Department of Labor may also investigate compliance with the PST law and impose fines for violations. Additionally, employers that willfully violate the PST law could potentially be held criminally liable.

The St. Louis employment attorneys at McMahon Berger have been representing employers across the country in labor and employment matters for over sixty years and are available to discuss these issues and others. As always, the foregoing is for informational purposes only and does not constitute legal advice regarding any particular situation as every situation must be evaluated on its own facts. The choice of a lawyer is an important decision and should not be based solely on advertisements.