

Paid Sick Leave

Host: Welcome to *From Lawyer to Employer*, a Shipman podcast, bringing you the latest developments in labor and employment law, offering you practical considerations for your organization. You can subscribe to this podcast on Spotify, Apple podcasts, Google podcasts, or wherever you listen. Thank you for joining us.

And we hope you enjoyed today's episode.

Dan Schwartz: Welcome back to season three of *From Lawyer to Employer*, a Shipman & Goodwin podcast. I'm your host, Dan Schwartz, a partner in the Labor and Employment and Education group. And I am very excited to be back with you after a few months off. As I think we can say we live in interesting times where change is happening all around us. So, I figured what better way to acknowledge these changes than to bring back in some of my colleagues to talk about it. And so, over the next several months, we're going to be going through some of the things you might have missed in employment law. Look at some of the trends that we're seeing and look at things from the perspectives of what employers should be thinking about now.

We know it's hard for the lawyers to keep track of it all. And for employers, we think these podcasts are a way to talk about some of these subjects in a quick fashion. And allow us to do what we do best, which is explain it all in a way that makes sense. So, I can think of no better person to kick this off with than my colleague, Peter Murphy, a partner in my group as well.

Welcome, Peter.

Peter Murphy: Great. Thanks for that nice introduction. Happy to be here.

Dan Schwartz: Yeah, so look, at the time this podcast is coming out, I wanted to bring you in because paid sick leave is something that almost all employers in Connecticut are going to have to deal with, if not this year, then in the upcoming years, and I feel like it's been a little bit confusing for employers in Connecticut.

Because they're having to deal with FMLA and Connecticut FMLA and more recently Paid Family Leave. And while a few employers have had to deal with Paid Sick Leave, that was for a category of workers called service workers. So, we're going to spend today really talking about this new Paid Sick Leave law,

but before we do that, can you just briefly explain some of the differences between the big three of FMLA, Paid Family Leave and Paid Sick Leave?

Peter Murphy: Sure. And we can come back and do future podcasts on all three of those topics because they're all worthy of discussion, right? FMLA, most employers are aware of, at least most larger employers, and that's just unpaid leave for employees, serious health condition, it doesn't come with any financial compensation, but it's just job protected leave, and most employers are familiar with that. In Connecticut, we also have the Paid Family Leave that now employees and employers are paying into, and that employees can use for significant absences over a period of time, such as when they're on CT or federal FMLA leave. And that's all administered by the state of Connecticut. Employees apply to that and receive their pay from that, and that's a complicated subject that can also be worthy of a podcast. But here today, I think the new one, the most important one for employers as they head into the start of 2025 is the Connecticut Paid Sick Leave Act, because this is going to be something new for most employers as the way it's constituted right now.

It's a big change. Let's just say that.

Dan Schwartz: Yeah, so I think where some employers get confused is paid sick leave, at least in one version of it, has been around for a few years, but this past year, the Connecticut General Assembly made a substantial revision to it, right?

Peter Murphy: That's correct. In fact, numerous revisions, right. And I think several that we're going to go through right now.

Dan Schwartz: Yeah, I think one of the biggest change is that it's going to cover employers that are much smaller than before and expand the scope of the worker. Maybe let's talk about some of those changes. First, who does this law now cover?

Peter Murphy: It'll cover all employers. And so, this includes schools and private sector employers and the like. And while there used to be a cap of 50 employees or more, as of January 1st, 2025, that's going to be 25 employees or more, which is a substantial percentage of employers across the state. And over the next two years, that number will decrease from 25 to 11 to ultimately one. So, in three years time, this will cover all employers in the state.

Dan Schwartz: And what type of workers are going to be covered? I think as we were talking about before, it used to just be the service workers, that's been expanded now though, right?

Peter Murphy: That's right. Now it's all employees. So not just service workers. Service workers in the past could be social workers or dental hygienist. Now it's *all* employees for covered employers will be covered by this sick leave.

Dan Schwartz: So, let's talk about how this works in terms of coverage. Does it cover non-exempt workers only or does it also cover exempt workers now?

Peter Murphy: No, it'll cover all of your employees. All means all, right. Both your non-exempt and your exempt employees are covered. For exempt employees when you're doing the calculations that will go through in a minute, you're just going to presume that they work 40 hours per week. But yes, it covers exempt and non-exempt. The only ones who will not be covered are seasonal employees, people who work for less than 120 days per year. As of January 1st, you'll start tracking how many days certain employees, summer staff, for example, work for you. And if it's less than 120 days and not consecutively, *total* in the calendar year then they are not going to be covered by this statute. If they work more than 120, then as of the 120th day, they start accruing time into the system.

Dan Schwartz: Yeah, so I, I suppose it may be like someone who works at a, one of our local amusement parks in the summer months. It's that type of seasonal summer work, for example, that may not be covered.

Peter Murphy: Exactly. Or, coming up, this is a busy time for restaurants and the mall and so seasonal staff there would be covered as well, or would not be covered because if it's less than 120 days.

Dan Schwartz: Okay. So we've talked about what employers are covered. We talked about what employees are covered. Employees get, under this law, some paid sick leave. First of all, how is it approved?

Peter Murphy: That's a good question. And so, under the old work system for service workers, you would get one hour of paid leave for every 40 hours worked. Now it's one hour paid leave for every 30 hours work. So, if someone works an average of 40 hours a week, they're gonna be crewing, a little over an hour for every week.

Now, employers have options. At least under this statute, they can allow employees to accrue on that schedule, or they can just front load. So, you could front load an individual full time individual who works 40 hours a week and is going to earn up to the maximum of 40 hours of sick leave as of January 1st, you could front load that 40 hours.

And one of the benefits of doing that is then you don't have to allow carry over into the next year. It's 40 hours, use it or lose it type of approach. Whereas if you follow the approval system, you will need to allow employees to carry over they're unused accrued leave so that if something happens in January, they have that leave available to them

Dan Schwartz: Now, I think one of the interesting things we were talking about beforehand is this seems to apply even if an employer already provides more than 40 hours of paid time off. Can you delve into that?

Peter Murphy: That's true. Employers should not think I already provide PTO and so I don't have to follow this system. And that's not true. You don't have to provide *more* leave. You don't have to provide 40 hours more leave, you just have to ensure that the leave you're providing already is at least up to 40 hours and also that it can be used for the purposes set forth in the Connecticut sick leave.

Dan Schwartz: Okay. And there used to be some reasons under the old paid sick leave, but presumably with all the changes *that's* changed as well, right?

Peter Murphy: That has, and that will change any of your policies as well. So for the first 40 hours, an employee uses, you need to ensure that it can be used for all of the reasons set forth in the paid sick leave act. And this is, as you just said, a much broader set of reasons for leave than included before. So of course it applies to your own health conditions, your own illnesses or injuries, diagnoses, preventative medical care, the right? But it also applies to a family member's illnesses, medical diagnoses, preventive medical care, etc. And the definition of a family member is pretty broad, and it can include anyone even with a strong affinity to you, right? And so, it's a much broader definition of family members. That's a significant change that employers are going to have to address.

Dan Schwartz: Yeah, and reading the law, I think the I'm struck by the fact that this isn't really for the same reasons as an FMLA, which is a serious health condition. This is more hey, you have a doctor's appointment for your checkup,

a preventative medical care, that's what paid sick leave is really designed for, right?

Peter Murphy: And one of the most, I'll say controversial reasons for the leave is a mental health wellness day during which an employee attends to the employees, emotional and psychological well-being in lieu of attending a regular scheduled shift. Now, most employer leave policies that you and I have seen don't allow for that, and it wasn't allowed for under the prior version of the statute. So, that is a significant change that an employee could take a day, a mental health day essentially, and be paid for it.

Dan Schwartz: Yeah, and I guess they can go to that amusement park that I was just referencing before.

Peter Murphy: And visit their relative who's a seasonal worker, yes.

Dan Schwartz: Yes, exactly. So, the reasons that an employee can take paid sick leave have been expanded and you touched on some, but obviously I encourage employers to look at the statute, look at some of our guidance as well, which has it a bit broader. Let's talk about documentation. Many employers, if the employee says, *hey, I'm out sick*, some employers will ask for a doctor's note if they have it. Can employers still do that for this type of leave?

Peter Murphy: They can, but not for the, not for this type of leave. So, for the first 40 hours of leave an employee will take the employer cannot ask for documentation - establishing, for example, that the employee was doing something for a mental health wellness day. They just need to say they're taking leave. They can't be forced to provide a doctor's note. And so, say someone's out for three days in a row, right? A lot of employers currently have policies that say we're going to require a doctor's note if you've been out for two or three days in a row and under the Connecticut Sick Leave Act, they can no longer ask for that note in the first 40 hours.

Dan Schwartz: Got it. And can employers dictate that it be taken in four hour or eight-hour increments? Or is there something in the law that describes the hourly increments that it can be taken in?

Peter Murphy: Yeah, for the again for the first 40 hours, the employers lose a little bit of control here, right? And in policies that would require in the past, employees take it in 4-8 hour chunks of time cannot be enforced because the laws it's written is very broad and gives the employees the ability to take leave on an hourly or, two hour basis, which is going to present problems for a lot of

employers in terms of coverage and how to address this and things of that nature.

Dan Schwartz: Yeah, I think that's a great point. One of the other things that might be overlooked is the law requires now that a notice be sent out on or before January 1st about this law. There's a notice available on the Department of Labor website. I think you can put it up if you have employees that are going into a physical office - you can put it up on a bulletin board but otherwise, the statute specifies that it should be sent out by electronic communications or some other type of electronic distribution if the employees are out of the office. So, something to keep in mind there as well. One of the other things I know we had talked about was there's some record keeping requirements here. Can you discuss what some of that might be?

Peter Murphy: Absolutely. There's the initial notice, as you just described, and then there's the ongoing notice that employers are required to provide to their employees on pay stubs - that need to show how much they've accrued and how much they've used, as of that date so the employees have an idea where they stand in terms of their available sick leave. Now, if you're front loading it, that'll be easy on the accrual side, but the usage side might be a little more difficult for some employers to track. So, you need to come up with a plan as to how you're going to track your employees absences from the office, even exempt employees, and how you're going to ensure that time is being put against their accrued leaves so that, you're bringing that number down as they go.

Dan Schwartz: Yeah, how do we think that it's going to be done? I suppose some of the payroll services out there will probably give employers a head start there. But anything else that you would suggest on determining this leave?

Peter Murphy: Yeah, I think actually I think some of the payroll companies and a lot of employers are caught a little flat footed with this upcoming change and it's going to require some pretty significant changes in the next month or two to make sure their procedures are really doing this tracking and every employer is a little different and so they might have to consult internally or with legal counsel to come up with some sort of plan for tracking employee use of leave. I think the important takeaway from employers today, at least is, any sort of leave, the first 40 hours of an employee's leave, any sort of that, should be allocated to the Connecticut sick leave. Because as we just went over, Dan the list of reasons allowable reasons for the leave is so broad, that almost all leave other than vacation, it's going to fall into those categories. So, we want to make sure we're allocating it to the Connecticut sick leave. Those first, first 40 hours, as much as possible.

Dan Schwartz: Yeah, I suppose one of the takeaways and obviously I've been looking to you for your perspective, but I think one of the takeaways is that from most of the employers and most of the employees, it probably is a lot less hassle to just front load the time at the beginning of the year and track it accordingly rather than have to deal with this accrual and when does someone accrue it and it seems to take away some of the paperwork issues that I think employers are struggling with.

Peter Murphy: I agree, especially for full time employees. I think it just makes a lot of sense to front load it for people that work maybe 0.4 schedules or otherwise, and you could still front load it based on their expected work, but you might choose to have a split where you're going to front load it for full-time employees and maybe make a part-time employees accrue. I don't think there's anything in the statute that would prohibit that set up. And then the interesting question that I know a lot of employers are struggling with right now, especially school systems that operate on something other than a calendar year - employers can designate whatever year period they want for purposes of measuring and using leave. They could start January 1st, like a lot do, but others such as schools start in July 1st. And so, what do we do during those first six months of 2025? How do we get it to July 1st? So that's, if you're on that sort of schedule, there's some additional considerations that you need to take as opposed to people who begin their calendar year on January 1st.

Dan Schwartz: That's a really interesting point. And you're not going to find that in the statute. I think, obviously, talking to your counsel is always one of the good takeaways from this. But any other takeaways that you think employers should keep in mind here?

Peter Murphy: I think getting ahead of it, planning for January 1st, having a good system in place to track employee use and being flexible, especially during this first year. I think that the changes of short term use of leave, an hour or two hours or whatever, the mental health days, the lack of documentation, these are all big changes for employers so we're going to have to be patient, see how it works out over the first year and then try and adjust accordingly for next year.

Dan Schwartz: Sounds great. Peter, thanks so much for joining us on this podcast. Again, I want to encourage you if you haven't already subscribed to this podcast, you can do so on whatever podcast service that you do. We always appreciate any comments or suggestions that you have, and rating it always ensures its visibility to everyone else. And if you have a particular topic you'd like to see us discuss on a future podcast you can just email me at

dschwartz@goodwin.com. We'd love to hear from you and love your feedback. So, with that we will wrap up another edition and hope to see you again soon. Thanks again.

Host: Thank you for joining us on this episode of *From Lawyer to Employer*, a Shipman podcast. This podcast is produced and copyrighted by Shipman & Goodwin LLP, all rights reserved.

The contents of this communication are intended for informational purposes only and are not intended or should not be construed as legal advice. This may be deemed advertising under certain state laws. Subscribe to our [00:19:00] podcast on Spotify, Apple Podcasts, Google Podcasts, or wherever you listen. We hope you will join us again.