

Paid Sick Days Legislation

A Legislators' Guide



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PAID SICK DAYS LEGISLATION

A LEGISLATOR'S GUIDE

November 2006

This guide is intended to help legislators think through the provisions that make up paid sick days legislation. It provides some choices for the following ten issues:

- Which workers should have access to paid sick days?
- Which employers should provide paid sick days?
- How many days should be established as the minimum?
- For what purposes should sick days be available?
- What protections should be available for employers?
- What existing time off could count as paid sick days?
- How should paid sick days compliance be managed?
- When should implementation and information programs begin?
- What reporting and evaluation should be undertaken?
- Other considerations in getting started

We hope that you will use the guide to help you work through choices in crafting legislation; we leave to you the challenge of anticipating how the component pieces you choose might interact. We believe the challenge needs to be met: Unlike most of the nations of the world, the U.S. has no national policy.¹

This guide does not explain why paid sick days are important, who currently does and does not get paid sick days, ways to calculate the cost/benefit of paid sick days, or other related and important questions. Appendix A provides links to relevant resources and to a variety of legislation. What this guide does is to identify key legislative issues, in order to help you think through the elements of your bill.

We invite you to contact either of us with any questions you might have. Laura has been a state legislator and can help talk through the politics and link you with other legislators; Jodie is a policy wonk and can walk through the issues, provide research findings, and link you to other national and local organizations working on this and related issues.

Please let us hear from you.

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Paid Sick Days Legislation: Issues to Consider

Paid sick days bills are designed to provide a worker with needed time off from the job for situations such as when the flu hits or a visit to the doctor. There are lots of different ways to construct paid sick days legislation. Consider two hypothetical variations:

In state A: All employees—upon being hired by employers of any size business—have access to ten paid sick days per year. The days may be used for the employee’s own well-being or that of a family member; in addition, the days may be used to address well-being related to domestic violence.

In state B: Those employers who currently provide some paid sick days for the employee’s own well-being are required to allow employees to use these days to attend to the well-being of a family member.

The following is designed to identify some of the key issues to consider as you move from a hypothetical idea to concrete legislation. The choices listed for the ten issues below are meant to facilitate dialogue around the issues; this is not intended to be an exhaustive list of all the ways to design paid sick days legislation.

Which workers should have access to paid sick days?

The goal of any paid sick days legislation is to provide access to paid sick days, so that workers do not lose income—or lose a job—because of health-related needs. About half of the nation’s workers do not have paid sick days for themselves, and even more do not have them for the care of family members.² The needs of individual workers are also a public health concern, since sickness can spread and can worsen if not addressed.

Hours of employment: While part-time and low-income workers are more likely to lack paid sick days, some full-time and higher-wage workers lack sick days, too. Access to paid sick days is a universal issue not only because everyone gets the flu sometimes but also because a lack of paid sick days cuts across employment categories.³

Some choices:

- For each hour worked, a worker could accrue time toward paid sick days. For example, for every 30 hours worked, a worker could earn one hour of paid sick leave, up to an established maximum.⁴ In this scenario, workers would have equal access independent of whether their status was part- or full-time, but full-time workers would get more sick leave by virtue of their working more hours.
- A set threshold of weekly work hours could trigger eligibility for paid sick days. For example, all full-time workers and only those part-time workers who worked an established number of hours (e.g., 15 or 20 per week) could be eligible. In this

scenario, part-time workers would have access on a pro-rata basis, but some workers would have no access. Furthermore, there might be a “perverse incentive” for employers to limit employees’ hours to a number below the threshold for paid sick days coverage.

Length of employment: Employers often worry whether their new hires will prove to be good ones. For this reason, many establish probationary periods. Thus, those employers who are reticent about paid sick days in general might be particularly troubled by rules that mandate both immediate accrual of paid sick days and immediate access to paid days off.

Some choices:

- Paid sick days could both start to accrue and be accessible from the first day of employment. This approach recognizes that illnesses strike irrespective of the date of employment.
- Paid sick days could start to accrue immediately but be accessible only after some period on the job, for example, after 90 days. This approach credits all time on the job toward developing the bank of paid sick days but does not let those days get used until after a probationary period.
- Paid sick days could start to accrue only after some period on the job. This approach would not allow an initial period on the job to count as part of the accrual of paid sick days. For example, paid sick time might not start to accrue until after 90 days on the job, after which it could be used as it accumulates.

Definition of worker: There is no single labor law definition of an employee. Different definitions are used in different laws. The relationships between employees and employers are varied; for example, some employees work in offices from 9 to 5, while others work on commission and set their own schedules. The challenge of paid sick days legislation is to cover as many workers as possible.

Some choices:

- Employees could be defined using an existing law, such as the definition used under the Fair Labor Standards Act (FLSA). The FLSA establishes protections for employees, a category into which paid sick days could fit.. For state or local laws, using an existing state law that provides labor protections could be a useful starting point.
- Employee definitions that are broad could exempt certain types of workers from paid sick days. For example, a Madison, Wisconsin ordinance would exempt, among others, those who work solely on commission and those who are apprentices.

Which employers should provide paid sick days?

Paid sick days are typically viewed as similar to other paid days off—they are a cost of doing business and, like paid holidays and paid vacations, are built into the business budget. Employers come in all shapes and sizes. In setting standards and requirements, government sometimes differentiates between employers. Such distinctions can be made in the design of paid sick days legislation.

Size of employer: The lack of paid sick days is concentrated in smaller businesses, which tend to be more financially fragile than larger businesses.⁵ Some smaller employers that do not provide paid sick days would like to but feel that they cannot afford to offer a benefit that their competitors do not. Legislation that requires paid sick days establishes a level playing field among employers, including smaller employers.

Some choices:

- Smaller businesses could be exempt. For example, the Madison measure would exempt firms with five or fewer employees, while the Healthy Families Act in Congress would exempt employers with fewer than 15 employees.
- Requirements could be lower for small businesses. For example, firms with ten or fewer employees would be required to pay up to 40 hours (5 days) of paid sick leave, while bigger firms would have a 72-hour (9 days) requirement (see San Francisco legislation).
- The size of a business could be defined by not the number of employees but the number of full-time equivalents.

Type of Employer: Businesses of a certain type could be prioritized. While ultimately a paid sick days law could be designed to cover all types of businesses, some employers might be identified as priorities and phased in first.

One possible choice:

- Businesses that are on the front lines of communicable diseases could be prioritized. Examples include service sectors, such as restaurant and hospitality (because of their interactions with the public), and the caring businesses, such as those related to child and elder care (in which transmission of illness is particularly hazardous).

How many days should be established as the minimum?

The point of any paid sick days legislation is to set a minimum standard, above which employers may provide more leave. Along with establishing this minimum number, there

are related issues: whether the days carry over from year to year and how workers are allowed access to the available time.

On average, workers currently miss about four and a half days of work per year to address their own health needs.⁶ In order to care for children and elders, workers need additional time off.

Some choices:

- Paid sick days could provide the expected average for adult workers along with some time to care for others—a total of seven to ten days as a minimum standard.
- This sort of minimum standard could be phased in over time. For example, the minimum number of days earned could be lower in the first year of implementation of a new law—or for a new firm—than in the second and subsequent years (see Madison legislation).
- Paid sick days could provide for less than the expected average need.

Carryover of days from one year to the next can help address concerns that would emerge if an employee needed to accrue from scratch each year. Carryover of days would avoid a potential scenario in which a long-tenured employee who got the flu in the beginning of the accrual period lacked enough paid sick days to get through the flu without losing wages.

Some choices:

- Paid sick days could carry over from year to year in an unlimited way.
- Paid sick days could carry over with a cap that is higher than the minimum.
- Paid sick days could carry over but be capped at the same number as the minimum. In other words, if ten days is set as the minimum, then an employee could carry over unused days from the first year for immediate use but could use a total of no more than ten days throughout the second year.

Another important consideration is whether available paid sick “days” must be taken only in full days. If a worker needs to take a child to the pediatrician in the morning but has child care for the afternoon, should the worker be allowed to take hours off rather than a full day?

Some choices:

- Paid sick days could provide that workers must be allowed to take smaller than full-day increments of leave for any allowable purpose.

- Paid sick days could provide that workers must be allowed to take smaller than full-day increments of leave for certain allowable purposes.

For what purposes should sick days be available?

Even workers who receive paid sick days are limited in how they can use them. Only 30 percent of workers with paid sick days are allowed to use those days to care for child health needs.⁷ A policy that provides paid sick days only for the worker fails to acknowledge that many workers are responsible for caring for other family members, including children and elders. Further, if paid sick days are unavailable for wellness appointments, employees may feel the need to “hide” these appointments as sudden illnesses. Paid sick days for wellness appointments benefit both workers and employers: The worker receives preventive health care, and the employer can plan for a *scheduled* absence. While any absence can be challenging for an employer to manage, an unplanned absence can prove substantially more difficult.

Some choices:

- Existing paid sick days could provide time off for workers to address preventive and immediate health care for themselves and for family members.
 - Family could be defined as broadly as possible, so that primary caretakers could fulfill obligations (e.g., an aunt for a niece).
 - Preventive wellness issues could also be defined broadly, to expand beyond purely medical issues (e.g., to include domestic violence counseling).
- Existing paid sick days could provide time off for workers to address wellness.
- Existing paid sick days could provide time off for workers to care for family members.

What protections should be available for employers?

Employers may worry that an employee who does not really need a sick day will take a day off anyway. But, while employees who are “bad apples” about paid sick days may exist, it is unlikely that they are otherwise excellent staff. Such employees likely pose other problems in their workplaces. And employers report that unscheduled absences in firms with lower morale are twice as large a problem as in firms with higher morale.⁸ Still, employers should have some options to allay some of this worry. For example, employers may want to be able to ask employees to cover time taken for health reasons by substituting other hours. In such situations, it would be important that such substitution be an option, not a requirement that the employee must accept.

Some choices:

- Employers could be allowed to require employees to provide as much advance notice as possible for wellness-related care and anticipated treatments (e.g., informing them at the time appointments are scheduled).
- Employers could be allowed to require employees to provide notice as soon as practicable for unforeseen absences.
- Employers could be allowed to require employees to provide medical verification of absence after a reasonable period, such as three consecutive days of absence.
- If the employer requires medical verification and the employee lacks health coverage, the employer could be required to pay for a medical visit and/or to allow pharmacists or other health sector professionals to provide verification.
- Employers could be allowed, following an employee’s notice of intent to take leave, to make a reasonable offer of other hours of work to be used in lieu of paid sick leave—provided the employee has the discretion to accept or reject the offer (see Madison legislation).

What existing time off could count as a paid sick day?

Employers who already provide paid vacations and/or personal days may feel that their employees are also able to use this time for health-related reasons. However, some vacation policies limit leave to certain seasons or require supervisor approval—a level of scheduling that viruses do not respect. Some employers provide paid days off but are explicitly disinterested in the purposes for which employees use them. Under these “Paid Time Off” policies, employers allow employees to take off for any reason, including vacation, illness, and personal time. Clearly, the more paid time off available and the more flexible it is, the better employees can meet their own and their families’ health demands. But many workers have jobs that provide no time off at all—for any purpose. More than half of working parents below poverty have no paid time off, and four out of ten jobs of those with incomes between 100 and 200 percent of poverty offer no paid days off.

Some choices:

- Paid sick days legislation could allow employers to count paid time off as meeting the minimum standard and require that PTO policy adhere to rules related to the number of days and access to those days.
- Paid sick days legislation could allow employers to count PTO, vacation, and/or personal days if the terms of these paid days adhered to the rules related to sick days.

- Paid sick days legislation could require those employers who already offer a higher number of paid days off to maintain their current levels.
- Paid sick days legislation could provide particular instructions on the treatment of collective bargaining agreements and on whether such agreements supersede the legislation (see Madison legislation).

How should paid sick days compliance be managed?

Legislation that sounds like it will make a difference sometimes fails to move from a policy on paper into practice in the real world. Compliance requirements can signal policymakers' intentions to actually put paid sick days into operation. In addition to nudging the law along, compliance requirements provide a corrective mechanism for those employers who may not implement the rules or may do so inappropriately.

Some choices:

- Paid sick days legislation could identify an existing entity charged with labor disputes to handle compliance issues; alternatively, employees could be provided with the capacity to take civil action.
- Paid sick days legislation could create a new entity to address paid sick days compliance and/or charge a new entity with identifying the kinds of issues that emerge, in order to make recommendations for which an existing entity would have ongoing responsibility.

When should implementation and information programs begin?

- The implementation start date could apply to all employers and begin some set number of months after enactment. For example, the Healthy Families Act in Congress provides for 12 months—in order to allow time for regulations to be issued (not more than 120 days after enactment of the law) and time for businesses to develop management tools that reflect the new law and to inform employees of the new plan.
- The implementation start date could differentiate between small and large firms. Smaller firms could be given a longer period before implementation begins.
- The implementation start date could differentiate between new and old firms. New firms could be given a period of time before they are required to implement, to ensure they have received the technical assistance they need for effective management.

- The paid sick days legislation could stipulate whether an entity will provide technical assistance to employers in advance of and after implementation.
- The paid sick days legislation could stipulate whether an entity will provide information resources (such as postings) to employers—for their own information programs for employees—in advance of and after implementation..

What reporting and evaluation should be undertaken?

Record keeping requirements should be as simple as possible. Employers already keep records related to wages and other benefits. Some may have computerized systems that can be adjusted; others may need to do more. For employers, the general purpose of reporting is to ensure that those who have earned paid sick days accrue them properly. In terms of public policy development, the reporting can have a particular added function, especially in the early years of the policy: to help identify answers to important questions about the new policy, such as “take up”—the extent to which the new policy is actually used in practice. Other kinds of evaluation questions can also provide insight into how the law is working and ways in which it can be improved.

Some choices:

- The paid sick days legislation could simply require that employers maintain records demonstrating compliance.
- The paid sick days legislation could establish that regulations will be written regarding record keeping (and other aspects of the law).
- The paid sick days legislation could fund an evaluation and define the questions that need to be addressed (e.g., how many sick days were taken and by employees in which industries/at what wages, benefits perceived by employers and workers, concerns employers have, ease of implementation).

Other Considerations in Getting Started

Crafting the provisions of your bill is only one part of the process of moving paid sick days from the hypothetical to operational practice. Some other parts include:

- **Language.** This topic can get confused with medical leave generally and with the Family Medical Leave Act specifically. The main distinction is that this bill is about *days* off, not long periods of time off. Using the term *days* in your description or title could help reduce confusion.
- **Legislative context.** In a number of states, the lack of health insurance is on the legislative agenda. Some view paid sick days as competitive with a health

insurance agenda and believe that the larger health insurance debate should not get tangled up with discussions on paid sick days. Others view the two as complimentary and want to fold paid sick days into a broader health insurance measure. Under either scenario, it helps to appreciate what each achieves—insurance relates to covering the costs of health care, while paid sick days enable workers to use the insurance by providing time for doctor visits and recuperation.

- **Coalition.** The voice of supportive businesses will help any coalition on this issue. While your own office may not be in a position to identify these supporters, you can urge the groups with which you are aligning to ensure this voice is found. The coalition that is developed should be as broad as possible and embrace organizations and individuals involved in arenas such as public health, religious, parent, child care and elder care.
- **Opposition.** While it is reasonable to assume that certain business associations will oppose a paid sick days initiative, individual members of those business associations might be supportive and willing to speak up. In addition, even associations assumed to be in opposition may choose to stay quiet rather than launch an assault. In San Francisco, the restaurant association decided not to attack the paid sick days bill. As the association’s vice president noted, “To be honest, if we fight it, we look like complete jerks.”⁹
- **Timing.** Raising paid sick days during an election cycle could help or hurt the progress of the bill—depending on such local factors as the strength of the coalition at the time, the likelihood that candidates will zero in on the issue, and the competition from other campaign-season issues.
- **Local data.** It is helpful to know your local statistics: which workers have and which ones need paid sick days, what the projected cost/benefits of implementation are, etc. Some of this data can be provided by local agencies; other data is available via national resources. Some may need to be generated. Legislation can provide for this type of analysis (see Maine legislation), or local foundations might take it up.

CLASP’s work on this publication was funded by the Annie E. Casey Foundation. We thank them and the Ford Foundation for their support for CLASP’s work in this area. The findings and conclusions presented in this report are those of the authors alone and do not necessarily reflect the opinions of these foundations.

SOME RESOURCES on PAID SICK DAYS

CLASP

[Get the Prescription: Child Care Workers Need Paid Sick Days](#)
[Presenteeism and Paid Sick Days](#)

INSTITUTE FOR WOMENS POLICY RESEARCH

[No Time to be Sick: Why Everyone Suffers When Workers Don't Have Paid Sick Leave](#)
[Paid Sick Days Improve Public Health by Reducing the Spread of Disease](#)
[Valuing Good Health in Massachusetts: An Estimate of Costs and Savings for the Paid Sick Days Act](#)
[Valuing Good Health: An Estimate of Costs and Savings for the Healthy Families Act](#)

NATIONAL PARTNERSHIP for WOMEN and FAMILIES

[Provisions of the Healthy Families Act](#)
[Get Well Soon: Americans Can't Afford to Get Sick](#)
[Why Working Families Need Paid Sick Days](#)
[Why Paid Sick Days Make Good Business Sense](#)

SLOAN WORK AND FAMILY RESEARCH NETWORK

wfnetwork.bc.edu/search.php?search_text=Sick+Days

URBAN INSTITUTE

[Getting Time Off: Access to Paid Leave Among Working Parents](#)

WORK LIFE LAW

[One Sick Child Away from Being Fired](#)

SAMPLE LEGISLATION

[Madison, Wisconsin](#)

[San Francisco](#)

[Maine](#)

[Massachusetts](#)

U.S. Congress: Healthy Families Act (www.thomas.gov/, browse by bill number: S. 932.)

National Partnership for Women and Families

- Model state legislation. Contact Taylor Hatcher (taylorh@nationalpartnership.org)

Endnotes.

Cover: Data from 1996-98. See Vicky Lovell. *No Time To Be Sick: Why Everyone Suffers When Workers Don't have Paid Sick Leave* (2004). Institute for Women's Policy Research. Dataset excludes federal, military, agricultural, household, and self-employed workers. www.iwpr.org/pdf/B242.pdf

¹ Jody Heymann, Alison Earle, Stephanie Simmons, Stephanie M. Breslow, and April Kuehnhoff. *The Work, Family, and Equity Index: Where Does the United States Stand Globally?* (2004). The Project on Global Working Families, Harvard University, www.globalworkingfamilies.org/

² Lovell, *No Time to Be Sick*.

³ Lovell, *No Time to Be Sick*.

⁴ The 2006 ballot measure in San Francisco does this.

⁵ www.sba.gov/advo/research/rs262.pdf

⁶ Vicky Lovell. *Valuing Good Health: An Estimate of Costs and Savings for the Healthy Families Act* (2005). www.iwpr.org/pdf/B248.pdf

⁷ Lovell, *No Time to Be Sick*.

⁸ www.cch.com/Press/news/2005/200510121h.asp

⁹ Dan Scherotter, Vice President Golden Gate Restaurant Association. American Public Media/Marketplace interview, October 5 2006.



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