



# POLICY BRIEF

## **Analysis of Seattle's Paid Sick Leave Ordinance**

by Carl Gipson  
Director, WPC's Center for Small Business

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### Key Findings

1. Mandatory paid sick days could cost Seattle businesses and consumers between \$30 million and \$90 million a year.
2. The lack of sick leave has not been a threat to public health. Incidents of foodborne illnesses in Washington have dropped in the last ten years without mandatory paid sick leave.
3. Mandatory paid sick leave is likely to impact small businesses, restaurants and the hospitality industry the hardest.
4. Employees are already protected by half-a-dozen federal and state laws mandating paid and unpaid leave provisions as well as job protection.
5. The new sick leave ordinance would apply to current collective bargaining agreements.
6. A city ordinance would impact employers whose employees conduct business both in and outside of city limits – as well as out-of-city businesses that have employees working more than 80 hours inside city limits.
7. Federal, state, county and local governments (except for the city of Seattle) are exempt.

### Overview

A mandatory paid sick leave ordinance would affect every business in the city of Seattle that does not already have an official paid sick leave employee policy. It would also affect any business that already provides paid sick leave that allows fewer days than the ordinance mandates. The ordinance would also impact any business that already provides paid time off, but does not specify that it can be used for paid sick days.

This mandate would heavily burden the service sector – food service and accommodation in particular. However, smaller businesses, regardless of industry classification, would also be impacted because smaller firms are less likely to provide benefits in the form of paid sick days.

Who already receives paid sick days? The Bureau of Labor Statistics reports that nationwide 61 percent of private industry workers and 89 percent of state and local government workers have paid sick days available to them.

Employees in large businesses (more than 500 employees) are much more likely to receive paid sick days than those in smaller businesses, as are employees who work in professional, management or related occupations. The least likely to receive paid sick days are part-time workers and those who work in the food service and accommodations industries, as well as those who work in businesses with fewer than 100 employees.<sup>1</sup>

Those who work full-time for state and local governments are the most likely to receive paid sick days (98 percent).

### Elements of the Proposal

The Seattle City Council released the proposed ordinance in June and is expected to hold hearings and public comment in early July.

Major details of the Seattle ordinance:<sup>2</sup>

- Employees of businesses with between 1-49 workers could accrue up to five paid sick days per year.
- Employees of businesses with between 50-249 workers could accrue up to seven paid sick days per year.
- Employees of businesses with more than 250 workers could accrue up to nine paid sick days per year.

<sup>1</sup> "On Paid Sick Leave," Program Perspectives, U.S. Bureau of Labor Statistics, March 2010, available at [www.bls.gov/ebs](http://www.bls.gov/ebs)

<sup>2</sup> Information from the Seattle Coalition for a Healthy Workforce website at [www.seattlehealthy-workforce.org/our-proposal/](http://www.seattlehealthy-workforce.org/our-proposal/)

- For businesses with more than 1,000 employees that use a “Paid Time Off” plan (meaning there is no designation between vacation and sick days), employees must accumulate leave equivalent to 1 hour per 15 hours worked and are entitled to at least 72 hours (9 days) per calendar year.
- Workers may swap shifts, if they prefer, as a substitute for a paid sick day (option only available to businesses with 1-249 employees).
- Leave accrual begins upon date of employee hire but smaller businesses (1-249 employees) can require a waiting period of 180 days before granting a paid sick day, large businesses (250 or above) can require a 90 day waiting period.
- Employers are not required to offer a “cash out” of unused paid sick leave.
- Smaller businesses would be required to comply with the ordinance one year after its passage, larger businesses would be required to comply with the ordinance within 90 days of its passage.
- A new or relocated business inside city limits would have two years before it would be required to comply (businesses with 1-249 employees only).
- Employers may be liable to pay for certain medical documentation costs dependent upon pre-existing employee health care insurance benefits.
- The mandate applies to collectively-bargained workforces unless current bargaining agreement specifically waives the right to paid sick days.

### **Does a Public Health Crisis Exist?**

Proponents of the mandated paid sick days proposal point to a number of reasons they think this would be good policy. One of the reasons they stress is to avoid situations where those who work with or around food show up to work ill, thereby passing on communicable diseases as foodborne pathogens.

While the seriousness of passing on communicable diseases via food services cannot be ignored, there are superior alternatives over mandating paid sick leave in order to help alleviate this problem.

One study in particular, “Factors Associated With Working While Ill,” recently printed in the *Journal of Food Protection*, suggests that restaurants with a high volume of business are the most likely to be hit with an outbreak of foodborne pathogens. According to the study, the most effective and cost-sensitive way in dealing with containing outbreaks is a self-reporting policy that encourages workers to tell managers when they are ill and a corresponding restaurant policy that encourages use of on-call staff.<sup>3</sup>

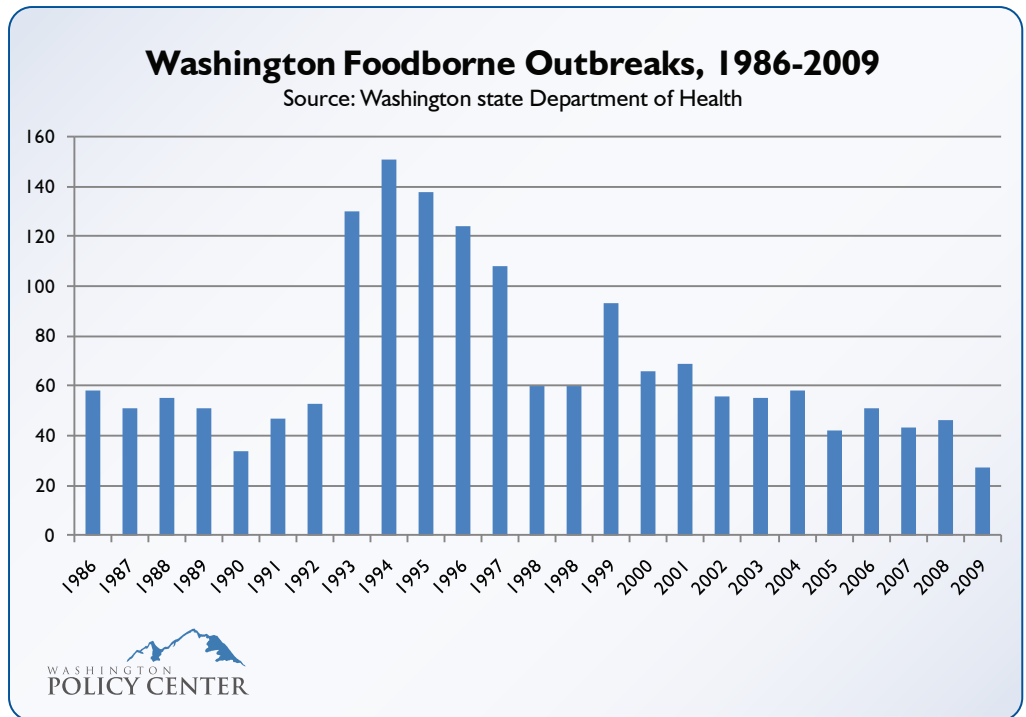
That same study acknowledges that paid sick leave may help alleviate the instances of food service workers reporting to work while ill, but the authors report this is based on anecdotal evidence. They also point out that paid sick leave at the busier restaurants, which posed the most risk, is unlikely to compensate for the lost income generated by gratuity. The incentive to work can sometimes outweigh the incentive to stay home.

While food contamination is an important topic for public health officials and policymakers, for the most part the news is good.

<sup>3</sup> “Factors Associated with Food Workers Working While Experiencing Vomiting or Diarrhea,” *Journal of Food Protection*, Volume 74, No. 2, 2011, pages 215-220.

A recent Centers for Disease Control and Prevention report highlights the success in fighting many foodborne illnesses. Although salmonella has risen slightly over the last fifteen years, illnesses from E. Coli have been cut in half and the overall rates of six foodborne infections have been reduced by 23 percent.<sup>4</sup>

Similarly, in Washington the instances of foodborne outbreaks reported to the state Department of Health have plummeted since the mid 1990s (see graph below).<sup>5</sup>



### Existing Federal and State Leave Laws

Currently, under the federal Family and Medical Leave Act (FMLA) of 1993, full-time employees of businesses with more than 50 employees are entitled to up to 12 weeks of job-protected, unpaid leave for specific medical purposes.<sup>6</sup> This leave is primarily used to take care of an ailing spouse, parent, or child or maternity/paternity leave.

When Congress passed the FMLA, it did so based on the compromise that the leave would be unpaid, and small businesses would be exempt. This compromise stemmed from the understanding that mandating paid leave would raise the cost of operations and regulatory compliance, particularly among the smaller businesses, which already face a disproportionate cost in complying with regulations, compared to larger businesses.<sup>7</sup>

A national poll conducted by the National Federation of Independent Business reports 93 percent of small businesses granted the latest request received

<sup>4</sup> “Food safety annual report card targets hard-to-prevent infection,” Centers for Disease Control and Prevention press release, June 7, 2011. Available at [www.cdc.gov/media/releases/2011/p0607\\_vital-signs.html](http://www.cdc.gov/media/releases/2011/p0607_vital-signs.html)

<sup>5</sup> “Table 1. Foodborne Outbreaks 1986-2009,” Washington State Department of Health, available at [www.doh.wa.gov/notify/nc/incidence/foodborne1.png](http://www.doh.wa.gov/notify/nc/incidence/foodborne1.png)

<sup>6</sup> See [www.dol.gov/whd/fmla/](http://www.dol.gov/whd/fmla/) for more information on FMLA regulations.

<sup>7</sup> See “The Impact of Regulatory Costs on Small Firms,” by Nicole V. Crain and Mark Crain, U.S. Small Business Administration, available at: [www.sba.gov/advocacy/853/2016](http://www.sba.gov/advocacy/853/2016)

for unpaid family leave. Only two percent of those polled denied family leave requests, but each respondent who denied the request re-arranged the worker's schedule to compensate (a non-cash compensation). The poll also shows that 67 percent of the businesses continue to pay wages or other compensation, such as paid vacation or paid sick leave.

As the poll authors note, "Given the industry's need for skilled employees, the issue is not so much the provision of leave as the regulations surrounding a government-required benefit."<sup>8</sup>

Washington state already has the state Family Care Act, the Family Leave Act, the Leave for Victims of Domestic Violence, Sexual Assault & Stalking Act, and others.

These various laws, including the federal FMLA, allow employees to use paid leave to care for families, and allows for unpaid leave for medical reasons, largely exempt the smallest firms in the state from the regulation, and create leave policies for pregnant women or families who have just had a baby or for the adoption of a child. Likewise, most of these laws already protect a worker's job and prohibit any retaliatory actions an employer may take against an employee for using these entitlements.

Adding a city mandate on top of the many existing laws would create more regulations for businesses to comply with and increase the cost of doing business in Seattle.

## **Paid Sick Day Laws in Other States**

### *Connecticut Legislation*

Connecticut recently passed legislation mandating paid sick days on a statewide basis, primarily aimed at service-oriented businesses such as restaurants and hotels. However, the "service" designation also includes such fields as social workers, therapists, registered nurses, security guards, childcare workers, and much more. The smaller firms, those with fewer than 50 employees, are exempt, as are most businesses in the manufacturing sector and nationally chartered non-profits (e.g. YMCA).

Details:

- Bill applies to employers of 50 or more.
- Manufacturers and YMCA are exempt.
- Applies only to "service workers," however there are over 50 definitions of what constitutes a service worker (this includes independent contractors).
- "Service workers" do not include day or temporary workers.
- Service workers are entitled to 5 paid sick days a year.
- Accrued leave can be carried over for one year.
- Employers that already offer "other paid leave" including paid vacation, personal days or paid time off would be deemed to comply with the rule if they offer at least 5 days.

<sup>8</sup> *Small Business Problems and Profiles*, National Federation of Independent Business, June 2008, page 17.

- Sick leave may be used for the employee’s own condition or that of a family member.
- Employees are eligible for accruing paid sick leave after working 680 hours and having worked an average of at least 10 hours a week (17 weeks @ 40 hours a week).

*San Francisco Ordinance*

San Francisco’s paid sick leave ordinance went into effect in February of 2007. It was the first mandatory paid sick day requirement to pass in the nation. It affects all businesses, and there is no separate tier for smaller businesses.

Details:

- Workers begin to accrue leave 90 calendar days after date of hire.
- Workers earn one hour of paid leave for every 30 hours of paid work, maximum of nine days for firms with 10 or more employees and five days for smaller firms.
- Leave may be used for workers’ own illness, injury, health conditions, and medical appointments, and to care for family members or a “designated person.”
- Unused leave (up to maximum of five or nine days) carries over from one year to next.
- It is unlawful for employers to retaliate against employees for requesting or using leave.

*Washington, D.C. Ordinance*

Washington, D.C. enacted its paid sick leave ordinance in 2008.

Details:

- Employees of firms with fewer than 25 employees accrue one hour per 87 hours worked for three days per calendar year.
- Employees of firms with between 25 and 99 employees accrue one hour per 43 hours worked for five paid sick days per calendar year.
- Employees of firms with 100 or more employees accrue one hour per 37 hours worked for seven paid sick days per calendar year.
- An employee’s paid leave carries over from year to year but an employee may not access more than the maximum allowed per year, unless the employer allows.
- An employer who willfully violates this Act shall be assessed penalties.
- Employees who assert their rights to receive paid leave pursuant to the Act are protected from retaliation.

The city of Milwaukee, Wisconsin, enacted its city ordinance in 2008. A trial court in 2009 ruled that the ordinance was not lawfully adopted and placed an injunction on the ordinance's implementation. A Wisconsin Court of Appeals recently reversed the lower court's decision.<sup>9</sup>

Details:

- Employers with fewer than 10 employees must provide five paid sick days.
- Employers with more than 10 employees must provide nine paid sick days.
- Employees begin accruing sick leave on the first day of employment but cannot use any until after the 90th day.
- Unused leave carries over (no accrual cap), but the yearly-use cap corresponds to eligibility (five days for small business, nine days for large).

While Connecticut's bill, which is a statewide mandate, exempts small businesses and other various types of businesses and focuses on a broad definition of a "service" industry, neither San Francisco, Milwaukee, nor Washington, D.C.'s ordinances exempt small businesses or otherwise, though they do allow for a smaller cap on the number of days employees accrue.

### **Economic Impact Statement?**

The recently-passed Connecticut statewide mandate did not include an economic impact statement, therefore no cost estimate was taken into account prior to the bill's passage. Failing to conduct a cost estimate, or cost-benefit analysis, means policymakers are not serious about considering the cost the proposed ordinance would have on their constituents. In other words, policymakers who decide not to conduct such an analysis are showing that they do not actually care what the cost is, so long as they are perceived by voters as deliverers of a new entitlement.

This is unfortunate because the cost of this proposal could be quite substantial. Using the cost of providing paid sick leave laid out by the Bureau of Labor Statistics (BLS) and proponents' own numbers, the paid sick leave mandate in the city of Seattle would cost at least \$30 million.

This number is calculated using the estimated 190,000 workers without paid sick leave in Seattle and multiplying that number by 2,000 working hours (50 weeks a year) and then multiplying that by \$0.08 per hour worked (the cost of providing paid sick leave to a service sector employee).<sup>10</sup>

There are caveats to this calculation that may send the cost up or down. Not all 190,000 workers are full-time workers (proponents do not break down the details of this number by full-time/part-time), but the \$0.08 per hour cost is based on the service industry, which is the industry likeliest to be impacted by this rule.

However, cost estimates to provide paid sick days vary drastically, from \$0.08 per hour for service occupations in the private sector, to \$0.53 per hour for larger companies employing white collar workers in the private sector and \$1.07

<sup>9</sup> See *Metropolitan Milwaukee Association of Commerce Inc v. City of Milwaukee*, No. 2009AP1874-AC, State of Wisconsin Court of Appeals, District I, March 24, 2009.

<sup>10</sup> Marilyn P. Watkins, "Evaluating Paid Sick Leave: Social, Economic and Health Implications for Seattle," Economic Opportunity Institute, May 2011.

per hour for state and local government employees.<sup>11</sup> The cost per hour does not appear to be significant at first glance, until you calculate the aggregate cost. Add on the other costs such as payroll taxes, health care benefits, paid vacation, and others and one can see why paid sick days are not provided as often as proponents of this measure wish.

If the same calculation is done with the estimated 190,000 workers and the BLS's average cost to provide paid sick days (spread across all industries), the cost skyrockets to almost \$90 million because the average cost to provide this benefit is \$0.23 per employee per hour. Again, the estimated 190,000 employees in Seattle without paid sick days are likely to be spread across a wide swath of industries.

Very small businesses that only employ a handful of people may only see direct costs increase by several hundred dollars per year, but larger companies would see multiples of that. Indirect costs must be taken into account as well, as businesses in the service industry often require an employee to have to fill in for a sick employee. While no one wants to go to work sick, this cost must also be accounted for, as many times employers must pay overtime on top of the cost of paid sick days. Even with the ordinance's proposal for shift swapping, that tool would only help a limited number of businesses in the service industry. Businesses that allow an employee to make up a shift in the following pay period may also have to pay overtime to that employee as well.

This proposal may very well harm the employees that the ordinance is designed to help most – those in the lower wage category, especially minimum wage earners. Because the minimum wage sets an artificial wage floor, no employer can further decrease the wage to offset the increased costs of mandated benefits. Therefore, this could result in higher unemployment for the young and inexperienced minimum wage workers, particularly those in the food service industry, which tends to employ minimum wage workers who earn additional money through gratuity.

### **Other Cost Concerns and Lack of Flexibility**

**Employer Cost for Medical Documentation:** If an employee is absent for more than three days, an employer who requests medical verification and does not already provide health insurance for the employee must split the cost of medical documentation (for businesses with fewer than 250 employees) or cover the entire cost (businesses with 250 or more employees). This is an unprecedented requirement – one that is not a part of any of the other paid sick day legislation already in place in various other cities and Connecticut.

**Employee Eligible Upon Return Under Nine Months:** If an employee leaves employment and returns within nine months, previously accrued leave is reinstated without a waiting period. There is no definition of what “leaving” means – in most benefit eligibility requirements a voluntary quit voids most accrued benefits. If an employee is temporarily furloughed or laid off and then rehired, this would not be uncommon.

**Grace Period:** The proposal would allow a grace period before the mandate goes into effect. For businesses with 250 or more employees, they would be required to comply with the mandate 90 days after its passage. For businesses with one to 249 employees, the mandate would go into effect one year after its passage. New businesses with one to 249 employees opening or relocating to Seattle would have a two-year grace period. Businesses with 250 or more employees would have no grace period and would be required to comply immediately.

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<sup>11</sup> *Supra*, note 1.



While grace periods give businesses time to prepare for a change in their business practice, they simply delay the inevitable cost. The fact that small to medium businesses are allowed a one to two year grace period indicates proponents of this mandate recognize they would be creating a substantial cost to comply.

**Out-of-City Businesses and Employees Impacted:** Also of concern is the broad range of eligibility for businesses and employees that do business both in and outside city limits. As proposed, a business based outside city limits, but whose employees conduct more than 80 hours a calendar year inside the city must provide paid sick days. Again, this could provide an incentive for out-of-city employers to reconsider their presence inside city limits if they do not already provide the mandated amount of paid sick days.

Businesses based inside city limits would have to count the hours their employees work outside the city towards their FTE calculation. So, almost any business, inside city limits or outside that does even a modicum of business inside the city, would be required to comply with this mandate.

**No Minimum Use Requirement:** The ordinance does not have a minimum-use requirement. The language in the proposal says that,

“Accrued paid sick time and paid safe time may be used in the smaller of hourly increments or the smallest increment that the employer’s payroll system uses to account for absences or use of other time.”<sup>12</sup>

This section means employees could realistically take paid sick days piecemeal, hour-by-hour (or even as little as 15 minutes), until their allocated time is used up. This obviously presents a problem for businesses that rely on employee punctuality and stability. Requiring that paid sick days be used at a minimum of four hours, for instance, would ensure that truly ill workers would be granted recovery time, instead of this benefit being abused and used for other instances that are not related to illness. This mandate will negatively impact smaller businesses’ ability to track employee hours and locations in order to comply with the regulation.

**Government Largely Exempted:** Other than employees of the city of Seattle, government employees (federal, state, county and local) are exempt from this mandate.

**Exemption for Collective Bargaining Agreements:** The paid sick day mandate would not apply to employees that are currently covered by a collective bargaining agreement, but only if the agreement has language expressly waiving the right to this benefit. Otherwise, unionized workforces whose employers do not already provide paid sick leave, or at least the required minimum amount of days, would be entitled to the same benefit as everyone else.

Repealing the paid sick days benefit would require a change in the collective bargaining agreement during the next round of negotiations.

## Conclusion

No one argues that employees must go to work sick. In fact, doing so (also referred to as “presenteeism”) actually harms employer and employee productivity and opens up the workplace to further sickness, exacerbating the problem. In

<sup>12</sup> Council Bill 117216, Section 14.16.030, Subsection C.

trying to solve the problem, however, this type of government mandate would incur significant financial costs as well.

These costs would come at the expense of employees who may see less pay or other benefits. The costs may manifest themselves in the form of higher prices for consumers. The costs may also be incurred through higher administrative and regulatory burdens – making it more expensive to own and operate a business in a city still suffering the effects of the “Great Recession.”

There are other, more cost-efficient and efficacious ways to address the problem of sick employees than a one-size-fits-all mandate. Flexibility is a major component for a good human resource policy. There is no flexibility in the proposed ordinance. Small businesses, even firms with one or two employees, are affected by this proposal. There are no incentive-based or voluntary alternatives proposed and there is no room for tailor-making a sick leave policy that best fits the particular business or industry in which a firm operates.

Generally, it is more expensive for larger companies to provide paid sick days than for smaller businesses to provide the same benefit. Ironically, larger companies are much more likely to already provide paid sick days so the proposed ordinance would be less likely to affect the larger businesses and much more likely to impose new mandates on smaller firms (1-99 employees). This presents a competitive disadvantage to small businesses against their larger competitors.<sup>13</sup>

Mandating paid sick days also removes the option of non-cash benefits that smaller firms are more likely to use, such as a flexible work schedule or telecommuting.

Adding the mandate of paid sick days prioritizes this benefit over that of health insurance, paid vacation, flexible schedules, etc., because none of these other benefits are mandated and may be reduced to counter the added cost of providing paid sick days. Policymakers should take this into consideration as well.

The best way to address the problem of presenteeism is through voluntary measures based on the specific needs of a business and its employees. No employer wants ill employees to interact with customers or fellow workers, but a top-down mandate, as has been proposed nationwide, passed in only a few cities, and now proposed in Seattle, would increase costs to the small business community and potentially to consumers as well, while reducing job opportunities for low-wage workers.

<b>Business Size</b>	<b>Accrual Rate</b>	<b>Max. Allowed per Year</b>	<b>Max. Carried Over</b>	<b>When eligible to use days</b>
<b>&lt; 50 FTE</b>	1 hr per every 50 worked	40 hours (5 days)	40 hours (5 days)	After 180 days
<b>50-249 FTE</b>	1 hr per every 35 worked	56 hours (7 days)	56 hours (7 days)	After 180 days
<b>250+ FTE</b>	1 hr per every 30 worked	72 hours (9 days)	72 hours (9 days)	After 90 days
<b>1,000+ FTE (PTO)</b>	18 total days of PTO	Half total accrual (9 days)	9 days	N/A

<sup>13</sup> The fact that larger businesses are able to afford a higher benefit level for their employees is explained through economies of scale. Large businesses are better able to spread the cost of the benefit out over a larger cost base, thereby driving the marginal cost down.

## About the Author

**Carl Gipson** is Director of the Center for Small Business at Washington Policy Center. He also directs WPC's technology and telecommunications policy research. He regularly writes opinion pieces, legislative memos, policy notes, and is the author of *Reviving Washington's Small Business Climate*, *24 Ways to Improve Washington's Small Business Climate*, *A Citizen's Guide to Initiative 920: The Estate Tax*, and other publications. Carl appears regularly in print and broadcast media across the state addresses chambers of commerce and other civic groups. He was a columnist for *The Olympian* in 2003 and received his bachelor's degree in political science from Western Washington University in 2001.



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