



**In Focus – Special Edition
Ohio’s Proposed Healthy Families Act
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Ohio employers are not currently required to provide paid sick leave to employees. That may change in November. In addition to voting for Barack Obama or John McCain, Ohio voters are entirely likely to get the opportunity to vote Yes or No on a proposed law called the Ohio Healthy Families Act (OHFA) introduced in the Ohio General Assembly as H.B 536. OHFA requires Ohio employers with 25 or more employees to provide at least seven days of paid sick leave annually.

The implications of OHFA are significant, affecting everything from budgeting for a new employer cost for sick leave, to the design, communication and administration of new sick leave policies. The current thinking is that Ohio’s voters will approve OHFA by a large margin. If they do, the law will take effect within 30 after the November 4 election. Moreover, the proposed law states that employers will be restricted in their ability to amend sick leave policies in place on the date the law takes effect. That’s why some employers with potentially non-OHFA compliant sick leave policies in place today are scrambling to amend them now.

OHFA is only five pages long and its provisions are plainly stated. However, as written, the proposed law leaves many subjects of great interest to employers either unaddressed or insufficiently treated. OHFA assigns The Ohio Director of Commerce with the responsibility of providing rules and regulations needed to carry out the act. If OHFA becomes law, it is likely that employers won’t get many of their questions answered until those regulations are released.

Following are some Frequently Asked Questions and Answers about OHFA:

Who must comply?

Employers with 25 or more employees in Ohio must comply. The proposed statute references the Ohio Constitution and the federal Fair Labor Standards Act for definitions of “employer” and “employee”.

What class of employees is affected by OHFA?

Employees working 30 or more hours per week become eligible for the 7 days of paid sick leave. A prorated amount of sick leave must be extended to employees working less than 30 hours per week or less than 1,560 hours per year. OHFA does not describe how the dollar amount of paid sick leave should be calculated.

How broad are the sick leave requirements?

Employees are eligible for the new paid sick leave for any absence resulting from a physical or mental illness, injury or other medical condition as well as absences for medical appointments. Such allowable absences can be for employees themselves or

on behalf of their parents, spouses and children, up to age 18 (unless incapable of self support). An employer can require a medical certification only when the leave lasts for more than three consecutive days. The employee has up to 30 days to provide that certification.

What if an employer already provides sick leave?

An employer is not required to amend its present leave policy so long as it is equivalent to OHFA's requirements. "Equivalence" is not defined in the proposed law. Once OHFA is enacted, employers will not be permitted to reduce or eliminate any of their leave policies to produce more paid sick days to comply with the law (e.g., recharacterizing seven vacation days as paid sick leave days after OHFA's enactment).

It is thought that if the voters approve OHFA in the November 4th election, it will be considered as enacted 30 days later, which also is when it takes effect. This means that employers are likely to have only until early December 2008 to amend their leave policies if the voters approve the new law. After that, non-compliant employers may have few choices beyond simply adding up to seven paid sick days to their leave policies.

An employer with a "leave policy" providing "paid leave options" is not required to modify that policy if that policy offers employees the unfettered discretion to take "paid leave" that is at least equivalent to OHFA's "paid sick leave" requirements. (OHFA uses several phrases when referring to leaves. Presumably, all of these phrases mean "paid sick leave", but different interpretations are possible.)

OHFA does not mention short term disability or salary continuation programs at all. Presumably, OHFA's seven days of paid sick leave can serve as the initial days of paid short term disability or salary continuation. As currently written, most short term disability and salary continuation programs would not completely satisfy the requirements of OHFA. If OHFA becomes law, bringing these programs into compliance may not be an easy job to complete in a short amount of time.

What records must be kept?

Employers must maintain a record of hours worked and hours of paid sick leave taken for three years and must make the records available for inspection by the State. Record retention file formats are not specified in the law and will no doubt have to be addressed by the Ohio Director of Commerce.

Does OHFA require carryovers of accrued paid sick days?

Yes. OHFA states that accrued but unused paid sick leave must be carried over from year to year but does not have to accumulate to more than seven days per year. As written, the practical meaning of this carryover requirement is puzzling to most readers of OHFA, even to groups working to get popular support for the proposed law.

How does OHFA impact collective bargaining agreements?

OHFA states that its requirements do not prevent collective bargaining for paid sick leave that is more generous than its mandated seven days. The proposed law is silent as to whether existing labor contracts, if non-compliant with OHFA, must be brought into compliance by the law's effective date or if they can run their course.

What steps are employers taking now?

Employers with traditional holiday, vacation, sick and other discrete leave policies are considering converting to Paid Time Off (PTO) programs that allow employees to use up to seven PTO days for any purpose, including sick paid leave. While this technique is not specifically endorsed by OHFA, it is seen as the best approach to minimize the impact of OHFA.

The Chelko Perspective

Designing leave policies is often a time consuming and occasionally contentious process within many companies. In large part, this is true because there is a fair amount of discretion available to employers in settling on their leave policy provisions. Ironically and unlike explaining why medical plan deductibles are increasing, employers do not have combating a villain like “the rising cost of healthcare” to cite in justifying the necessity of their leave policy decisions. Therefore, to say that employers with traditional leave policy formats should switch to something as substantially different as PTO, and to do this in just a few months, (by late 2008) is to dramatically underestimate the challenge many Ohio employers will face if OHFA becomes law.

Moreover, many employers with disability and leave policies that may not satisfy OHFA must decide soon if they are going to bring their policies into compliance (and how) before the November 4 election. If they wait till after the election, they will have less than the 30-day window that closes on December 4 to design, communicate, and to be prepared to track their new leave programs.

The Chelko Consulting Group is ready to help you assess your specific compliance issues and options and to work with you to develop and implement an OHFA compliant leave policy - one that reflects the specifics of your situation and the implications of readily available trade-offs.

Note: The information contained in this Bulletin should not be construed as legal advice. Readers should consult legal counsel for such advice.