

# **Implementing the Fair Wages & Healthy Families Act**

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**Prescott Valley Chamber of Commerce**

**Prescott Area Human Resources  
Association**

# Speaker

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# Were Voters Informed When They Cast Their Ballots for Prop. 206?

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☐ 58.33% of Arizona Voters Supported It

☐ “Fair Wages & Healthy Families Act”



☐ Two Parts to the Law:

- Minimum Wage Increase = “Fair Wages”
- Mandatory Paid Sick Time = “Healthy Families”

☐ Litigation Pending, But Don’t Wait to Comply

# **Industrial Commission of AZ (ICA)**

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- ☐ **ICA is Responsible for Enforcement and Implementation**
- ☐ **ICA is Preparing Regulations and has Issued “Unofficial” Guidance—Frequently Asked Questions**
  - **[www.azica.gov](http://www.azica.gov) –FAQ’s and Posters**
  - **Still a number of Unanswered Questions**

# Minimum Wage Increase

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- ❑ 1/1/2017—Increased from \$8.05 to \$10.00 Hour
- ❑ 1/1/2018—Increases from \$10.00 to \$10.50 Hour
- ❑ 1/1/2019—Increases from \$10.50 to \$11.00 Hour
- ❑ 1/1/2020—Increases from \$11.00 to \$12.00 Hour
- ❑ Adjusts Annually Based on Cost of Living after 2020
- ❑ Tipped Wage Can Be \$3.00 Hour Less than Regular Minimum Wage, if Tips Add Up to Minimum Wage for all Hours Worked in the Week





# **“Employer” Definition for Minimum Wage Coverage**

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**All Employers, Except State and Federal Government and “Small Businesses”**

❑ **“Small Business”-- <\$500,000 in Gross Annual Revenue and Affected Employees are Not Engaged in Interstate Commerce or Production of Goods for Interstate Commerce—(Fair Labor Standards Act Definition)**

- **Very Rarely Qualify in Today’s Internet World**
- **Examples: Barbers or Janitors who buy all Supplies Locally and Accept Only Cash or Checks from Arizona Banks**
- **Same Definition as the Previous Minimum Wage Law**



# **“Employer” Definition for Paid Sick Time Coverage**



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- ☐ All Employers, Except State and Federal Government
    - Same Definition as for Minimum Wage Coverage, but No Small Business Exception
  - ☐ Regardless of the Size or Revenue of the Employer, the Paid Sick Time Requirements will Apply



# Which Employees are Covered?

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## ☐ Covered Employees:

- Full-Time, Part-Time and Temporary Employees
- Recipients of Public Benefits who are Working as a Condition of Receiving Benefits are Covered for Paid Sick Time Purposes

## ☐ NOT Covered:

- Those who Work for a Parent or a Sibling
- Casual Babysitters who Work in Your Home
- State and Federal Workers







# **Paid Sick Time**



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- ☐ **Effective July 1, 2017**
  - ☐ **Guarantee of Time Off for Covered Reasons and Pay for the Time Off**
  - ☐ **Because it Applies to Part-Time and Temporary Employees, Employers Cannot Establish a Minimum Hours Worked Requirement, Which is in Most Sick Leave Policies**
  - ☐ **Employers Can Establish More Generous Sick Leave Policies, as Long as they Meet the Minimum Requirements of the Law**

# Accrual of Paid Sick Time

- ❑ Employees Accrue 1 Hour of Sick Time for Every 30 Hours Worked
- ❑ Assume that Full-Time Exempt (Salaried) Employees Work 40 Hours a Week, Unless their Regular Workweek is Less than 40 Hours, Then Use the Number of Hours in the Regular Workweek
- ❑ Employers with Less than 15 Employees—Maximum Accrual of 24 Hours of Sick Time per Employee per Year
- ❑ Employers with 15 or More Employees—Maximum Accrual of 40 Hours of Sick Time per Employee Per Year





# **On the Threshold of 15 Employees?**

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- ☐ **Count Full-Time, Part-Time and Temporary Employees**
- ☐ **Employer is Required to Accrue at the Higher Level if...**
  - **There were 15 or More Employees on the Payroll for Some Portion of a Day in 20 Different Calendar Weeks (not necessarily consecutive) in the Current Year or Preceding Year**
  - **Employees on the Payroll Can Be Different People**
- ☐ **Employer Could have 5 Employees in 2017, but if it Employed 15 in 2016, it may have to Accrue Paid Sick Leave at the Higher Rate**



# Accrual of Paid Sick Time

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- ☐ Accrual Begins 7/1/2017
  - No Retroactive Accrual for Employees Hired before 7/1/2017
- ☐ Employers Can Require Employees Hired after 7/1/2017 to Wait 90 Days before taking Sick Leave
- ☐ Employees Hired On or Before 7/1/2017 may take Paid Sick Time as Soon as it is Accrued
- ☐ Employers can “Front Load” instead of Accrue



# Annual Use of Paid Sick Time

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## ☐ Employers with Less than 15 Employees:

- Employees Cannot Take More than 24 Hours of Earned Paid Sick Time per Year

## ☐ Employers with 15 or More Employees:

- Employees Cannot Take More than 40 Hours of Earned Paid Sick Time per Year



# Carryover of Unused Sick Time

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- ❑ **Unused Sick Time Must be Carried Over from Year to Year**
  - **BUT, Maximum Annual Accrual and Use Limits Still Apply**
  - **SO, Employees Can Continue to Accrue Sick Time, but Not Be Able to Take It, which will Create Confusion and Likely Cause Employees to Take the Maximum Amount Each Year**
  - **No Cap on Amount Carried Over (ICA May Clarify in Regulations)**
- ❑ **Employer Can Pay Out Unused Sick Time at Year End, but Must Front Load Annual Maximum at Beginning of Following Year**
  - **No Incentive to Do This**



# How is a “Year” Defined?



- ❑ The law defines a “year” as “a regular and consecutive 12-month period as determined by the employer.”
- ❑ Most employers will likely designate calendar years to coordinate with payroll years, for recordkeeping purposes.
- ❑ Designation of calendar or fiscal year (not anniversary year) will require prorated accrual and usage after hire.
  - The ICA has not provided additional guidance.



# Sick Pay Rate Calculations

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- ❑ Sick Pay is Paid at Pay Rate when Employee Uses it, Not When it was Accrued
- ❑ Commissioned Employees—Use Average Hourly Rate for all Wages (including commission) from Previous 90 Days
- ❑ Production-Based Pay—Use Wages Employee would have been Paid (if known), or Average from Previous 90 Days
- ❑ Tipped Employees--Base Wage Rate, plus Average of Tips
  - No ICA Guidance for Use of 90 Day Average for Tipped Employees





# **When Can Employees Use Paid Sick Time?**

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- 1. Employee or Employee's Family Member has mental or physical illness, injury, or health condition; or needs preventative care or a medical diagnosis; or,**
- 2. Closure of Employee's Workplace or Child's School due to Public Health Emergency; or,**
- 3. Absence due to Domestic or Sexual Violence, Abuse, or Stalking of Employee or Family Member.**

**NOTE: Sick Time Can be Used in Hour Increments or Smallest Increment Employer's Payroll System Uses (Example: 6 minute increments)**



# Who is a “Family Member”?



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- ☐ Child, Parent, Spouse, Domestic Partner, Grandparent, Grandchild, Sibling—Regardless of Age
  - ☐ Adopted, Foster, and Step-Relations; Person who Acted as a Parent to the Employee, but is not Related; or the Employee is Acting as a Parent to a Child, although not Related; and Family Members of Employee’s Spouse or Domestic Partner
  - ☐ Any Person Related by Blood or Affinity whose Close Association with the Employee is Equivalent to Family Relationship
    - ??Live-in Boyfriend/Girlfriend, Aunt, Uncle?? No Guidance from ICA





# Advance Notice to Request Paid Sick Time?

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- ❑ **“Foreseeable Leave”**—Employees must make Good Faith Effort to Give Advance Notice and Schedule Leave Time so it doesn’t “Unduly Disrupt the Employer’s Operations”
- ❑ **“Unforeseeable Leave”**—Employer can require Prior Notice if it has a Written Policy with Procedures for Providing Notice, as long as Employer gave Employee a copy of the Policy
  - **Example: Require 2 hour advance notice if going to be absent**



# More Notice Issues...



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- ☐ **Request for Paid Sick Time can be made “Orally, in Writing, by Electronic Means, or by any Other Means Acceptable to the Employer”**
    - **It appears that the Employer Can’t Dictate Notice Method**
  - ☐ **When Possible, the Expected Duration of the Absence should be Provided**
  - ☐ **Employee Cannot be Required to Find a Replacement Worker as a Condition of Taking Leave**
  - ☐ **Absences Cannot be Used Against Employee (Like FMLA—Can’t Count Absences as an Occurrence that Could Lead to Discipline)**



# Can Employers Request Documentation?



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- ☐ Employer can Require Documentation only if the Employee has been Absent for 3 or more Consecutive Work Days
    - Information must be kept Confidential—No Disclosure without Employee's ok
  - ☐ For Medical-Related Absences, a Document Signed by a Health Care Professional stating that the Sick Time was Necessary is Sufficient
    - Employer Cannot Request Details about the Medical Condition
    - Possible Conflict with Family and Medical Leave Act?
  - ☐ For Domestic Violence Absences, a Police Report, Protective Order, Witness Advocate, Attorney, or Employee's Written Statement is Sufficient

# Termination, Rehire, Successor Employers

- ❑ **No Requirement to Pay Out Unused Sick Pay upon Termination of Employment, Regardless of the Reason Employee Left**
- ❑ **If the Employee is Rehired within 9 Months of Separation, Previously Unused Sick Pay must be Credited to the Employee**
  - Employee can Use and Accrue Sick Pay Immediately upon Rehire
- ❑ **If a New Employer takes over the Business and Existing Employees are Hired by New Employer, those Employees are Entitled to their Unused Earned Sick Time and may Use It**



# Coordination with Other Paid Time Off (PTO) Policies



- ❑ If Employer has PTO Policy that Meets or Exceeds the Law's Minimum Requirements, there is No Need to Provide Additional Sick Time, But...
  - Must be Able to Use it for Same Purposes/Conditions as the Law
  - This includes Coverage of Part-Time and Temporary Employees
- ❑ Option #1: More Generous PTO Policy for FT Employees; Basic Sick Pay Policy for Part-Time/Temporary Employees
- ❑ Option #2: Vacation Policy for FT; Basic Sick Pay Policy for All
- ❑ Unlimited Carry-Over in Law Creates Challenge for PTO Policies, Unless Pay-Out at Year End and Front-Load at Beginning

# Notices Required of Employers

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- ☐ Post by 7/1/2017, a Notice to Inform Employees of their Rights Concerning Paid Sick Time
- ☐ Minimum Wage Poster should already be Posted
  - Both are available at [www.azica.gov](http://www.azica.gov)
- ☐ Include with Each Employee's Paycheck:
  1. Amount of Earned Sick Time Available to the Employee
  2. Amount of Earned Paid Sick Time Taken by the Employee in the Year
  3. Amount of Pay the Employee Received as Earned Paid Sick Time in the Year





# **Recordkeeping Requirements for Minimum Wage & Paid Sick Time**

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- ☐ Requirements to Maintain Payroll Records haven't Changed, but Employers will also have to track Accrual and Payment of Sick Time effective 7/1/2017
- ☐ The Tracking and Reporting of Accrual and Use of Paid Sick Time may be Difficult when Combined with a PTO Policy that is used for Vacation and Other Non-Covered Absences
  - Report Total PTO Taken and Available for Any Purpose and Amount Paid? (ICA may need to clarify)
- ☐ Records must be Maintained for 4 Years



# No Retaliation or Discrimination



- ❑ Strong Anti-Discrimination and Anti-Retaliation Provisions
- ❑ “Retaliation”—Denial of any Right Under the New Law; any Threat, Discharge, Suspension, Demotion, Reduction of Hours, or any other Adverse Action against the Employee
- ❑ IMPORTANT: Taking Adverse Action against an Employee within 90 Days of the Employee asserting Rights under the Law is Presumed to be Retaliation
  - Accurate Documentation of Reason for Adverse Action by the Employer is Critical





# Penalties



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- ☐ **Unpaid Wages or Sick Pay:** Pay Balance Due, Interest, an Amount Equal to Twice the Unpaid Balance, Attorney's Fees & Costs
  - ☐ **Retaliation:** No Less than \$150 for Each Day the Violation Continued or Until Legal Judgment is Final
  - ☐ **Recordkeeping or Posting Violation:** At Least \$250 for 1<sup>st</sup> Violation, \$1000 for Subsequent or Willful Violations, plus Special Monitoring

# Collective Bargaining Agreements



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- ☐ Law doesn't Apply to Employees Covered by a Collective Bargaining Agreement (Union Contract) in Effect on 7/1/2017, until it Expires
  - ☐ Union Contracts entered into after 7/1/2017 can Waive the Paid Sick Time Requirements of the Law if the Waiver is Stated in Clear and Unambiguous Terms



# **Next Steps for Employers...**

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- ✓ **Develop Accrual Method for Paid Sick Time**
  - ✓ **Prepare to Revise Paystubs to Reflect Paid Sick Time Earned, Amount Taken and Payment Amount**
  - ✓ **Determine “Year” for Accrual and Use of Paid Sick Time**
  - ✓ **Implement or Revise Sick Time or Paid Time Off Policies and Communicate Them to Employees (closer to 7/1/2017)**
  - ✓ **Revise Absence Control Policies that Penalize for Time Off Covered by New Law, Clarify Required Notice for Time Off**
  - ✓ **Post Notices: Minimum Wage—Now; Paid Sick Time--June**

# **So...Were Voters Informed When They Cast Their Ballots for Prop. 206?**

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## **Contact Information**

☐ **Industrial Commission of Arizona— [www.azica.com](http://www.azica.com)**

**“Frequently Asked Questions” Posted on Website**

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