



Harry Franzheim—an HR/OD Practitioner for over 30 years—has published this newsletter to bring you careful insight into reducing costs and unlocking employee potential.

AT ISSUE

Initiative 1433, passed by the voters of Washington state, is a complex law that can be easily abused by workers and will be burdensome (more paperwork) and costly (potentially excessive) for employers.

Sick and Safe, Burdensome and Costly



HR Fact:

History of the Federal Minimum Wage

- 1912** Massachusetts becomes the first state to pass a minimum wage law, but the U.S. Supreme Court rules it unconstitutional.
- 1933** President FDR signs the NIRA Act establishing a federal minimum wage of 25 cents an hour.
- 1935** The U.S. Supreme Court rules the NIRA Act is unconstitutional (*Schechter Poultry v. United States*).
- 1938** President FDR signs the FLSA into law, creating mandatory federal minimum wage of 25 cents.
- 1941** The U.S. Supreme Court upholds the FLSA.

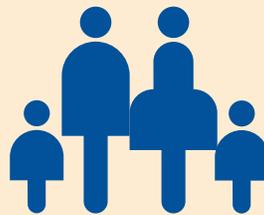
And just like that ... all Washington state employers are required to offer paid time off to all employees at the rate of one hour for every 40 hours worked! It does not matter the size of the employer or the nature of the business. ALL employers are included; no employer is exempt. All employees are eligible including part-time and seasonal!

This article is not an argument for or against this law, which was passed by the voters of Washington state in 2017, but rather it is intended to demonstrate the burden, the complexity, and the costs associated with Initiative 1433 that apply specifically to our staffing company and clients.

The Law

The law, which also requires annual increases to the minimum wage to \$14.23/hour by Jan. 1, 2022, from \$11.00/hour in 2017 (29% increase in 5 years!), forces employers to begin accruing one hour of paid

But Wait, Another Added Cost Is Coming!



Paid Family and Medical Leave

Beginning 2019 Washington state will start the funding process for a Paid Family and Medical Leave, funded by employers and employees that, in 2020, will provide for 12 weeks of PAID leave for an employee for personal illness, pregnancy, or illness of family members. Learn more (I dare you) at www.esd.wa.gov/paid-family-medical-leave.

time off for every 40 hours worked, starting the first day of employment. Here are some of the highlights of the law:

- An employee is “entitled” to use the accrued time off beginning the 90th calendar day after the start of their employment.
 - Unused paid time of 40 hours or less must be carried over to the following year.
 - Employees may use their paid time:
 - To care for themselves or their family members.
 - When the employee’s workplace or their child’s school or place of care has been closed by a public official for any health-related reason.
 - For absences that qualify for leave under the state’s Domestic Violence Leave Act.
- Again, we make no argument for or against the intent of the law, but the consequences are of concern. Our company, prior to 2018, did not offer paid time off to our temporary employees (our business

exists for the primary purpose of putting people to work; our profit is derived from people working, not NOT working!), and paid time off is now an added cost of doing business. In the worst case scenario, assume 200 employees work 52 weeks with 40-hour workweeks at the current minimum wage of \$11.50. (Most of our employees earn more than minimum, but for simplicity let's assume minimum wage.) That's 52 hours of paid time per person times 200 times \$11.50, which adds up to \$119,600 in added cost with no tangible return on the money. By 2020 that rises to close to \$150,000 per year!

Complexity

Even if a temporary employee of ours gets hired on by our client, or disappears (takes another gig, moves out of town/state) and then reappears for another assignment within one year of leaving our agency, the employee is entitled to the unused paid time as if they never left! So the liability to our company continues to exist even if an employee should leave our employment. The complexity continues as the law requires employers to notify every new hire about their entitlement and every existing employee as well. And the employer is required to make available and known to every employee what their unused paid time off accrual is each week (typically on the pay stub).

Retaliation Protections

"The new law protects employees from retaliation for exercising their rights under the Minimum Wage Requirements and Labor Standards Act." In other words, if an employee has accrued the time and uses it for legitimate reasons, an employer cannot "ding" the employee using their attendance policies. These legitimate, paid days off are protected and cannot damage an employee's standing or be used in any consideration to alter the employment relationship. These are "free days" and stand outside of typical disciplinary policies.

"Reasonable" Notice

"Employers may require employees to comply with the employer's notification policies, as long as such policies do not interfere with an employee's lawful use of paid time off." If the need for leave is foreseeable, the employer may require advance notice of at least 10 days, or as early as practicable. However, if the need for leave is unforeseeable, then the employee must provide notice to the employer as soon as possible before the required shift unless it is not practicable to do so. If it is impracticable for an employee to provide advance notice to their employer, a person on the employee's behalf may provide notice to the employer. Say goodbye to the immediate "no call, no show, no job"!

Verification Requests

Employers must keep their hands off any paid time off to which the employee is entitled. The law does suggest that an employer may request verification for time off of three days in a row or more. However, the wording implies that the request cannot be "burdensome" to the employee. And any request for medical verification must not require that the information provided explain the nature of the condition. Of course the information must be kept confidential as personal health information, and requesting such personal information can trigger other expectations and regulations like the Family, Medical Leave Act.

If You Read Nothing Else, Read This

With regard to this law and your temporary staffing partnerships, employers need to be very careful about ending a temporary employee due to attendance. As you can imagine, temporary employees often begin an assignment with one client, finish that assignment and then move on to another client for a different assignment. This pattern could go on for a long time. A likely scenario is that a temporary employee works for her agency for over 90 days and is therefore entitled to any unused, accrued

paid time off. Then she ends that assignment and is placed on another assignment with your company. On day one (for dramatic purposes) of her new assignment she calls out with a qualified sick or safe leave issue. Most host employers would request a replacement temporary employee on the belief that if she can't make it to work on the first day, she is not a good bet to show up the next day or soon after. That decision just cost the temporary employee her job with the client, and all that she did was exercise her right under the law! The temporary employee will likely claim retaliation and both the staffing company and the host employer (co-employment laws—see Fall 2017 newsletter) could be fined for violating this law.

Your staffing agency needs to partner with you and your supervisors to educate and inform when these situations arise. Gone is the day when a host employer can simply dismiss a temporary employee for missing a day, even if it is day one! Make sure that your staffing firm is understanding this issue, is tracking accrued and used leave, and has the wherewithal to help you make the correct decisions about attendance of temporary employees.

A Law That's Easy to Abuse

We are not arguing the appropriateness of Initiative 1433; the people of Washington state voted in favor of this law. In fact, in our opinion, it has some merit. However, the wording in the law, in our opinion, makes it very easy for an employee to take advantage of the accrued paid time off. We can see how the wording makes this law easy to abuse and hard for any employer to deny or challenge an employee taking the time off. The law is complex and overly expensive to small employers. The law has required expensive new tracking tools, retraining of staff and clients, and costly communication attempts to inform employees. **ne**



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