

# Proposition 206

## The Fair Wages and Healthy Families Act

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# Arizona electors approved Proposition 206 on November 8, 2016

Prop. 206 has two parts:

- State Minimum Wage increases
- Mandatory “earned paid sick time”

## Overview of Prop 206

**The 2016 Prop. 206 “Fair Wage and  
Healthy Families Act”**

**UPGRADES**

**The 2006 Prop. 202 “Arizona Minimum  
Wage for Working Arizonans Act”**

**Overview of Prop 206**

In 2006, Arizona electors approved Prop. 202:

- State minimum wage increased to \$6.75 per hour (from the \$5.15 federal minimum wage).
- Annual inflation adjustments.
- State minimum wage is now \$8.05 per hour

**Prop 206 - Wage rules**

2006 Prop. 202 put in place some key definitions and exemptions that will apply to 2016 Prop. 206.

- Minimum Wage Law Definitions - ARS 23-362 (Version 2)
- Wage Claim Enforcement Regulations - A.A.C. R20-5-1201
- The AZ Industrial Commission has issued nonregulatory guidance about calculation of hours worked and work activities of disabled persons.

# Prop 206 - Wage rules

➤ What employers are exempt from AZ minimum wage?

- Federal government
- State of Arizona

Note: School Districts are not the State of Arizona

**Prop 206 - Wage rules**

## ➤ Who is not an employee?

- Person employed by their parent or sibling
- Babysitter employed on a casual basis
- Independent Contractor

Note: The Federal standard is used to determine independent contractor status.

# Prop 206 - Wage rules

## ➤ Who is not an employee?

- Persons who work for another “without any express or implied compensation agreement”
- Employees when providing volunteer services if:
  - Work is for “civic, charitable, or humanitarian reasons,” and
  - Work is “offered freely and without direct or implied pressure or coercion from an employer,” and
  - Work is not the same type of service that the volunteer is paid to perform for employer

**Prop 206 - Wage rules**

- Note the State minimum wage law does not exempt an employee because he or she is a
  - Part-time or intermittent worker
  - Minor
  - Student
  - Severely disabled person - unless placed in a certified work activity/vocational training program

## Prop 206 - Wage rules

Proposition 206 requires annual increases to the State Minimum Wage:

- \* January 1, 2017 \$10 per hour
- \* January 1, 2018 \$10.50 per hour
- \* January 1, 2019 \$11 per hour
- \* January 1, 2020 \$12 per hour
- \* CPI increase each year thereafter

Note: Minimum wage may be up to \$3 per hour less for tipped workers if the tips received make up the difference.

# Prop 206 - Wage rules

- \*Employers with 15 or more employees must provide at least 40 hours of paid sick leave to each employee each year.
- \*Employers with fewer than 15 employees must provide at least 25 hours of paid sick leave to each employee each year.

## Prop 206—Paid Sick Leave The General Rule

An employee may use paid sick leave to address the employee's own:

- \* Mental or physical illness, injury or health condition;
- \* Need for medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or
- \* Need for preventive medical care.

## Prop 206—Paid Sick Leave Reasons Justifying Use

An employee may use paid sick leave to care for a family member who:

- \* Has a mental or physical illness, injury or health condition;
- \* Needs a medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition; or
- \* Needs preventive medical care.

## Prop 206—Paid Sick Leave Reasons Justifying Use

An employee may use paid sick leave to undertake specified activities if the employee, or a family member of the employee, is a victim of:

- \* Domestic violence;
- \* Sexual violence;
- \* Abuse; or
- \* Stalking.

## Prop 206—Paid Sick Leave Reasons Justifying Use

In relation to domestic violence, sexual violence, abuse or stalking, paid sick leave may be used to obtain:

- \* Medical care;
- \* Services from a domestic or sexual violence program or victim services organization; or
- \* Psychological or other counseling.

## Prop 206—Paid Sick Leave Reasons Justifying Use

For absences resulting from domestic violence, sexual violence, abuse or stalking, paid sick leave may be used:

- \* To relocate or take steps to secure an existing home; or
- \* For legal services, including preparing for any criminal or civil proceeding related to the domestic or sexual violence, abuse or stalking.

## Prop 206—Paid Sick Leave Reasons Justifying Use

Paid sick leave may be used:

- \* If the employee's place of business is closed by health authorities;
- \* To care for a child if the child's school or care facility is closed by health authorities; or
- \* For care of a family member or the employee if the family member or employee is subject to a communicable disease quarantine (regardless of whether the disease has been contracted).

## Prop 206—Paid Sick Leave Reasons Justifying Use

An employee must be allowed to begin accruing paid sick leave

- \* on July 1, 2017, or
- \* upon commencement of employment, whichever date is later.

## Prop 206—Paid Sick Leave Accrual

Accrual of paid sick leave must be at a rate of at least 1 hour of leave for every 30 hours worked, except that accrual of paid sick leave can be capped at:

- \* 40 hours per year (by large employers)
- \* 24 hours per year (by small employers)

# Prop 206—Paid Sick Leave Accrual

- \* For accrual purposes, an exempt employee is assumed to work 40 hour workweeks unless his or her normal workweek is less than a 40 hour workweek.
- \* An employee who is terminated and then rehired by the same employer within a nine month period of time, must be credited with paid sick leave that had accrued at the time of the employee's termination.

## Prop 206—Paid Sick Leave Accrual

An employee is entitled to use paid sick leave as it accrues except that:

- \*The cap of 40 hours per year (for large employers) or 24 hours per year (for small employers) applies not only with respect to paid sick leave accrual, but also its use.

# Prop 206—Paid Sick Leave Use

An employee is entitled to use paid sick leave as it accrues except that:

- \* An employer may require an employee hired after July 1, 2017, to wait for 90 days after his or her start date.
- \* At its discretion, an employer may loan an employee paid sick leave in advance of the employee's accrual of such leave.

# Prop 206—Paid Sick Leave Use

\*Paid sick leave 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.

Question: What does the phrase "use of other time" encompass?

**Prop 206—Paid Sick Leave  
Use**

- \* An employee's accrued paid sick leave is carried over from year to year unless the employer chooses to pay the employee for the leave at the end of the year.
- \* If an employer purchases an employee's paid sick leave, the employee must be provided the required minimum amount (40 or 24 hours) of paid sick leave for his or her immediate use at the beginning of the following year.

## Prop 206—Paid Sick Leave Carryover and Termination

An employee is not required to be compensated for accrued but unused sick leave upon termination of employment.

## **Prop 206—Paid Sick Leave Carryover and Termination**

The required carryover of unused paid sick leave may have little actual impact because an employer:

- \* Can limit an employee's use of paid sick leave to either 40 or 24 hours per year (depending on the size of the employer), and
- \* Is not required to compensate the employee for unused sick leave upon termination.

## Prop 206—Paid Sick Leave Carryover and Termination

- \* An employee may request use of paid sick leave by a request “made orally, in writing, by electronic means or by any other means acceptable to the employer.”
- \* Does the phrase “acceptable to the employer” modify only “other means”?
- \* An employee’s leave request must include the expected duration of the leave.

## Prop 206—Paid Sick Leave Notice and Documentation

When the need for leave is foreseeable, the employee must make a good faith effort to provide the employer with advance notice and must make a reasonable effort to schedule the leave during a time that will not unduly disrupt the employer's operations.

## **Prop 206—Paid Sick Leave Notice and Documentation**

If an employer requires notice of the need to use paid sick time where the need is not foreseeable, the employer must:

- \* Have a policy to this effect containing notice procedures for the employee to use; and
- \* Provide a copy of the policy to the employee.

The above is required in order for a leave request to be denied based on improper notice.

# Prop 206—Paid Sick Leave Notice and Documentation

If an employee uses three or more consecutive work days of paid sick leave, the employer can require reasonable documentation that the leave is being used for a proper purpose.

- \* Documentation signed by a health care professional saying that the leave is necessary is sufficient.
- \* A.R.S. §23-373G details various documentation options for situations involving domestic violence, sexual violence, abuse or stalking.

## Prop 206—Paid Sick Leave Notice and Documentation

An employer can never require that documentation relating to the need for, or use of, paid sick leave:

- \* Explain the nature of the health condition suffered by the employee or the employee's family member, or
- \* Describe details of the domestic violence, sexual violence, abuse or stalking.

## Prop 206—Paid Sick Leave Notice and Documentation

An employee's paycheck, or an attachment thereto, must indicate, for that employee:

- \* The amount of paid sick leave available;
- \* The amount of paid sick leave taken to date; and
- \* The amount of pay received as a result of use of paid sick leave.

## Prop 206—Paid Sick Leave Notice and Documentation

Upon the later of an employee's start of employment or July 1, 2017, the employer must give each employee notice of the employee's entitlement to paid sick leave, protection from retaliation for use of leave, and other matters set out in A.R.S. §23-375A.

## **Prop 206—Paid Sick Leave Notice and Documentation**

- \*The notice to employees of rights related to paid sick leave must be in English, Spanish, and such other specified by the Az. Industrial Commission.
- \*Model forms of the employee notice—in all required languages—shall be prepared by the Az. Industrial Commission.

## Prop 206—Paid Sick Leave Notice and Documentation

An employer's use of a paid time off (PTO) policy that does not distinguish between different types of leave is permissible if such policy provides employees with the same or better rights with regard to accrual, use, and other aspects of paid leave for any and all of the purposes referenced in Minimum Wage and Health Families Act.

## **Prop 206—Paid Sick Leave Miscellaneous Issues**

Although using the accrual rate of 1 hour of paid sick leave for every 30 hours of work means that part-time employees will accrue paid sick leave at a slower rate than full-time employees, the “caps” on accrual and use of paid sick leave—40 hours for large employers and 24 hours for small employers—are the same for all employees, including those that are part-time and full-time.

## **Prop 206—Paid Sick Leave Miscellaneous Issues**

For example, for a large employer using the statutory minimum 1 to 30 accrual rate:

- \* An 8 hour per day full-time employee can reach the 40 hour accrual cap in 30 weeks.
- \* A 6 hour per day part-time employee can reach the 40 hour accrual cap in 40 weeks.

The full-time employee has earned 5 full days of paid sick leave. The part-time employee has earned 6 2/3 full days of paid sick leave.

# Prop 206—Paid Sick Leave Miscellaneous Issues

- \*The term “family member” is defined very broadly. For example, it includes certain persons whose relationship to the employee is based on a “*in loco parentis*” status.
- \*Family member also includes “any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.”

## Prop 206—Paid Sick Leave Miscellaneous Issues

- \*The term “year” means a consecutive twelve month period as determined by the employer.
- \*This allows an employer to use its fiscal year for the “year” referenced in the new law.

# Prop 206—Paid Sick Leave Miscellaneous Issues

- \* The requirements set out in the Fair Wages and Healthy Families Act are minimum requirements.
- \* An employer can choose to provide more generous paid sick leave benefits than provided in the Act.

## **Prop 206—Establishes Minimum Standards**

- \* Violations can subject an employer to treble liability and civil penalties.
- \* An employer may not count time taken as paid sick leave as an absence that may lead to discipline, discharge, demotion, suspension, or any other adverse action.
- \* The focus of the preceding provision is likely to focus on “other adverse action.”

## Prop 206—Violations

- How to meld Prop. 206 and FMLA?
  - No “Serious health condition” requirement in Prop. 206
  - Prop. 206 says employer cannot require employee to disclose the nature of the health condition that is the basis for leave.
  - Prop 206 “Family member” is more inclusive than FMLA’s “parent, spouse, son or daughter”

**Prop 206 vs. FMLA**

- \* Substitute teachers are employees of school district/charter school under Prop. 206, unless provided through a private employee services company.
- \* Could a substitute teacher accept an assignment and then request to use accrued earned sick time instead of reporting for the assignment?

## The Substitute Teacher Problem

- U.S. Department of Labor adopted a new FLSA rule that would increase the minimum salary level for exempt employees from \$455 per week (\$23,660 annually) to \$921 per week (\$47,892 annually), effective December 1, 2016.
- A U.S. District Court in Texas enjoined implementation of the new rule nation-wide.
- DOL will appeal the injunction to the 5<sup>th</sup> Circuit Court of Appeals. The expected duration of the appeal process is unknown.

# FLSA Update

If a governing board has adopted salary increases in response to the new FLSA rule, what are its options now that the rule will not take effect?

**FLSA Update**