



HEALTHY FAMILIES ACT

Will the Healthy Families Act Affect Your Business?

Yes. The Healthy Families Act (“HFA”) is an initiative to enact proposed Chapter 4114 of the Ohio Revised Code which, if passed, would require employers with 25 or more employees to provide a minimum of seven (7) days of paid sick leave per year to all covered employees.

As proposed, HFA also prohibits employers from eliminating or reducing leave in existence on the “date of enactment,” regardless of the type of such leave. In all likelihood, the “date of enactment” would be construed to be Election Day 2008, if voters pass the legislation, and therefore any changes to existing policies should be made **before** Election Day.

We recommend an analysis, review, and where appropriate, revision of all leave, disability, and attendance policies before Election Day because even though HFA requires employers to provide seven days of paid sick leave per year, it does not necessarily require employers with current paid leave policies to **add** seven additional days. Instead, as set out below, HFA specifies conditions and employee rights with respect to the accrual and use of up to seven days paid sick per year, with the implication that employers would have to add additional days to the extent that employer policies in effect on the date of “enactment” fail to assure employees of the rights, entitlements and protections set out in the HFA.

What Would the Healthy Families Act Require?

Sick Leave – The HFA guarantees employees who work 30 hours or more per week up to seven days of paid sick leave each year and a pro rata amount of paid sick days for employees who work less than 30 hours per week or less than 1,560 hours per year. The following are further requirements of the HFA:

Medical certification for the use of paid sick leave can be required only when sick leave is taken in increments of more than three consecutive work days.

Employees may carry over accrued paid sick days each year, but employers do not have to permit accumulation of more than seven days per year.

Employees can request paid sick leave verbally or in writing. Foreseeable leave requires seven days’ advance notice to the employer, while unforeseeable leave requires notice “as soon as practicable” after the employee becomes aware of the need for leave.

Paid Sick leave begins to accrue immediately after “enactment” of the HFA and can be used by any and all employees who have worked more than ninety days since date of hire. Newly hired employees cannot use accrued paid sick leave during their first 90 days of employment.

If an employee’s weekly schedule varies, a weekly average of hours worked over the 12-week period preceding the need for sick leave must be used to calculate the normal work week and determine the employee’s prorated sick leave entitlement.

Minimum Time Increments – Similar to the FMLA, the HFA permits employees to take paid sick leave in increments of less than a full day. For periods of sick leave less than a regular work day, the HFA requires the employer to track leave in hourly increments. If the leave is less than an hour, the employer must track leave in the smallest increment the employer’s payroll system uses to account for **absences or other leave**.

Note – as the Act references “absences or other leaves” for tracking purposes, an employer’s policies should distinguish what constitutes an “absence” from the method used to calculate wage due for hours worked.

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Recordkeeping – Employers must maintain records documenting the number of hours worked and paid sick leave taken by employees for a period of three years. Employers will need to have a reliable tracking system for paid sick leave in order to ensure compliance with the **HFA**.

Paid Leave Policies – The **HFA** provides that,

“[a]n employer with a leave policy providing paid leave options shall not be required to modify such policy, if such policy offers an employee the option at the employee’s discretion to take paid leave that is at least equivalent to the sick leave described in this section.”

Accordingly, if an employer currently provides employees with at least seven days of paid time off (e.g., discretionary days, personal days, sick days, or paid vacation days,) the employer may not be required to add additional “paid sick leave,” provided the employer’s policies are written to ensure that an employee has the flexibility to use up to seven of those paid days per year in the manner and form guaranteed by **HFA**.

To take full advantage of this Section, most employers will have to amend existing policies **before Election Day** to incorporate the necessary flexibility to enable employees to accrue and use at least seven of the paid days as “sick leave,” in the manner and subject to the protections of the **HFA**.

Family & Medical Leave Act – While the FMLA requires 12 weeks of *uncompensated* time off for employees with “serious health conditions” for themselves or an immediate family member, the **HFA** requires seven days of *compensated* time that can be used for any medical need for employees or their immediate family members. .

*Although not specified in the **HFA**, it is likely that the provisions of the FMLA which permit an employer to designate qualifying time off as FMLA leave, would apply, and that employers will have the authority to designate **HFA** time as FMLA time and to count the time off concurrently under both Acts.*

No Fault Attendance – As with the FMLA, the **HFA** prohibits employers from assessing points or otherwise counting the seven days of paid **HFA** leave as an absence under a no-fault attendance policy, and Employers must alter their no-fault attendance policies to comply with the **HFA**.

Interference – The **HFA** prohibits employers from discharging or discriminating against employees for using **HFA** paid sick leave or for complaining about any unlawful practice under the **HFA**. Employers are also prohibited from considering an employee’s use of paid sick leave as a negative factor in evaluating the performance of any employee or qualifications of any applicant for employment.

For More Information

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About Marshall & Melhorn, LLC

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