

# **FREQUENTLY ASKED QUESTIONS**

## **PAID SICK LEAVE**

These are questions that were compiled after each of the Paid Sick Leave Information Sessions held by Metro Health in June and July. They are provided here as a reference to anyone. If and when City Council amends the Paid Sick Leave Ordinance, answers that are still relevant will be provided to these questions. Please continue to visit the paid sick leave webpage for updates.

<b><u>ORIGINAL SET OF QUESTIONS &amp; QUESTIONS FROM 6/27 INFORMATION SESSION</u></b>	<b>1</b>
<b><u>QUESTIONS FROM INFORMATION SESSIONS ON 7/1/19 AND 7/2/19</u></b>	<b>4</b>
<b><u>QUESTIONS FROM INFORMATION SESSION ON 7/10/2019</u></b>	<b>6</b>
<b><u>QUESTIONS FROM INFORMATION SESSION ON 7/18/19</u></b>	<b>10</b>

### **Original set of questions & Questions from 6/27 Information Session**

1. What is the San Antonio Paid Sick Leave (PSL) Ordinance?
2. Who is included in the PSL ordinance?
3. Who is considered an employee?
4. Who is considered an employer?
5. What does the ordinance do?
6. When does the PSL ordinance take effect?
7. Does the PSL ordinance only apply to businesses doing business with the city?
8. Which City department is responsible for enforcing the PSL Ordinance?
9. Does the PSL ordinance include City of San Antonio employees?
10. Are volunteers covered under this ordinance?
11. Are undocumented employees entitled to PSL?
12. Are family members who work for a parent or spouse included?
13. Does the PSL ordinance cover the employees of companies located outside the city of San Antonio when those employees actually work within San Antonio?
14. A temporary staffing agency supplies employees to a City of San Antonio job assignment. Are these employees covered under the ordinance?
15. When determining employer size, is the total number of employees employed over the past 12 months or the maximum number of employees at any given time over the preceding 12 months considered?

16. If an employer offers a Paid Time Off (PTO) plan or other sick or vacation leave, does that satisfy the requirements of the ordinance?
17. Are employees that work outside of the City of San Antonio considered in the employer size number?
18. Can a contract with a labor organization representing employees call for a lower than 48 or 64 hour yearly PSL cap?
19. Does this ordinance apply to those employees with a collective bargaining agreement (Unionized)?
20. If a pattern develops where an employee is taking one day off for sick leave (not 3 consecutive days), can I request verification be provided?
21. If I provide 100 hours of PTO (they can use for whatever they want, it doesn't have to be paid sick leave) and they use it all on vacation time rather than for sick leave, but they then become sick. Would I need to provide them with paid sick leave, since they used it as vacation time, rather than sick leave?
22. If an employee separates from the company, do you have to pay the employee for the accrued sick leave?
23. Will staffing agencies or the company an employee is working for be responsible for PSL?
24. How is a family member defined in the PSL ordinance?
25. What does the PSL ordinance require?
26. Can an employee be reprimanded for requesting or using earned leave under PSL?
27. Are employers required to provide an annual report to the city?
28. How much paid sick leave can employees accrue?
29. Do employees accrue PSL time in hour-unit increments?
30. If an employee carries over hours below the minimum cap, can they still accrue hours the next year?
31. When does an employee qualify to begin accruing paid sick leave?
32. If an employee carries over the baseline amount of hours, can they still accrue hours the next year?
33. If an employer makes the full number of minimum hours available at the beginning of the year (front loading), is the employer required to allow carry forward of hours, and accrual of PSL hours?
34. Is paid sick leave accrued retro-active to Jan 1st, 2019?
35. Must an employer allow accrual when an employee is not working (e.g. vacation or out sick)?
36. How is overtime (time over 40 hours a week) counted in the "every 30 hours worked" calculation?
37. If an employee uses up the 64 hours of PTO before the end of the year can the employee ask for more paid sick leave in that year?
38. If an employee has used 64 hours of paid sick leave before August 1st, 2019, is the employer required to provide more sick leave for 2019?
39. Is accrual based on pay period hours or YTD cumulative hours?
40. Is it mandatory to use January to December as a calendar year, or can the year be determined by the employee's anniversary date?
41. If the business is outside of San Antonio but many drivers spend time in San Antonio while making deliveries within San Antonio are they covered by PSL?
42. If an employer front loads hours at the beginning of the year on January 1st, how would they calculate remaining paid sick leave once the ordinance goes into effect on August on 1st, 2019?
43. For new hires – does the eighty (80) hours worked before accrual starts mean: 1) even after the eighty (80) hours, the employee won't get accrued hours for the first (80) hours worked and 2) new employees can't take any PSL until after they have worked eighty (80) hours?
44. What is an accrual spreadsheet?
45. Does an employee lose accrued and unused PSL hours at the end of the benefit year?

46. If an employee separates from their employer and is later re-hired, does the employee lose their previously earned PSL?
47. If I have carried over the baseline amount and use all my carried over paid sick leave, can I continue to accrue more PSL up to the baseline amount again?
48. If an employee leaves the company and the company pays the employee for their accrued paid sick leave, if they return does the company need to reload the hours?
49. What qualifies as paid sick leave?
50. How soon is PSL available for use?
51. What happens with my PSL if I am re-hired?
52. What is considered a timely request to use PSL?
53. An employer can limit an employee to 8 days of PSL. Does this mean if they use 1 hour of PSL on 8 separate days, they are restricted from using any more hours.
54. Is the 60-day waiting period considered 60 calendar days or 60 working days?
55. How many distinct days of PSL can employees use annually for a large employer?
56. What if an employee takes three consecutive days but refuses to turn in verification.
57. Can PSL be denied if the amount of time requested exceeds the available hours accrued.
58. In the case an employee is out for three consecutive days, but has not seen a doctor, in example stalking, domestic abuse etc., what type of verification can the employ require?
59. How do employees get paid if they have a shift differential?
60. If an employee uses PSL for three (3) consecutive days, but each day is a different excuse, what documentation is required?
61. What records must employers maintain?
62. What records must employers provide?
63. What signage/notices must employers provide?
64. Will Metro Health be able to audit businesses financial records?
65. Is including the ordinance in a handbook sufficient to meet the requirements of “including a notice of the employee’s rights and remedies” in the handbook, if a handbook is distributed?
66. Once signage from the City is available, is including a direction in the employee handbook for them to see the signage publically posted adequate notice for the employee rights and remedies notice requirement?
67. When will signage be available on the City’s website?
68. If accrued hours are on pay stubs, is the employer meeting the requirements of notifying the employee?
69. If an employer frontloads hours, will providing available and used overall leave to the employee be enough or does it need to specifically show time that was designated as paid sick leave?
70. What languages do you have the signage translated in?
71. How will the ordinance be enforced?
72. When will civil penalties be enforced?
73. As a small business, can PSL be phased-in based on employee tenure?
74. How can a concerned person file a complaint?
75. Is there a chance the PSL ordinance will be repealed after August 1st, 2019?
76. Is there a number employees can call with questions or for more information?

## **Questions from Information Sessions on 7/1/19 and 7/2/19**

1. Can an employer have an accrual method for Part time employees and Front load for full time employees?
2. Is PSL “protected” from company attendance policies like FMLA?
3. How do employers front load if the ordinance begins Aug 1, 2019?
4. If employees have access to view their accrued time off do employers still have to provide monthly notice?
5. Is there any pending litigation that might keep the PSL ordinance from being implemented?
6. Can an employer use Paid Time Off for Full time permanent employees and paid sick leave for part time/ temporary employees?
7. If company headquarters is out of state and they want to call with questions what number other than 311 can they call?
8. We have a group of instructors that get paid based on sign-ups for music lessons; we don’t track hours of teaching pay solely based on income generated by lessons. Are these instructors eligible for PSL?
9. We have employees that get a flat rate paid per day, how is this calculated with the PSL ordinance?
10. What minimum increments can the sick leave be used?
11. Could an employee arrive late each day and ask for paid sick leave?
12. How do we handle tipped employees PSL? For example their hourly wage is \$2.13.
13. How does this work for employees that work out of their home and control their own hours and flex time employees working on business premises?
14. May PSL be paid at minimum wage vs current hourly wage?
15. We have a 90 day introductory period for all new hires where no benefits are available, how would the ordinance work under this situation?
16. How do you calculate salaried employees?
17. Does the PSL ordinance change salaried employees to non-exempt status?
18. Are incorporated municipalities within San Antonio included? Example – Alamo Heights?
19. Will you cite for violations starting August 1st?
20. How long is this ordinance in place? Will it expire?
21. After all the community meetings are completed how can I receive the most recent FAQ that includes questions from all the meetings?
22. Is accrual retro-active to Jan 1<sup>st</sup>, 2019?
23. May an employer forego accruing PSL if earned hours are paid out as wages as they are earned?
24. What is the penalty when you cite a violation?
25. Is a calendar year or an employee’s hire date used for front loading hours?
26. Has there been an economic impact study performed in advance of the ordinance going into effect?
27. How do we keep track of the 80 hours an employee works within the city limits?
28. How does the PSL ordinance affect FMLA?
29. Is accrued sick leave payable upon resignation, firing, or retirement?
30. What determines a medium/large employer? What determines a small employer?

31. If you front load more than forty-eight (48) hours for a small employer every year on the employee's anniversary for date of hire, is this is compliance?
32. Will anonymous complaints be investigated?
33. Can there be different policies for different types of employees? For example, hourly workers must accrue PSL and salaried employees have their PSL front loaded
34. Under FLSA of 1938, commissioned employees are not required to record time worked. Commissioned auto dealer sales people do not currently receive any benefits or paid time off. How will this ordinance apply to them?
35. Can we request all paid sick leave pay requests be put in writing?
36. Are there times when PSL cannot be used, such as a company holiday or closed office?
37. If an employee starts in the middle of the year and front loads PTO, do we have to pro-rate the sixty four (64) hours?
38. Will businesses be notified of complaints prior to investigations?
39. Does the PSL ordinance apply to federal contractors working on military installations if the employer is a non-profit?
40. What sanctions are in place for employees that lie or abuse their employer's paid sick leave policy?
41. If an employee's pay varies from day to day how should we calculate sick leave?
42. Is the use of FMLA counted as hours worked? For example, the use of vacation time means that sick leave does not accrue under the ordinance. How about FMLA?
43. If PTO is front loaded, do employers still have to provide a monthly statement?
44. Can the employer start front loading hours in Jan 2020?
45. Are employers allowed to set their own fiscal year?
46. Do family members working for an employer have to be paid sick leave as well?
47. If I am an employer and have 25 total employees but 20 work in Houston and only 5 work in San Antonio, would I be considered a medium/large employer?
48. Can an employer do the accrual method for the first two years then switch to the front loading method?
49. Scenario: Employees are given 10 days a year which may be used for vacation or sick leave. The hours are available at the beginning of the year. Is this in compliance with the ordinance or do we need to separate into six (6) days of sick leave and four (4) days of vacation?
50. Scenario: Currently, for part time employees, they earn up to two (2) hours of sick leave each pay day based on hours worked. If a part time employee will earn 2 hours X 26 pay periods = 52 hours are we in compliance?
51. Scenario: We employ three hundred and fifty (350) employees. We currently rollover forty eight (48) hours at the end of the year. Do we have to rollover sixty four (64) hours with the new ordinance?

## Questions from Information Session on 7/10/2019

1. Can employees donate sick time to an employee who has used up sick days due to catastrophic illness?
2. Can an employer mandate sick time be used in a minimum of 4 hour increments?
3. If an employee exhausts their sick time can they then utilize the workers' compensation benefit?
4. What is a family member? Can a service dog be considered a family member?
5. Can an employer request part time employees who work a limited number of hours each week to schedule appointments during their days off from work?
6. If an employer requires an exempt employee to track hours regardless of the purpose are we jeopardizing their exempt status?
7. Are off site employees not working or living inside San Antonio city limits included in employer count?
8. At day 3 of an absence, if a doctor's note is not provided, is an employee allowed to turn in just a written note from themselves?
9. When does the "10 business days" to voluntary compliance begin?
10. If there are two businesses under one main name and one has fewer than 16 and one has over 16 what size rule applies?
11. Can the employer that provides vacation deduct paid sick leave from vacation time?
12. If an employee goes to a clinic on day one and their documentation states they can go back the same day but they use 2 more days, can we discipline them?
13. When an employer provides a 401k plan matching opportunities do they have to match dollars earned for PTO hours?
14. Can an employer have a form to request PSL?
15. Is a monthly notice to employees the only way to notify employees of their available sick leave or can we just make it available on paystubs?
16. Do PSL rules apply to non- profit organizations?
17. How much time will we have to implement the handbook rule?
18. Can an employer pay minimum wage for PSL?
19. How long do you have to provide an employee notice of accrued hours after they quit?
20. Do we have to make modifications to our accrual for sick leave if our policy is already more generous than the 64 hour requirement?
21. What do part time employees earn in regards to PSL?
22. What happens if the employee falsifies a written excuse to use PSL?
23. Is carry over mandatory?
24. If your PTO pays out the balance in the following year do you still need to rollover unused sick leave?
25. If the company gives PSL the first day of the year, does the employer give the full amount in August or is it prorated?
26. For companies outside of San Antonio, does an employee need to work eighty hours in San Antonio or eighty hours total?
27. How do salaried employees accrue PSL?
28. Can I ask for a doctor's note on day three?
29. If we front load PSL, how will we determine PSL hours based on overtime?

30. Does the recipient of gifted PSL hours get to add those hours to the 64 hours that the recipient personally earned?
31. Are stipend employees considered under the ordinance?
32. We are paid biweekly and our PTO accrual is 7.39 per bi weekly pay period. Does this meet the criteria of the ordinance?
33. For exempt employees who may work up to eighty hour weeks, do they get one hour for hours in excess of 40?
34. What resource does an employer have when they suspect or are aware that an employee is abusing PSL?
35. For temp to hire employees, do hours accrue when a temp agency employee transfers to the company or does the process start over?
36. Why are labor agreements exempt from the minimum amount of PSL time?
37. How is compensation calculated for tipped employees?
38. If my business is on a military base do we still need to abide by the city ordinance?
39. How do we calculate hours for an employee that is hired mid-year?
40. What do I need to provide if an employee files a complaint?
41. What if an employer cuts employee's hours to thirty per paid period?
42. If an employee uses eight hours of the sixty-four, accrued do they start earning time to get them back to sixty-four in the same one year period?
43. Can an employer create a policy that the 1<sup>st</sup> year you accrue and then there after you can front load?
44. If unused PSL hours can roll over, how many years can they accrue?
45. Is Ft. Sam considered within the city Limits of San Antonio?
46. Is the ordinance stating we cannot request verification for absences for less than three days?
47. What if a work day is only six hours, do we have to pay them for eight hours?
48. If the employee does not take the time off do they lose them? Can they opt to get paid for the hours not taken?
49. Per our sick policy, full-time employees are given three sick days each January, if they were here for one full year before. If they weren't here for the entire year before they get a prorated amount of sick time in January. Do we have to give five days for the rest of 2019 to satisfy PSL?
50. Can PSL be satisfied with accruing each pay period to get to eight days?
51. If the ordinance isn't enforced until April 1, 2020, are we required to immediately provide what should have been accumulated and/or carry over hours from August 1, 2019 in order to not be subjected to any fines? Or can accrual/can your application start at that point?
52. If an employee is out due to stalking, domestic violence, etc. is a verification statement required?
53. Can a company have two different policies for full-time and part-time employees?
54. What do we do with the regular call-in person and how do we handle those challenged employees who will take advantage?
55. If employers have written attendance policies can they hold their employees to that policy & still be in compliance with the ordinance?
56. Can we pay for unused sick days at years end instead of carry over?
57. We have one owner & fifteen employees – are we a small or large employer?

58. If we front load hours, do we have to keep track of hours earned?
59. If an employee has forty carry over hours do you give them twenty-four in following year? If the employee has ten hours in the second year do we add an extra ten hours on the second year up to sixty-four hours?
60. If we have 104 hours of PTO or greater every year, do we have to track the amount of “sick time” used?
61. Why is it thirty hours and not forty hours as most payable and vacation is tracked, per week?
62. How are remedies determined when a violation has occurred?
63. If we have some employees that work in San Antonio but 65% don’t work in San Antonio at all does this apply to workers who never work in SA?
64. Is there a difference in accrual start time between current employees and new employees?
65. Our company accrues more than sixty-four hours of PTO a year for employee. However, the accrual is at half rate per hour than one hour for every thirty hours worked. Do we have to reprogram our payroll system even if at the end of the year they get more?
66. If a client ends an employer’s assignment because an employee used sick leave, can that be considered retaliation? Note – employee is still eligible for assignment at another client. They have not been terminated, but they now have no hours until a new assignment becomes available.
67. If unused time must be carried over and the employee must also accrue sixty-four hours on top of what is carried over, the employee could potentially accrue hundreds of hours over a few years. What is the point if the employer can limit use to a maximum of 64 hours per year? Having a large amount of accrued time that cannot be used affects accounting and potentially the tax liability of the employee and the employer.
68. What is considered a “violation”?
69. If the employer’s policy has incorrect accrual or carry over, would that be considered a single violation or multiple because it affects more than one employee?
70. What is the standard for determining retaliation under the ordinance? Is it similar to retaliation under Title VII or something else?
71. If the employer can limit use of sick leave to sixty-four hours per year, why does the employer have to allow accruals over that limit when there is a carryover?
72. How will the City of San Antonio enforce the ordinance for employers outside the city limits but whose employees may perform work in San Antonio? Does the City have jurisdiction over such employers?
73. What language do you expect employers to include in their handbooks regarding their rights and remedies, as is required by the ordinance?
74. The ordinance refers to “days”, but accrual is in “hours”. For some employees, a “day” is eight hours and for another it is twelve hours or six hours, etc. When the ordinance states that the employer can limit use of sick leave for up to 8 days, what is meant by that? Days as they pertain to the individual employee (i.e. depending on the employee’s length of a working day), or a specific number of hours?
75. If an employer’s current policy allows accrual of seven hours per month, up to ten days a year, which is above what the ordinance requires, does the employer have to change the accrual rate to one hour per every thirty hours worked or can the employer leave its policy as is?

76. Is there a minimum age that the PSL applies to? For example, we hire high school interns who are sixteen and seventeen years old, most of whom only work with us for up to nine weeks over the summer, but who are paid for forty hours per week. Would we be required to give them sixty-four hours of PSL? (We are an employer with 450+ employees)
77. Does an employee have a private cause of action? If there is a violation, such as retaliation, what is the penalty – up to \$500? What does the employee get? Who has the burden of proof of a violation – the employee, employer or the City?
78. What is the cost for taxpayers in SA to develop this program?
79. Why didn't City Council put this up for vote instead of deciding City Council & Mayor instead of citizens of San Antonio?
80. If an employee has a PTO policy that complies with the ordinance, does it need to provide monthly notice to employees re: amount of PTO (or does it need to separate "sick" time used)? Do all PTO policies (that comply) are now subject to monthly notice?
81. What is sufficient notice of rights and remedies in a handbook? For employers using one handbook for many cities/states, attaching the ordinance does not make sense what is sufficient notice of rights & remedies in this situation?

## Questions from Information Session on 7/18/19

1. Is a partner (significant other) considered a family member?
2. If my employee works at an offsite location how do I comply with the poster requirement?
3. Our current paid time off policy requires them to use 40 hours' time to prevent stress and job burn out and it is greater than the ordinance requires can I require them to use the leave?
4. If you have 16 employees and are paying 64 hours then you downsize to 10 employees would you then be able to pay 48 hours?
5. If they carry over 4 hours do they get 68 hours the next year or does it max at 64?
6. If employees tend to take off hangover Monday's do we have recourse?
7. If the employee uses all PSL and then quits after 3 months?
8. Do we still have to give them a new 48/64 hours or are the carry over hours applied to the 48/64?
9. Will employees be allowed to appeal the ruling and fine?
10. If an employee is out on Monday and Tuesday and they work 40 hours Wed-Friday do they earn overtime?
11. Can an employee that has accrued time take PSL in increments?
12. For hourly employees –wait staff what is the hourly they are compensated?
13. If we offer one week of PTO per year how would we calculate the amount of PSL?
14. We have two businesses with 6 employees each; do you count it as 6 or 12?
15. Do we have to pay now or next April?
16. Will there be a monthly reporting required to Metro Health?
17. If an employee quits do we pay them the accrual in final check?
18. If an intern is paid a flat rate not based on hours worked do they still get paid sick leave?
19. If an employee is offered 40 hours vacation, is the PSL for the employee only 24 hours?
20. Can some employees be front loaded with PSL while others on accrual bases?
21. What does a business do if half the staff calls out on specific days?
22. Is employee defined by full time equivalency? 2 PT=1 FT
23. Do full-time employees and part-time employees receive the same number of hours of sick leave, if the hours are given upfront?
24. We are a retail store with salaried salesmen. You mentioned to treat accrue salaried employees at 40 hours, but during Christmas they also work a lot of extra hours. Do you recommend tracking their hours and using the 30 hour accrual?
25. Can we take half a day if we get sick at work?
26. On page 6, if I read right, if I get 4 weeks paid vacation, I have to use my own time; so I will not get paid sick leave.
27. If an employer who has more than 6 employees who work in San Antonio, but also employs people who telecommute from places such as New Braunfels, are those telecommuters covered by this ordinance?
28. Can you please explain how accrual of paid sick leave applies for independent contractors, temporary employees, and paid interns? For example, what about temporary employees who are hired to work

- sporadically throughout the year? What if the temp. employee is brought in to work only 2 weeks (80 hours)? Are they entitled to paid sick leave?
29. After 4/1/2020, will penalties be back dated to 8/1/2019? (Can penalties be retroactive?)
  30. For a large employer, can we test with one location first, and then add on other locations before 4/1/2020?
  31. Does the ordinance apply to Live Oak, Hollywood Park, and Leon Valley?
  32. Regarding #24: “an employee’s spouse, child, parent, or any other individual related by blood or whose close association with the employee is the equivalent of a family relationship” – Does this apply to friends/non-relatives?
  33. Are on demand labor applications such as Bluecrew, Varyable, etc. affected by the ordinance?
  34. Can we offer full-time employees the baseline and part-time employees accrual, or is it necessary for all to be the same?
  35. How does the law work for salaried employees who are paid regardless of being present or not?
  36. Employee does not show up on time, employee calls to see if they are planning on coming I, employee claims to be sick but did not call before shift began, is this considered a timely request?
  37. If we provide sick accrual balances on our employee pay stubs are we in compliance?
  38. If an employer pays out unused PSL upon termination, and then rehires within 6 months, will the rehired employee be entitled to the paid sick leave already cashed out?
  39. We have an employee who works “as-available/needed”. Some months he has zero hours, other months he has 15-20 hours. Would he still be eligible to accrue sick leave?
  40. If an employer decides to combine the sick leave with an employee’s vacation into a PTO bank, do they have to decide to do this before August 1st or can they change this at any time?
  41. If an employee does not use earned paid sick leave at the end of the year, can he sell them back to the company, or can the company pay out all earned paid sick leave at the of each year and not carry over, and still be in compliance?
  42. In regards to time tracking: can we use proper time sheets or will we need to have a digital time stamp to verify?
  43. Our employees are based out of San Antonio however; they travel outside the city to do their work. Does paid sick leave apply to us?
  44. How does the carry over work?
  45. Can I give the sick leave hours upfront for the year?
  46. If I give it up front, and employee leaves before the year. Do I have to pay them the remaining hours of sick leave?
  47. If regulation starts on August 1 and we plan to implement our paid sick leave on a calendar year basis, do we prorate the required hours (48 or 64) to be (20 or 26.6) hours available to them on 8/1?
  48. If offering a comprehensive PTO program (both vacation & PSL), can you still request that vacation be pre-approved and this time can still come from the same PTO bucket?
  49. Is accrual based on a pay period or YTD cumulative hours?
  50. Can an employer require a minimum number of hours in which PSL can be taken? I.e. Can we say they must take at least 4 hours or at least 8 hours or do we have to allow for one hour increments?
  51. What is the 60 day waiting period associated with?

52. PSL does not require time to be requested, so the employee might not know they do not have enough hours. What recourse does the employer have in this case when the hours have been exceeded?
53. Why was the PSL issue never on the ballot for Citizen vote?
54. Are there any annexations that will be exempt from this ordinance?
55. We upload all hours on January 1 of each year for our employees based on years of service for them to use as vacation time. (1-7 years = 120 hours; 8-14 years = 160 hours; 15+ years = 200 hours). Do I need to add more days now for paid sick leave or can they call in and request these days as paid sick leave?
56. How does this new PSL policy work in conjunction with attendance policies that accrue points that can lead to corrective actions?