

**WASHINGTON PAID SICK
LEAVE (I-1433)**
SEPTEMBER 21, 2017

Sean Brown, Employment Attorney



We counsel companies in
California, Idaho, Oregon, and
Washington on complex
employment-related issues.

Today's Presenter & Moderator



SEAN BROWN

Employment Attorney

Sean is a member of the Idaho and Washington State Bar Associations.



JODI SLAVIK

Employment Attorney & Strategic Services Director

Jodi is a member of the Washington State Bar Association.

The information presented here is not intended to be legal advice

VIGILANT

Agenda

- Introduction
- Covered employers and employees
- Basic requirements
 - Summary
 - Leave year
 - Accrual/frontloading
 - Rate of pay and leave usage
 - Definitions
 - Administrative requirements (notice, verification, cashout, etc.)
 - Employee remedies
- Steps to take before January 1, 2018
- Questions

4

VIGILANT

Introduction

- Washington Paid Sick Leave Law:
 - Passed by initiative (I-1433) in November 2016
 - Initiative created new higher minimum wage as well
 - Labor and Industries (L & I) tasked with creating rules (WACs) to help administer the law (**final rules – expected mid-Oct.**)
 - Those with employees in cities where local paid leave ordinances are in place will now have to administer both leaves (may overlap but must meet minimum requirements of ordinance and state law)

5

VIGILANT

Covered employers and employees

VIGILANT

Covered employers and employees

- Employer includes any of the following acting directly or indirectly in the interest of an employer in relation to an employee:
 - Individual, partnership, association, corporation, business trust, or any person or group of persons.
- Employee as defined by Washington’s Minimum Wage Act, [RCW 49.46.010](#)

7

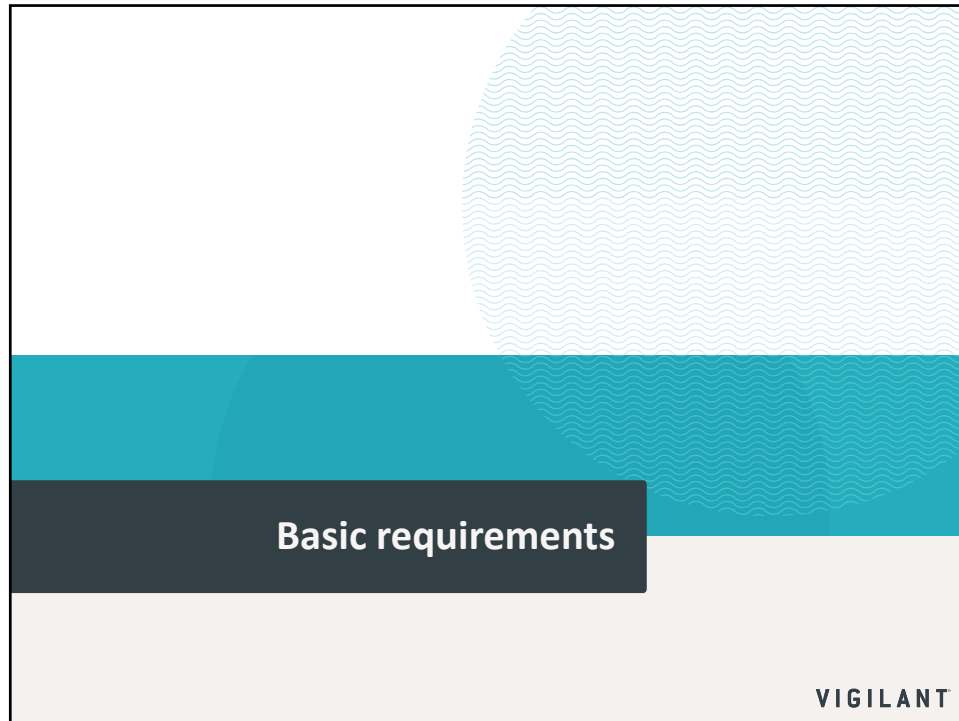
VIGILANT

Covered employers and employees

Employee situation	Law applies
Anyone covered by WA minimum wage (RCW 49.46.010)	Yes
Exempt employees as defined by WA law	No
Independent contractors	No
Work training program administered under state or federal assistance program	?
Limited exceptions for public employees (elected officials, members of the legislature and WA DOT ferry operating crews, etc.)	Some
Individual care providers (RCW 74.39A.240)	Yes

8

VIGILANT



Summary

- **Effective:** January 1, 2018
- **Accrual rate:** 1 hour for every 40 hours worked, including overtime hours. No cap on accrual.
- **Frontloading:** May frontload but must meet or exceed requirements for accrual, use, and carryover.
- **Usage:** Begins 91st day of employment. No cap on usage.
- **Carryover:** Up to 40 hours of accrued but unused paid leave.

10

VIGILANT

Summary

- **Written policy:** Employer must have a written policy and provide to employees by start of work or March 1, 2018 (for current employees).
- **Notice of leave amount:** Employer must provide information in writing to the employee at least monthly concerning the employee's leave amount.
- **Existing Policies:** Employers may use existing paid leave policies (e.g., PTO, sick, vacation), but must make all necessary adjustments to comply with requirements of the law.

11

VIGILANT

Leave year

- Leave year definition can be:
 - Calendar year, fiscal year, benefit year, employment year, or any other fixed consecutive twelve-month period established by the employer or collective bargaining agreement
- Default leave year is calendar year
- May have different leave years for different groups

12

VIGILANT

Accrual/Frontloading

Accrual method:

- Begins accruing on January 1, 2018, or first day of work, if later
- 1 hour for every 40 hours worked (actually worked)
 - Does not accrue during periods of leave or holidays
 - Must have written policy informing employees of this
- Must account for regular hours and overtime hours
- Reminder – no cap on accrual or usage

13

VIGILANT

Accrual/Frontloading

Frontloading method:

- Must still meet or exceed all requirements of law
- Frontloaded amount must be based on a reasonable calculation of the number of hours the employee will work. Retain documentation of “reasonable calculation.”
 - For example: Review hours worked in previous year(s) and use those numbers to determine frontloaded amount.
- You must tell the employee how much is being frontloaded and for what period of time that amount represents. Although not required by law, it might also be beneficial to tell employees what the calculation is.

14

VIGILANT

Accrual/Frontloading

Frontloading method (cont.):

- Must reconcile to actual hours worked
- Prohibited from deducting “extra” leave when reconciling, if leave was already used
- Part-time employees and those hired mid-year – based on amount of leave the employee would accrue during the remainder of the leave year
- Must have written policy explaining specifics

15

VIGILANT

Accrual/Frontloading

Frontloading method (cont.):

EXAMPLE 1 – Reasonable Calculation:

Employee worked 2000 hours last year. Divide amount by 40 for a total of 50 hours the employee would have accrued last year to get reasonable calculation.

$$2000 \text{ hours worked} / 40 = 50 \text{ hours of leave}$$

EXAMPLE 2 – Reconciling:

Same facts as 1. Employer decides to reconcile during last quarter of the year. After reconciling, employer realizes employee would have only earned 40 hours, if using accrual method. Employee has already taken all 50 hours of paid leave.

Employer cannot deduct 10 hours the employee would not have earned

16

VIGILANT

Rate of pay and leave usage

Rate of pay:

- Employees must be paid their regular rate of pay:
 - Includes: differential pay (i.e., shift differential)
 - Does not include: overtime, tips, gratuities, service charges, holiday pay, or other premium rates
- If leave is used during period of overtime, only regular rate of pay must be paid (not time and one-half)
- Rules provide example rate calculation for fluctuating hourly pay rates, commissioned employees, piece-rate employees, and nonexempt salaried employees

17

VIGILANT

Rate of pay and leave usage

Usage:

- No cap on leave use each year
- Employees may use leave in increments consistent with the employer's payroll system and practices, not to exceed one (1) hour. So, if employer rounds time worked in 15-minute increments, the employee is allowed to use leave in 15-minute increments.
- Employers may seek variance from L & I on increments of use for "good cause"

18

VIGILANT

Rate of pay and leave usage

Usage (cont.):

EXAMPLE:

Employee clocks in at 8:04 AM and clocks out at the end of the day at 11:54 AM. Employee's work time is rounded to the nearest quarter-hour (15 minutes). So, employee is paid as though he worked from 8:00 AM to 12:00 PM and is paid for 4 hours, even though employee technically only worked for 3 hours and 50 minutes.

Because you round to the nearest 15 minute increment when paying employees, you must allow the employee to use leave in those same 15 minute increments.

19

VIGILANT

Rate of pay and leave usage

Leave may be used by an employee for their own or for family member's:

- Mental or physical illness, injury, or health condition;
- Medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or
- Preventive medical care.

20

VIGILANT

Rate of pay and leave usage

Leave may also be used for:

- Public health emergency – closure of employee's place of business, child's school or place of care by order of a public official for any health-related reason
- Domestic violence, harassment, sexual assault, or stalking, as detailed in the domestic violence leave act, [RCW 49.76](#)

21

VIGILANT

Definitions

Family members:

- Child – Biological, adopted, foster child, stepchild, or a child to whom the employee stands in loco parentis, is a legal guardian, or is a de facto parent, regardless of age or dependency status;
- Parent – Biological, adoptive, de facto, foster parent, stepparent, legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child;
- Spouse;
- Registered domestic partner;
- Grandparent;
- Grandchild; or
- Sibling.

22

VIGILANT

Administrative requirements (notice, verification, cashout, etc.)**Employee notice for use of leave:**

- May require employees give reasonable notice so long as it does not interfere with an employee's lawful use of leave:
 - Foreseeable leave: at least 10 days notice
 - Unforeseeable leave: follow general call-in procedure but in an emergency other person may call in on behalf of the employee

23

VIGILANT

Administrative requirements (notice, verification, cashout, etc.)**Employer notice of leave balance:**

- When using accrual method:
 - Amount of leave earned since the last notification;
 - Amount of leave used since the last notification; and
 - Total amount of leave available for use.
- When frontloading:
 - Total amount of leave available for use

24

VIGILANT

Administrative requirements (notice, verification, cashout, etc.)**Verification:**

- May require verification only for absences of more than 3 consecutive scheduled workdays
- Must have written policy

25

VIGILANT

Administrative requirements (notice, verification, cashout, etc.)**Cashout:**

- No obligation to provide financial or other payout for accrued and unused paid sick leave upon termination, resignation, retirement, or other separation from employment
- Cashout at separation is allowed, but must be voluntary, paid at or above the employee's regular rate of pay, and we recommend putting the arrangement in writing
 - For example: Employee makes \$20/hour. Employee must be paid that rate for any cashout of leave.

26

VIGILANT

Administrative requirements (notice, verification, cashout, etc.)**Rehired workers:**

- Reinstated accrued unused leave if worker returns to work for within 12 months (returns to any location)
- Previous period of employment must be counted for purposes of determining the worker's eligibility for leave usage

27

VIGILANT

Administrative requirements (notice, verification, cashout, etc.)**Records requirements (RCW 49.46.070):**

- Employer shall make and keep in or about the premises:
 - Each employee's paid sick leave hours accrued each month,
 - Each employee's paid sick leave hours used each month,
 - Balance of leave (monthly and at end of year), and
 - Leave not carried over into next leave year (the lost leave)

28

VIGILANT

Administrative requirements (notice, verification, cashout, etc.)

Employer may not:

- Discriminate or retaliate against an employee for exercising any rights under the chapter
- Adopt or enforce any policy that counts the use of paid sick leave as an absence that may lead to or result in discipline
- Require an employee find a replacement worker to cover hours the employee is on paid sick leave
- Hinder or delay enforcement of the law, refuse L & I admittance to any place of employment, or fail to make, keep, or preserve records required, or falsify records

29

VIGILANT

Administrative requirements (notice, verification, cashout, etc.)

Administrative remedies and employee lawsuits:

- L & I accepts and investigates complaints
- Employees can sue immediately and independently of L & I complaint process
- Violation and conviction of any violation of the chapter ([RCW 49.46](#)) is a gross misdemeanor
- Final rules for enforcement are due out in December

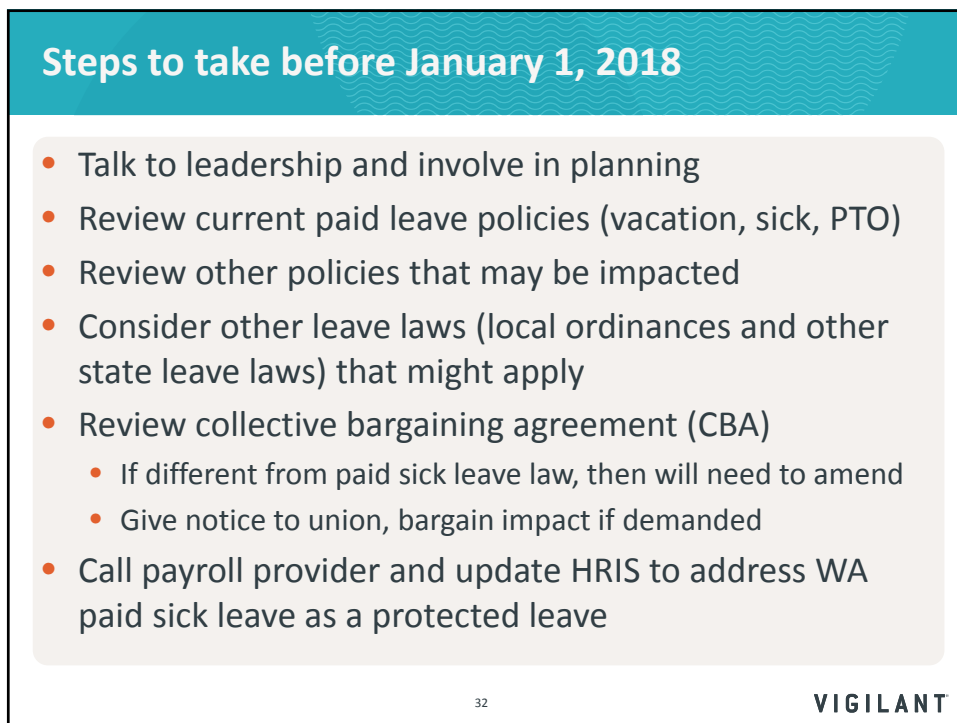
30

VIGILANT



Steps to take before Jan. 1, 2018

VIGILANT



Steps to take before January 1, 2018

- Talk to leadership and involve in planning
- Review current paid leave policies (vacation, sick, PTO)
- Review other policies that may be impacted
- Consider other leave laws (local ordinances and other state leave laws) that might apply
- Review collective bargaining agreement (CBA)
 - If different from paid sick leave law, then will need to amend
 - Give notice to union, bargain impact if demanded
- Call payroll provider and update HRIS to address WA paid sick leave as a protected leave

32

VIGILANT

Steps to take before January 1, 2018

- Keep up with final rules and any other L & I actions
 - Vigilant newsletter announcements
- Make a plan for complying
 - If multiple state employer:
 - Same/Different policy for each state?
 - One policy for all with most beneficial parts of all laws/ordinances?
 - What to put in handbook?
 - Frontload leave or use the accrual method,
 - If frontloading leave, how much and how often to audit the leave?

33

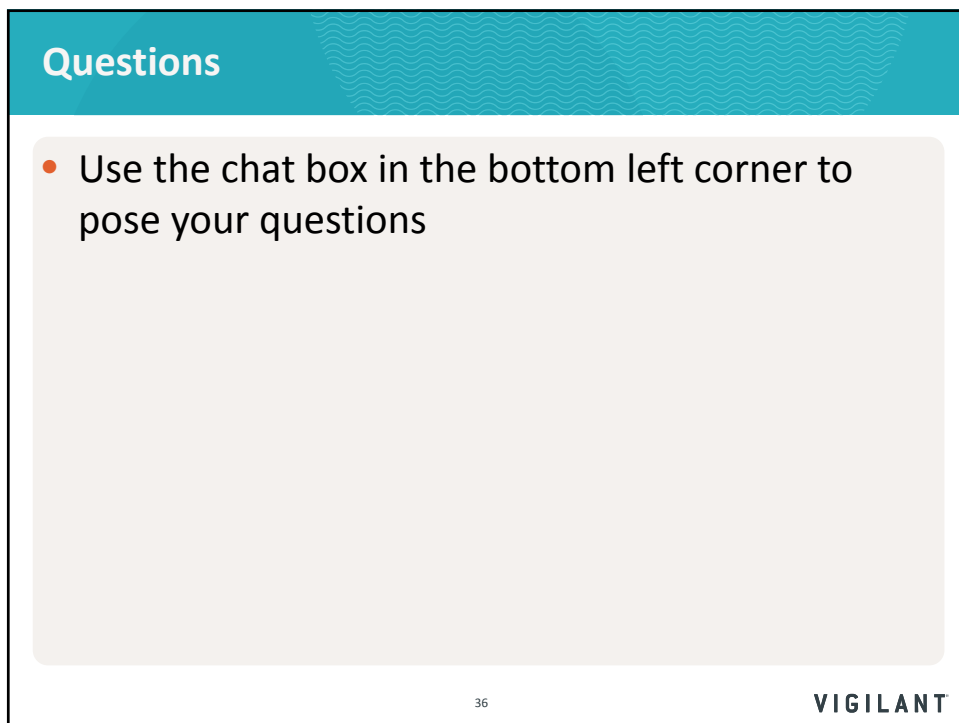
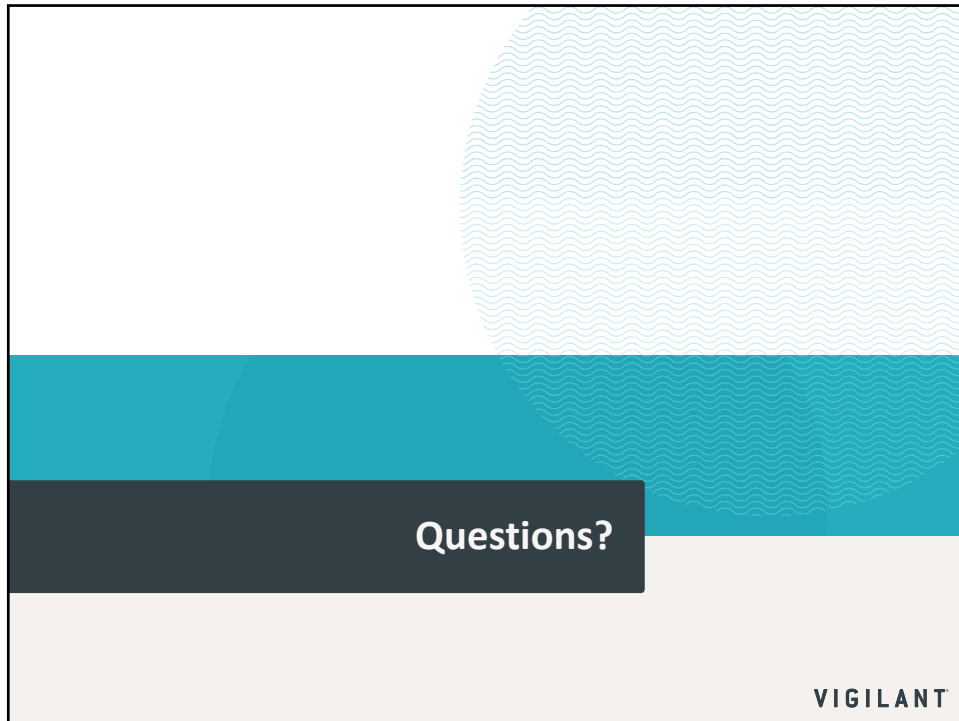
VIGILANT

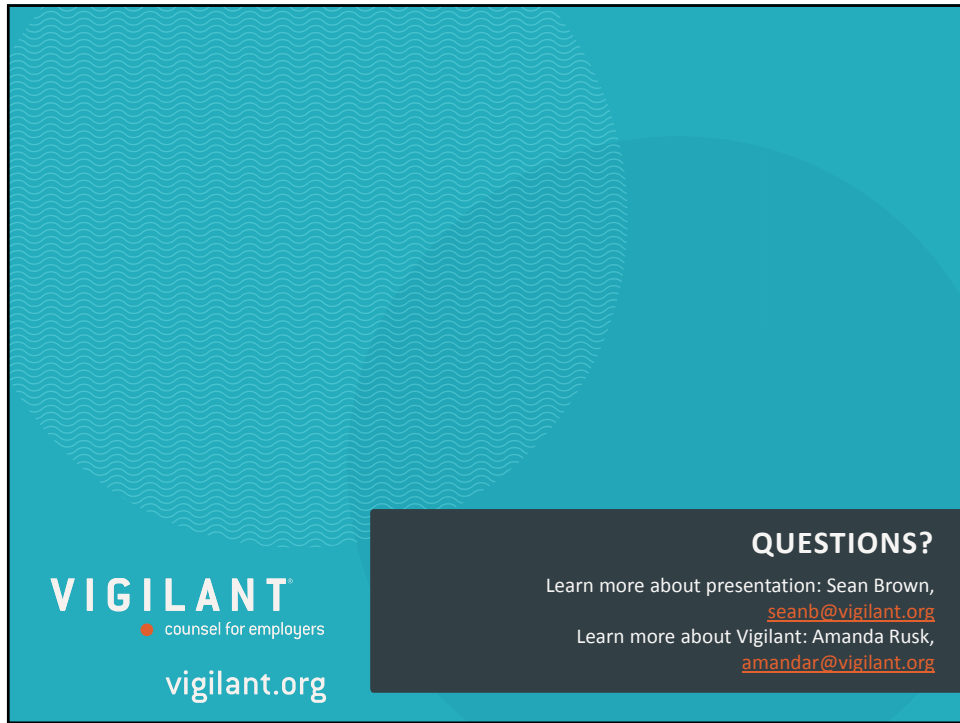
Steps to take before January 1, 2018

- Make a plan for complying (cont.)
 - Determine if same or different leave year for all employees,
 - Talk to counsel
- Implement plan
 - Change all necessary policies, not just paid leave section(s), based on these decisions (e.g., attendance, call-in, etc.),
 - Update HRIS, payroll systems,
 - Train your people (leads/supervisors/managers),
 - Communicate changes to employees, and
 - If unionized, give notice and negotiate impacts with union (if they demand to bargain)

34

VIGILANT



A teal-colored slide with a wavy pattern in the upper left. The Vigilant logo is in the bottom left, and a dark grey box with white text is in the bottom right.

VIGILANT
● counsel for employers
vigilant.org

QUESTIONS?
Learn more about presentation: Sean Brown,
seanb@vigilant.org
Learn more about Vigilant: Amanda Rusk,
amandar@vigilant.org