



# Arizona Employers – Prop 206

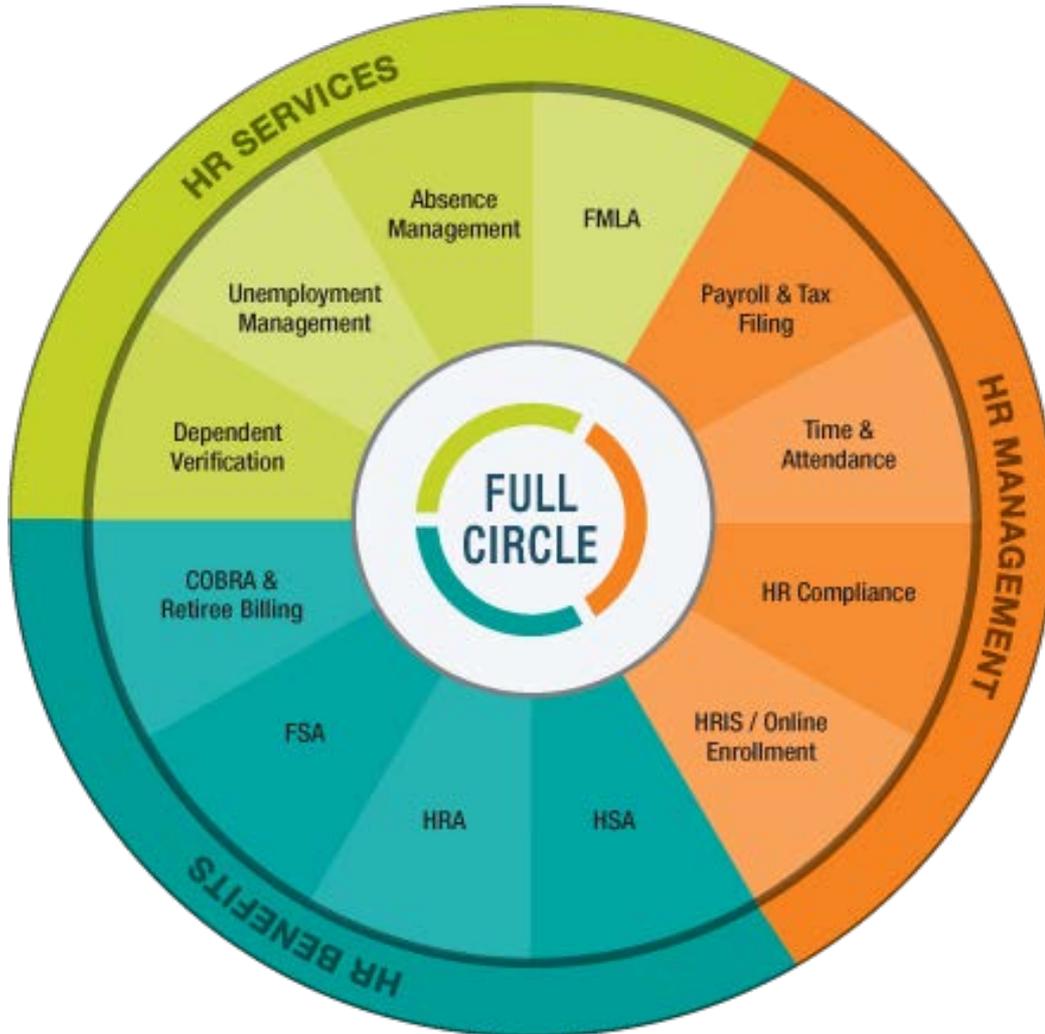
Presented by: Joe Aitchison



- HR Benefits
- HR Management
- HR Services

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## *This presentation is a “flash” overview of Arizona Proposition 206 – Paid Sick Time Law & Requirements*





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Joe provides Business & HR client advisory services and HR out-source services nationally. He is a Human Resource professional with over twenty five years business management and HR consulting experience. He has worked with multi plant International Tier I Automotive Manufacturing, retail, food processing, health care, legal administration and professional services.

Mr. Aitchison is recognized as a leader in human resources and has obtained a lifetime certification as a senior professional in human resource management, SHRM – Senior Certified Professional and Healthcare Reform Specialist by the Healthcare Reform Center & Policy Institute. Mr. Aitchison serves on several for profit and not for profit boards.

# Today's Topics



- Introduction
- DOL / Wage & Hour
- AZ Prop 206 Review
- AZ Paid Sick Time
  - Run concurrent w/ FMLA when applicable
- Best Practices
- Q&A

# Top Reasons for (FED DOL) FLSA Complaints



- Number 5:** Employers' failure to pay employees for short breaks and/or work through lunch
- Number 4:** Employers' docking time for employees working on the clock. *(I did not authorize you to work so I am not going to pay you for it....)*
- Number 3:** Employers' failure to pay employees working off the clock *(It's your mess ... you clean it up after work hours or I will write you up!!!)*
- Number 2:** Employers' misclassification of employees as independent contractors (1099 Contractors)
- Number 1:** Employers' misclassification of employees as exempt employees

# DOL Wage Settlement Database

*Available Online!*



DOL publishes on a quarterly basis, an updated database regarding closed investigations.

- Includes (as example) Name of employer
  - Number of FLSA violations /employer
  - Amount of “agreed to” back wages”
  - Type of violation.

US Department of Labor

**DATA ENFORCEMENT** Customer Survey

Home > Search > Search Results

**SEARCH RESULTS**

Search Criteria  
Agency: WHD  
State: AZ

Agency	Records Found	Export Results
WHD	4096	

Click on an Agency name to see the search results

Where: <https://enforcedata.dol.gov/views/search.php>



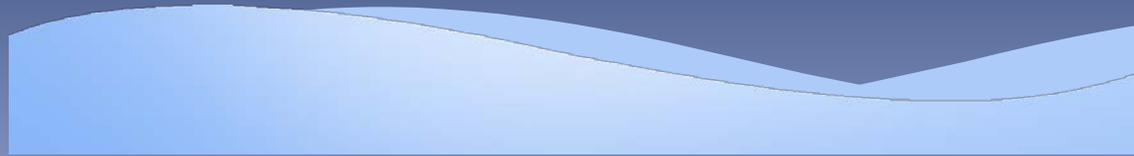
ICA Commission – A five-member Commission responsible for policy-setting for the IC.A

- Commission is appointed by the Governor and confirmed by the Senate to staggered five-year terms.
- When wages owed to an employee are no more than \$5,000.00 and the accrual of those unpaid wages does not exceed one year, the employee may file a wage claim with the ICA Labor Department
  - **Steps for employee wage claim**
    1. Employee files claim with the ICA – Labor Department
    2. ICA notifies the employer & Investigates the claim
    3. Written Determination is made by the ICA provided to employer & Employee
    4. ICA Determinations can be appealed in Superior Court
- An employer who does not comply within 10 days from the date of the termination becomes final is subject to being held liable for triple the amount of unpaid wages owed to the employee.
- Employees may file their claim with the ICA – DOL or through the Civil Court - cannot file their claim with both the ICA-DOL / Civil Court.

# Arizona Proposition 206



**Minimum Wage**



**Paid Sick Time**

<https://www.azica.gov/frequently-asked-questions-about-wage-and-earned-paid-sick-time-laws>

# AZ Prop 206 ~ It is the Law



## **AZ Prop 206 ... Upheld by AZ Supreme Court Justices (58% of voters approved Prop 206.**

- o **December 15, 2016** - Lawsuit was filed by AZ Business, Chamber of Commerce and individual Citizens based on the constitutionality of the law.
- o **December 21** - Trial court denied the motion to temporarily halt the increase in minimum wage increase / Appealed to **AZ Supreme Court on 12/29** – Court denied the temporary request to halt the implementation of the minimum wage increase.
- o **March 14, 2017** - AZ Supreme Court Justices unanimously upheld the constitutionality of the Law and Prop 206 requirements are enforceable

# AZ Prop 206 – Minimum Wage Change



## What Changed

- 2016 Minimum Wage Rate - \$8.05 (Fed minimum wage is \$7.25)
  - **Tipped employees - \$3.00 less**
- January, 2017 - Increased to \$10.00 hourly
- January, 2018 – Increases to \$10.50 hourly
- January, 2019 – Increases to \$11.00 hourly
- January, 2020 – Increases to \$12.00 hourly
- January, 2021 (and every year there after) COLA adjustments annually



## Impact of Proposition 206

1. **Estimated 700,000 Low wage earners** increase to a minimum \$10 per hour from \$8.05, January 1, 2017
  - \$4,000 annual increase per FT worker (2017)
  - \$8,200 annual increase by January, 2020 (\$12 hourly)
2. **Increase in State budgets for contracted services**
  - **Estimated \$21 million** in additional state costs in the 2018 budget year to help contracted HHS providers cover higher wages
3. **Part-time employees** will receive paid sick Time in addition to wage increases (small job shops, retail, franchise fast food services)

# AZ Prop 206 – Paid Sick Time



## What Changes & When?

- Commencing on July 1, 2017
- “Most All Employees” Full & Part Time are eligible for Paid Sick Time Accruals...
  - **1 hour of paid sick time for each 30 hours worked.**
  - Exempt employees are considered as working 40 hours weekly
- Employers not subject to AZ Prop 206
  - Federal Employees
  - Small employers having Gross Revenue of Less than \$500,000
  - State of Arizona Employees
    - Municipal and County employees are eligible
  - Not engaged in interstate commerce or the production of goods for interstate commerce
- Sick Time Accrual Caps
  - **Employers w/fewer than 15 employees** – Cap at 24 hours paid sick time
  - Employers w/15 or more employees – Cap at 40 hours paid sick time
  - Sick time rolls over year to year subject to accrual caps

# AZ Prop 206 – Paid Sick Time



## What Can an employer do?

- Employer can define the 12 month period for Sick Time Accrual
  - Based on Anniversary Date
  - Calendar Year
  - Other 12 month period
- Delay **use of accrued sick time** until after the first 90 days from date of hire (after July 1<sup>st</sup>)
  - **Employees start accruing sick time at time of hire**
  - Must have a policy in place to cover the 90 day delay (*initial employment period*)
- Employers can “Establish a paid sick time bank annually - Crediting with 40/24 hours of sick time
  - Must be credited at the beginning of the 12 month period.

# Paid Sick Time ~ Employer Options



## What can employers do?

- Employers having (or can create) a Paid Time Off (PTO) Policy
  - Providing at least equal to/or greater than Prop 206 Paid Sick Time Accruals
    - Don't have to have a separate sick time policy.
  - Unused sick time does not have to be paid out at separation of employment
    - Employer must reinstate the balance of sick time (accrued but not used) if a separated employee is rehired within months.

# Paid Sick Time ~ Employee Use



## How can an employee use their sick time?

- At any time for an mental or physical illness, including diagnosis, treatment and preventative care.
  - Covers the employee, spouse, family members:
    - children /no age limit ~ biological, adopted, step and foster child
    - spouse, registered domestic partner (any state or local law in any region)
    - grandparent, grandchild, employee or spouse's (domestic partner) sibling (biological, step or foster)
    - other individual related by blood "or affinity" whose close association with the employee is equivalent to a family member.
  - Employee must give reasonable notice when time is foreseeable
    - Handbook Policy
  - Employee must follow written policy on absence as per employer policy.
    - If there is no policy ~ sick time requests can be made orally, in writing, electronically or by other means acceptable by the employer.
    - Best if a absence call off policy is in place and referenced in the company Handbook.

# Paid Sick Time ~ Employer Requirements & Rights



## Employer Requirements

- Treat all sick time information confidential
- **Employer has the right to request supporting documentation for sick time for 3 or more consecutive days.**
  - Statement from HCP that sick time was necessary – Cannot require specific illness / condition information.
    - Sick time covers domestic abuse, sexual violence and other similar events.
  - Legal documents, statements from counselors or “even the employee own written statement” is sufficient documentation.
  - Employer cannot ask for any details

# Paid Sick Time ~ Employer Requirements & Rights



## Employer Requirements

- **Employer Tracking** – Sick Time Accruals and Informing Employees
  - Employer statement or Employee paycheck stub (as example) must provide Employee with Sick Time use and accrual information:
    - How much Sick Time Employee has accrued
    - How much Sick Time Employee used
    - Remaining Sick Time Hour available
- Sick time rolls over year to year subject to accrual caps
  - “Can be paid out” at year end but requires a new bank of 24/40 hours at start of new year (12 month period)

# Paid Sick Time ~ Employer Requirements



## What Employers “can’t do”

- Retaliation is prohibited – an adverse action against an employee taken within 90 days of an employee’s protected activity raises suspicions of unlawful retaliation – documentation for disciplinary action is “extremely important”.
- Employer cannot impose a disciplinary policy for use of paid sick time.
- Employer’s must allow sick time in the smallest timekeeping increment trackable by the employer’s timekeeping system.

## What employers Must do

- Record retention requirement – 4 years on individual employee Paid Sick Time accrual and utilization.
- Make available sick time records to employees when requested, within a reasonable time period.
  - Failure to maintain records can result in a fine or penalty based on a presumption that the employer failed to follow the Law.

# Paid Sick Time ~ Employer Risk



## Penalties and Risk

- Employees can file an administrative action with the ICA “or” the employee could file a civil suit against the employer.
  - **Damages & Recovery**
    - Pay for the amount of sick time owed “plus interest”
    - Additional amount equal to two times the sick time owed
    - Employee’s attorney fees may be compensable along with the cost to bring suit against the employer plus interest.
    - Failure to maintain records “can result in a fine or penalty” based on a presumption that the employer failed to follow the Law.

# AZ Prop 206 – Paid Sick Time



## **Employer Best Practice**

1. Post mandated Paid Sick Time Poster
2. Maintain wage Records for 4 years
3. Review Sick Time & Time Handbook Policies
4. Track, record and provide to employees Sick time accrual / usage against remaining available sick time balances (with payroll) or other method.



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## THE FAIR WAGES AND HEALTHY FAMILIES ACT

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### Earned Paid Sick Time

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<b>EXEMPTIONS:</b>	The Fair Wages and Healthy Families Act (the "Act") does not apply to any person who is employed by a parent or a sibling; any person who is employed performing babysitting services in the employer's home on a casual basis; or any person employed by the State of Arizona or the United States government.
<b>ENTITLEMENT AND AMOUNT:</b>	Beginning July 1, 2017, employees are entitled to earned paid sick time and accrue a minimum of one hour of earned paid sick time for every 30 hours worked, subject to the following limitations: <ul style="list-style-type: none"><li>• Employees whose employers have less than 15 employees may only accrue or use 24 hours of earned paid sick time per year.</li><li>• Employees whose employers have 15 or more employees may only accrue or use 40 hours of earned paid sick time per year.</li></ul> Employers are permitted to select higher accrual and use limits.
<b>TERMS OF USE:</b>	Earned paid sick time may be used for the following purposes: (1) medical care or mental or physical illness, injury, or health condition; or (2) a public health emergency; and (3) absence due to domestic violence, sexual violence, abuse, or stalking. Employees may use earned paid sick time for themselves or for family members. See Arizona Revised Statutes § 23-373 for more information.
<b>RETALIATION &amp; DISCRIMINATION PROHIBITED:</b>	Employers are prohibited from discriminating against or subjecting any person to retaliation for: (1) asserting any claim or right under the Act, including requesting or using earned paid sick time; (2) assisting any person in doing so; or (3) informing any person of their rights under the Act.
<b>ENFORCEMENT:</b>	Each employee has the right to file a complaint with the Industrial Commission's Labor Department alleging that an employer has violated the Act. Certain time limits apply. A civil action may also be filed as provided in the Act. Violations of the Act may result in penalties.
<b>INFORMATION:</b>	For additional information regarding the Act, you may refer to the Industrial Commission's website at <a href="http://www.azica.gov">www.azica.gov</a> or contact the Industrial Commission's Labor Department: 800 W. Washington, Phoenix, Arizona 85007-2022; (602) 542-4515.

**THIS POSTER MUST BE CONSPICUOUSLY POSTED IN A PLACE THAT IS ACCESSIBLE TO EMPLOYEES**

# Cost of Absenteeism



## CALCULATING ABSENTEEISM

### **Absenteeism Rate**

When calculating absenteeism, organizations often differentiate between *excused* and *unexcused* absences and collect data only on the *unexcused* since these absences are most disruptive to the workplace and have the most impact on productivity.

Long term leaves of absence, as defined as 5 or more days in duration, are usually excluded.

### **Monthly Absenteeism Rate**

1. Total number of days lost through job absence in the month: \_\_\_\_\_
2. Number of employees on 1<sup>st</sup> of the month: \_\_\_\_\_
3. Number of employees on the last day of the month: \_\_\_\_\_
4. Average headcount for the month (Line 2 + Line 3 divided by 2): \_\_\_\_\_
5. Number of available workdays in the month: \_\_\_\_\_
6. Average number of workdays for the month (Line 4 x Line 5): \_\_\_\_\_
7. Monthly absenteeism rate (Line 1 divided by Line 6 x 100): \_\_\_\_\_

### **Example:**

1. Total number of days lost through job absence in the month: 23
2. Number of employees on 1<sup>st</sup> of the month: 62
3. Number of employees on the last day of the month: 60
4. Average headcount for the month:  $62 + 60 / 2 = 61$
5. Number of available workdays in the month: 21
6. Total average number of workdays for the month:  $61 \times 21 = 1,281$
7. Monthly absenteeism rate:  $23 / 1,281 \times 100 = 1.8\%$

# Absenteeism / Attendance Policy



## What your Attendance Policy should include:

1. Define work Time
  - Employees are expected to be at their designated work area/location at the start of their scheduled work day
2. Define Late or Missed Time ~ What happens when an employee:
  - Arrives late to work (late return from a paid/unpaid break)
  - Leaves work early
  - Full day absence
  - No call - no show single or consecutive work days
3. Define Type of Attendance Policy
  - No Fault Attendance Policy
  - Absence - Point System
  - Occurrence Policy
4. Disciplinary Action
  - Progressive Disciplinary action system
  - Appeal Process / Peer Review (termination only)
- Federal & State Disclaimers – ***Flexibility for accommodation and FMLA***
  - Attendance policy will be enforced in accordance with all applicable laws & regulations
    - PST, FMLA, ADA, other Federal, State & Local Regulations



# Absenteeism / Attendance Policy



## Reduce your Legal Risks

- **Inform Employees on your Attendance Policy (document)**
- **Provide Manager & Supervisor training** on how to handle & report absences that are due to covered medical reasons affecting the employee or a family member
  - **Note:** Front line managers should not require an employee to tell them the medical issues that resulted in an absence occurrence. This needs to be directed to the appropriate front office personnel - Require work restrictions from HCP and respond accordingly.
    - AZ PST Follow the rules – Complaints filed with the ICA / Civil
    - FMLA ( Employee Retaliation / Interference Claims are filed with the DOL)
    - ADA accommodation
- **Accurately record all absences**
  - Includes Incidental / minor occurrence
  - Assure that FMLA / ADA absences are **“not considered”** when doing performance reviews.
- **Make sure attendance programs and policies are uniformly enforced**
  - No favoritism!!
  - No Exceptions under same or similar situations/absences within the same department
  - **Caution** – Review for adverse impact on protected class of employees



# Questions



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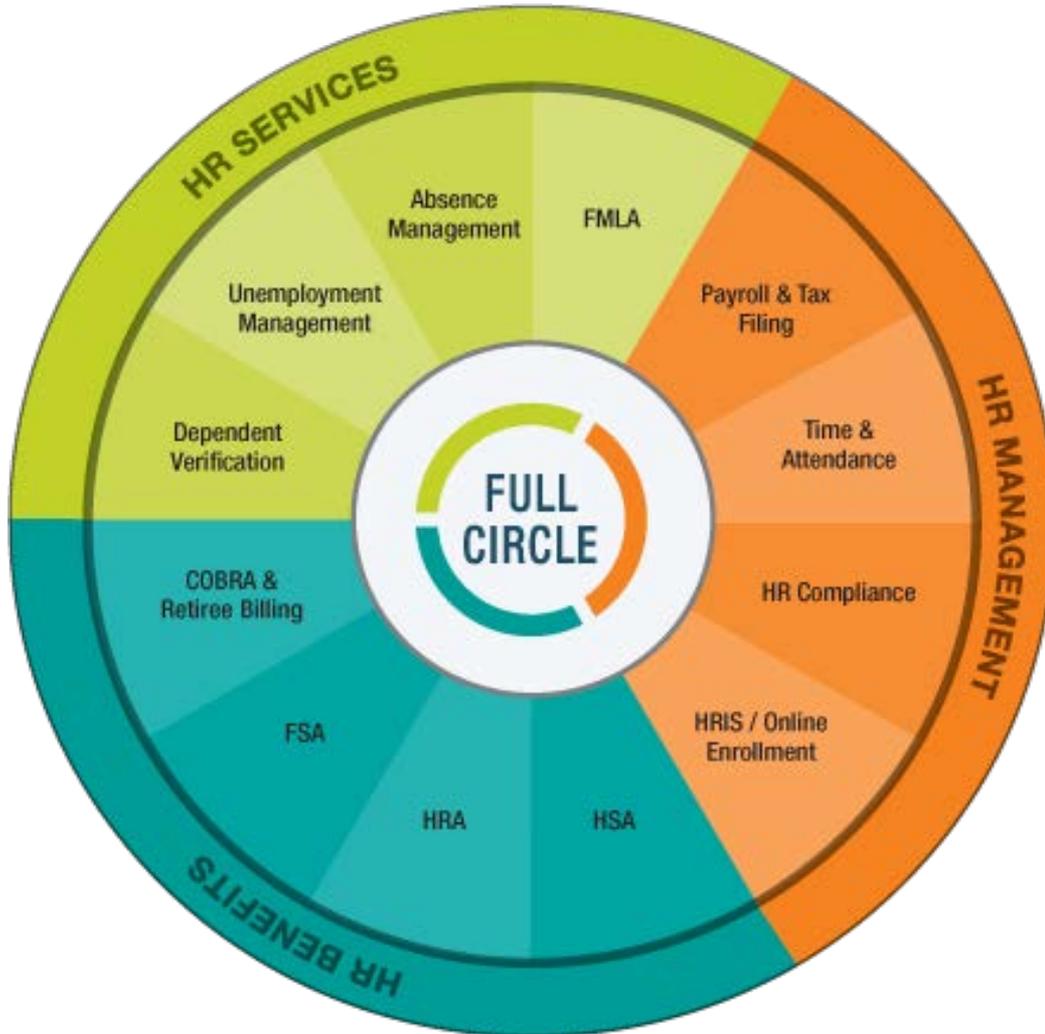
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# Contact Us



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