

April 7, 2017

I-1433 Rulemaking – Draft Proposed Rules

On December 7, 2016, the results from the November statewide election were certified. Initiative 1433 (I-1433) passed, and in addition to increasing the minimum wage in Washington State, I-1433 requires employers to provide paid sick leave starting January 1, 2018.

Under I-1433, the Department of Labor & Industries must adopt rules to enforce the new requirement, including, “...procedures for notification to employees and reporting regarding sick leave, and protecting employees from retaliation for the lawful use of sick leave...”

The first step of the rulemaking process began in January 2017. The department solicited input from stakeholders and interested parties to assist with identifying the scope and content of the rules. The [I-1433 engagement site](#) was created to ensure transparency and to maximize stakeholder participation.

At this step of the rulemaking process, prior to filing the CR-102, the department is circulating a draft of the proposed rule language to get further input on the development of the proposed rule language. In developing the draft proposed rules, the department reviewed all stakeholder comments and input submitted during the initial scoping process.

Additionally, department staff reviewed paid sick leave rules adopted by other local and national jurisdictions as a benchmark. Where possible, based on stakeholder input and the language of I-1433, the department tried to align the I-1433 draft proposed rules with Seattle, Tacoma, Spokane and Oregon’s rules to provide some consistency for those stakeholders who have to comply with and use rules from multiple jurisdictions.

Stakeholders are asked to review the draft proposed rules and provide initial feedback to the department by April 28, 2017. Please submit any feedback on the draft proposed rules to the [“I-1433 Draft Proposed Rule Language”](#) page of the I-1433 engagement site. The department plans to review stakeholder comments and where necessary, adjust the language of the rules. Prior to filing the CR-102, the department will provide an updated draft of the proposed rules for a second round of stakeholder feedback. The target date for sending the updated draft of the proposed rules is the second week of May 2017.

Timeline

The department’s timeline outlines key dates for the planned upcoming steps in the rulemaking process. The timeline estimates the earliest possible dates for each needed rulemaking step. The overarching goal is to have the CR-102 proposed rules filed in July 2017, and the CR-103 final rules adopted by mid-October 2017 to allow for outreach and implementation ahead of the January 1, 2018, paid sick leave effective date. Both the timeline and this cover letter will be posted to “Document Library” of the [I-1433 engagement site](#).

Administrative Policies

Prior to the January 1, 2018, paid sick leave effective date, the department will also be working to update its existing administrative policies, in addition to drafting new policies. The administrative policies provide additional clarification for the rules, and will help address stakeholder questions which were identified in the feedback process, but not addressed directly in the rules. The department will be engaging stakeholders in the development and review process for the administrative policies.

Cost-Benefit Analysis and Small Business Economic Impact Statement

According to the Administrative Procedure Act (APA), [chapter 34.05 RCW](#), certain rule changes, known as “significant legislative rules”, require a cost-benefit analysis. The purpose of the cost-benefit analysis is to determine whether the probable benefits of a rule are greater than the probable cost when looking at both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented. A significant legislative rule is one where the department can exercise discretion in deciding what a rule requires and where a violation of that rule can result in a penalty or sanction. Significant legislative rules may also require a small business economic impact statement under the Regulatory Fairness Act, [chapter 19.85 RCW](#). A small business economic impact statement requires consideration of how proposed rules will impact businesses and to mitigate the costs to small businesses that are disproportionately affected.

The department recognizes the some of the rules for I-1433 are likely to be significant legislative rules – where the department exercises its discretion to establish a rule requirement that is an increased requirement for employers and could result in a penalty. For these rule changes, the department will perform a cost-benefit analysis and, if applicable, a small business economic impact statement.

There are other types of rule changes that are not considered significant legislative rules and do not require a cost-benefit analysis or a small business economic impact statement. These types of rules are listed under [RCW 34.05.328\(5\)\(iii\)](#) and [RCW 19.85.025](#), and include a rule where the content of the rule is specifically required by statute or a rule that sets forth an interpretation of a statutory provision. For example, I-1433 specifically requires paid sick leave to accrue at a rate of at least one hour for every 40 hours worked by an employee. The department does not have discretion to establish a rule that provides a different minimum accrual level. Adopting the specific accrual provision in rule is exempt from the cost-benefit and small business economic impact statement requirement.