



ASSOCIATED GENERAL CONTRACTORS of WASHINGTON

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February 3, 2017

Mr. Joel Sacks
Director
Department of Labor and Industries
PO Box 44000
Olympia WA 98504-4000

Dear Director Sacks,

Below are AGC's comments regarding the paid sick leave (Initiative 1433) rulemaking.

AGC requests confirmation that a waiver for collective bargaining agreements is appropriate in light of Initiative 1433 permitting policies that are more generous or permitting use of paid sick leave for additional purposes and requiring that employees receive not less than what is due.

In commercial construction, the negotiated wage and fringe package, as agreed to by employers and labor, is and has historically been high enough to include days not worked due to illness and other reasons. Although the initiative includes language that bars agreements that allow the employee to receive "less than what is due under this chapter," we believe a waiver is appropriate because MLAs do indeed meet the minimum standards of the initiative by providing the high wage and benefit packages. Historically, labor unions have chosen to accept higher wages and benefit packages over paid sick leave. In order to continue to have the flexibility for labor unions to choose the terms and conditions of employment that matter most to them, a waiver is necessary.

We request that L&I recognize the existence of collective bargaining agreements and other contracts, and the complexity of implementing the initiative without violating these contracts.

In much of the construction industry there are CBA's with varying expiration dates which govern the working conditions and compensation packages of employees. Likewise, contracts for projects that were entered into prior to the initiative were based on very specific calculations regarding the cost of labor. The initiative significantly impacts these labor costs. To avoid the new initiative from negatively impacting these contracts, time is needed to both

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re-negotiate these existing contracts and for the creation of the system to implement that agreement.

With regard to collective bargaining agreements, AGC contractors and Washington's labor unions have a long-standing relationship that allows for consistent resolution of industry issues. Implementation of paid sick leave will require this joint effort and ample planning to ensure a successful program. Contractors need the ability and time to negotiate, whether it is through multi-employer trusts or individually by each contractor.

In the multi-employer environment, trusts have been established to administer health, pension and training programs. The benefit trusts that administer these programs and new ones such as paid sick leave are not involved in negotiations. Once the CBA's have been negotiated, the benefit trusts will need to be engaged to establish the procedures needed to implement this new benefit. Adequate time will be needed to successfully complete this process. Ultimately, these multi-employer benefit trusts will provide employees with a more generous paid sick leave policy, allow employees to more easily track their paid sick leave, and permit greater use of paid sick leave to these employees.

Ideally we would like the implementation rules to allow for an orderly phase-in. This would have the effective date for the new rules to be at the first expiration of a collective bargaining agreement. However, if January 1, 2018 effective date is impossible to change, we could make the needed accommodations if L&I meets their goal of having a final rule on October 1, 2017. If L&I misses that date, it will be impossible to make the needed changes to the collective bargaining agreement and develop the needed infrastructure to administer it.

How will the initiative affect prevailing wages?

Among the considerations for the sick leave provisions' impact on prevailing wage issues are our view that they should not apply to any existing contract, for which prevailing wages are being paid, that began before, but continue into, 2018.

Existing benefits that meet or exceed the intent of this initiative should be recognized.

Many companies provide paid time off (PTO) or sick pay as part of their total compensation package. Some also participate in the premium pay program under the Tacoma ordinance. These benefits should be accepted as meeting the requirements of this initiative.

There is support for this concept in the initiative:

- Section 5(1)(e) of the initiative states, “Employers are not prevented from providing more generous paid sick leave policies or permitting use of paid sick leave for additional purposes.”
- L&I website says, “Employers are not prevented from allowing employees to use paid sick leave for additional purposes.”

An employer is not responsible for tracking or reporting on any accrued sick leave an employee earned while working for another employer and cannot be held liable for denying or interfering with an employee’s request to use sick leave hours accrued with another employer. We accept the provision of the initiative that allow separate employees access to accrued sick leave benefits, provided that they return within 12 months. However, rulemaking should clarify that benefits accrued at one employer should not be the responsibility of another employer and cannot form the basis of a claim or charge against that employer. Employers also cannot be held liable as “joint employers” of an employee.

The normal wage will be established by the bargaining parties or the employer.

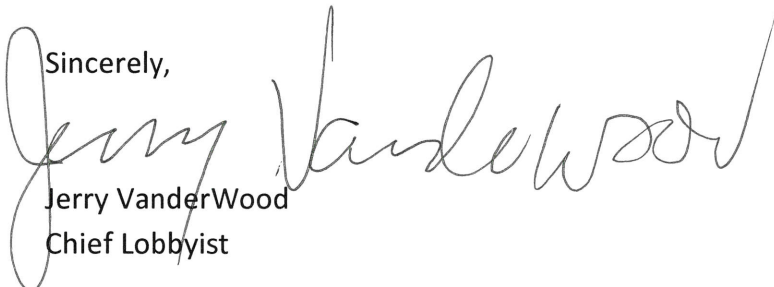
Due to varying classifications and pay scales within the construction industry, it is difficult to determine a “normal” wage as defined under this initiative. This determination should be left to the bargaining parties.

Many contractors work across state borders. Rulemaking should accommodate these circumstances.

Rulemaking should clarify that paid sick leave provided through I-1433 is accumulated for hours worked within the state, and can be used only while working within the state.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in cursive script, reading "Jerry VanderWood". The signature is written in dark ink and is positioned above the printed name and title.

Jerry VanderWood
Chief Lobbyist