

Grand Theft PTO: Handling Documentation Requests When Sick Leave Looks Suspicious

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by Joshua Hughes and Henry Adebisi

Employers may hear a few more coughs than usual this fall. On November 19, the long-awaited sixth installment in the famed “Grand Theft Auto” franchise is set to be released. In GTA VI, players will take the roles of Jason or Lucia in this open-world, action-adventure video game as they embark on a modern-day “Bonnie and Clyde”-style spree throughout the fictional Vice City (modeled loosely on Miami). As one of the most anticipated video game releases in years, employers are already reporting increased time off requests for November 19, while preparing for further call-ins on release day. And while “I need to explore Vice City” probably will not qualify as a legitimate reason for calling in sick, a sudden wave of suspiciously timed absences raises a question employers confront year-round: **When an employee calls in sick, what *can* you actually ask?**

When an employer suspects an employee’s “sick day” may be something else, the employer may naturally want more information. But state and local paid sick leave laws, federal restrictions on disability-related inquiries and medical information, and employer policies can limit how far an employer should go. Whether an employee is headed to Vice City, visiting family for the holidays, or genuinely home sick, now is a good time for employers to understand the rules before the next call-off comes in.

Know the Rules of the Road: Mapping the Sick Leave Landscape

Today, 17 states and the District of Columbia require employers to provide some form of paid sick leave. Three more states have no paid sick leave requirement, but require employers to provide a bank of paid time off that can be used for (generally) any reason at all. These laws vary significantly from state to state, but generally require an employer to credit a certain amount of paid sick leave based on hours worked.

State paid leave programs affect employer day-to-day operations because employees generally have a statutory right to use paid sick leave without advance notice if notice is not practicable. For example, under Minnesota’s Earned Sick and Safe Time (“ESST”)

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program, an employee may take paid sick leave for their own illness or medical care, but also for several other qualifying reasons, including certain school closures and public emergencies. This distinguishes paid sick leave programs from state-funded paid family and medical leave programs and FMLA, which typically require advance notice to employers, a certification or application process, and approval.

While state paid sick leave regimes differ, a common thread among the various state laws prevents employers from demanding medical documentation for a single-day absence. Many states permit employers to request reasonable documentation only after two or three consecutive workdays. And in states like Illinois—which has a broad paid leave program entitling employees to take paid leave for any reason—employers typically cannot request *any* documentation to support the reason for the absence.

More importantly, most state paid sick leave programs contain an anti-retaliation provision entitling employees to request and use paid sick leave without fear of reprisal. These considerations all point toward exercising restraint at the outset when an employee calls out sick, even if the timing is a bit suspicious.

When Sick Leave Triggers an ADA Mission

While single-day absences may commonly implicate state paid sick leave laws, employers in all states should recognize when a request for time off may trigger obligations under the Americans with Disabilities Act (“ADA”). Title I of the ADA requires covered employers to provide reasonable accommodations to qualified individuals with disabilities unless doing so would cause an undue hardship. Generally speaking, an accommodation is a change to the work environment or the manner in which work is customarily performed that enables an individual with a disability to enjoy equal employment opportunities. Depending on the circumstances, an accommodation may include a period of leave or exceptions from a generally applicable attendance policy.

Accommodations are generally identified through the interactive process, a flexible dialogue between the employer and employee designed to identify an effective reasonable accommodation. If the disability or need for accommodation is not obvious, an employer may request reasonable medical documentation so long as the inquiry is job-related and consistent with business necessity. In that context, an employer may require documentation sufficient to establish that the employee has a disability, is a qualified individual, needs the requested accommodation, and that the requested accommodation would be effective for the employee’s limitations.

Not every sick day triggers an ADA interactive process, nor are employers required to set aside their attendance policies each time an employee calls in for an illness-related absence. Instead, the ADA is likely to be implicated in situations with recurring absences (such as over the course of days or weeks), or absences that fit a specific pattern (consistently tardy on days following approved medical appointments). In these situations, employers should consider whether an absence may trigger obligations under applicable sick leave, disability, or other leave laws. In a practical sense, however, that means employers should be cautious about relying too heavily on the ADA to ask for

“proof” relating to an employee’s claimed sick day.

Plan Before Trouble Spawns

Understanding that an employer’s ability to demand proof that an employee was “actually” sick on any given day is generally limited, the best remedy is a dose of proactive planning.

First, employers should plan ahead and encourage employees to submit foreseeable time-off requests in advance, particularly around heavy-absence seasons like winter holidays and spring breaks. Employers should also pay attention to attendance trends that may suggest the need for further discussion about potential accommodations. Attendance and paid sick leave policies should be regularly reviewed to ensure compliance with applicable state laws and, just as importantly, to ensure that procedures actually work when a significant number of employees seek leave at the same time.

Next, managers should be trained on when documentation may be requested and what that documentation may include. Because these requirements differ by jurisdiction, managers responsible for employees in multiple states should understand that the same call-off may not permit the same response everywhere. Employers can use the chart below as a helpful starting point.

Lastly, employers should keep an eye on major cultural and social events that may predictably produce increased requests for time off. Whether it is a major sporting event, Taylor Swift ticket presales, or a highly anticipated video-game release, early communication and workforce planning may help employers prepare for staffing issues.

Being proactive allows employers to address predictable staffing challenges rather than needing to scrutinize individual employees’ time off requests.

Mission Complete: Key Takeaways

- In many states, there is little an employer can do to demand documentation for a single-day call-off, even when the timing may be suspicious.
- A request for sick leave may also implicate the ADA or develop into a request for reasonable accommodation, which employers should recognize and address appropriately.
- Employers are usually better served by planning for predictable spikes in absences than by reflexively challenging individual leave requests.
- Grand Theft Auto VI may be the headline, but the lessons apply equally to sporting events, concerts, holidays, and the next major cultural event employees do not want to miss.

While navigating paid sick leave may not be as exciting as a high-speed chase through Vice City in Grand Theft Auto, employers should recognize how a wrong turn can create real-world consequences. Slowing down, planning ahead, and understanding applicable state and federal law can help employers avoid turning a one-day call-off into a high-stakes collision.

Jurisdiction	What and When an Employer May Request	Citation
Alaska	For an absence of more than three consecutive workdays , an employer may require reasonable documentation showing that the leave was used for a covered purpose. The documentation need not disclose details of the employee's or family member's health condition.	<u>Alaska Stat. § 23.10.067(3).</u>
Arizona	For leave of three or more consecutive workdays , an employer may require reasonable documentation that the leave was used for an authorized purpose. A health care professional's signed document is sufficient for medical leave, and the employer may not require details concerning the condition.	<u>Ariz. Rev. Stat. § 23-373(G).</u>
California	The statewide statute does not specify a medical-documentation threshold for paid sick leave. Employees must give reasonable advance notice when the need is foreseeable, or notice as soon as practicable when it is not. Employers should not condition statutory paid sick leave on documentation in a manner that denies or interferes with the right to use accrued leave; local ordinances may impose additional rules.	<u>Cal. Lab. Code § 246(m); Cal. Lab. Code § 246.5.</u>
Colorado	Documentation may be required only when an employee uses paid sick leave for more than four consecutive days on which the employee would have worked . The documentation need only establish a permitted purpose; an employer may not require a diagnosis or detailed medical or safety information, and an employee may provide a written statement if other documentation cannot be obtained in a reasonable time or without added expense.	<u>7 Colo. Code Regs. § 1103-7, Rule 3.5.6.</u>
Connecticut	An employer may not require documentation that paid sick leave is being taken for a permitted purpose under the statewide law.	<u>Conn. Gen. Stat. § 31-57t(b).</u>
District of Columbia	An employer may require reasonable certification when paid leave lasts three or more consecutive days . The employee generally must provide certification upon returning to work, and	<u>D.C. Code § 32-531.04(a).</u>

	the employer must give advance notice of any certification requirement.	
Illinois	An employer may not require an employee to provide a reason or documentation for leave under the Paid Leave for All Workers Act. Normal reasonable-notice procedures may apply, but the leave is usable for any purpose.	<u>820 Ill. Comp. Stat. 192/15(h); 56 Ill. Admin. Code § 200.310.</u>
Maine	Maine earned paid leave is usable for any reason. An employer may require advance notice when the need is foreseeable and may impose reasonable scheduling requirements, but the statewide law does not authorize requiring documentation of the employee's reason for taking leave.	<u>Me. Rev. Stat. tit. 26, § 637(5); 12-170-18 Me. Code R. § 5.</u>
Maryland	An employer may require verification when leave is used for more than two consecutive scheduled shifts. Verification also may be permitted during an applicable initial-employment waiting period.	<u>Md. Code, Lab. & Empl. § 3-1305(g).</u>
Massachusetts	Documentation may be required in specified circumstances, including when leave exceeds 24 consecutively scheduled work hours or three consecutive scheduled workdays. The employer may not demand diagnosis information or details of domestic violence.	<u>Mass. Gen. Laws ch. 149, § 148C; 940 Mass. Code Regs. § 33.06.</u>
Michigan	For earned sick time used for more than three consecutive days, an employer may require reasonable documentation that the leave was used for a permitted purpose. The employer may not require details of the illness, domestic violence, or sexual assault.	<u>Mich. Comp. Laws §§ 408.964(6)-(8).</u>
Minnesota	When earned sick and safe time is used for more than two consecutive days, an employer may require reasonable documentation that the leave was used for an authorized purpose. If the employee cannot secure the requested documentation, the employee generally may provide a written statement that the leave was used for a qualifying purpose.	<u>Minn. Stat. § 181.9447, subd. 3.</u>
Nebraska	For an absence lasting more than three	<u>Neb. Rev. Stat. § 48-</u>

ka	consecutive workdays , an employer may require reasonable documentation that paid sick time was used for a permissible purpose. If documentation cannot be obtained without added expense, an employee's written statement may satisfy the requirement.	<u>3804(6).</u>
Nevada	An employee may use statutory paid leave for any reason and is not required to provide the employer with a reason for using it . An employer may require notice as soon as practicable.	<u>Nev. Rev. Stat. § 608.0197(2)-(3).</u>
New Jersey	When earned sick leave covers three or more consecutive days , the employer may require reasonable documentation that the leave was used for a permitted purpose. Additional rules apply to certain public-health closures and safe-leave absences.	<u>N.J. Stat. Ann. § 34:11D-3(b).</u>
New Mexico	For paid sick leave of two or more consecutive workdays , an employer may require reasonable documentation that the leave was used for a covered purpose. A health care professional's signed document is sufficient, and the employer may not require an explanation of the nature of the medical condition.	<u>N.M. Stat. Ann. § 50-17-5(A)-(B).</u>
New York	For absences of three or more consecutive previously scheduled workdays or shifts , the employer may request limited documentation confirming eligibility for sick leave, but may not require disclosure of the nature of the illness, prognosis, treatment, or other confidential medical information.	<u>N.Y. Lab. Law § 196-b; 12 N.Y.C.R.R. § 196-1.3(a), (c)-(d).</u>
Oregon	An employer generally may request reasonable documentation when sick time is used for more than three consecutive scheduled workdays . Medical verification may not require a diagnosis, and the employer must pay required uncovered costs.	<u>Or. Rev. Stat. § 653.626; Or. Admin. R. 839-007-0045.</u>
Rhode Island	For paid sick and safe leave lasting more than three consecutive workdays , the employer may require reasonable documentation that the leave was used for a permitted purpose. The employer	<u>R.I. Gen. Laws § 28-57-6(f)-(g); 260 R.I.</u>

	may not require details of the medical condition or domestic violence, sexual assault, or stalking.	<u>Code R. § 30-05-5.6.</u>
Vermont	The statewide earned sick time law does not establish a specific medical-documentation threshold. An employer may require an employee to give notice as soon as practicable of the intent to use earned sick time and the expected duration of the absence.	<u>21 V.S.A. § 483(h).</u>
Washington	For an absence exceeding three consecutive days the employee was required to work , the employer may require reasonable verification of an authorized purpose. The employer must have a written policy, may not require disclosure of the nature of a medical condition, and must consider alternatives if verification creates an unreasonable burden or expense.	<u>Wash. Rev. Code § 49.46.210(1)(g);</u> <u>Wash. Admin. Code §§ 296-128-660 to -680.</u>