

NEW PAID SICK LEAVE LAW TAKES EFFECT IN JANUARY

At the November 2016 general election, voters approved Initiative 1433, which requires employers to provide employees with paid sick leave beginning January 1, 2018. While most port districts already provide this benefit to full-time employees, the new law also applies to part-time and seasonal workers, which many ports do employ.

Paid sick leave must accrue at a minimum rate of one hour paid leave for every 40 hours worked, and must be paid at the normal hourly compensation. Employees will be eligible to use accrued sick leave beginning on the 90th calendar day after the beginning of their employment.

Unused sick leave of 40 hours or less must be carried over into the following year. All employers are allowed to provide employees with more generous accrual and carry-forward policies.

The new law also may create new allowances for usage of sick leave. Under the Initiative, employees may use paid sick leave to care for themselves or for a family member, as well as if a child's school or daycare has been closed by a public health official for a health-related reason.

At an employer's discretion, additional uses for sick leave may be allowed.

This law will be administered by the Department of Labor and Industries, which is about to adopt two sets of regulations to implement it. For more information, go to their web site at <http://www.lni.wa.gov/WorkplaceRights/Wages/Minimum/1443.asp>.

This paid sick leave requirement is a separate law from the Paid Family and Medical Leave Act that was passed by the legislature earlier this year. That law will not go into effect until January of 2019, and it creates a paid family and medical leave benefit that will be funded through a payroll tax – similar to the current unemployment insurance program. This new law will be administered by the Department of Employment Security. We will report the details of that Act in a separate publication, but for a fact sheet on that you may visit <https://esd.wa.gov/paid-family-medical-leave>. ■

PORT SPOTLIGHT

PORT OF PASCO NAMED PORT OF THE YEAR FOR TRI-CITIES AIRPORT RENOVATION



At the WPPA's Annual Meeting last month in Seattle, the Port of Pasco was awarded the Port of the Year Award for 2017. The award was made in recognition of the Port of Pasco's complete renovation of the Tri-Cities Airport. The project was completed earlier this year, and the new terminal was dedicated in a ceremony led by US Senator Maria Cantwell.

The nearly \$42 million project involved two and a half years of construction, and was the largest project in the history of the Port. In addition to the major terminal upgrades, the project involved another \$16 million in improvements to the airfield and runway system to accommodate the expanded terminal.

"We gave this award to the Port of Pasco because this project shows exactly what a Port can do" stated WPPA President Karen Moore, of the

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KNOWING THE WATERS

By Frank Chmelik of Chmelik Sitkin & Davis P.S. - WPPA Counsel

I look out my office window at another blustery day, start hearing about the “pass conditions” on the TV news and then read that the Mt. Baker Ski Area is opening early. You may be thinking “holiday season” but we lawyers are thinking “liability” obligations for inclement weather. This column will provide some practical advice to help avoid injuries and liabilities during the winter season.

First, a little legal background. Our courts follow a traditional analysis of landowner liability by looking at the “status” of the injured person to determine the duty owed by the landowner. We divide the universe of people on port property into “business or public invitees,” which are people that are invited (either expressly or impliedly) onto the port property for some purpose connected with the port’s business or business benefit or for some purpose for which the property is held open to the public. Think of marina tenants

or a contractor’s employee or people visiting the port offices for a business purpose. Practically speaking, most all people on port property are “business or public invitees.” Next are “licensees or social guests” which are people invited (either expressly or impliedly) onto port property with port permission for no particular port business purpose. Examples are hard to come by here, but think of the port office parking lots used by an adjacent church on a Sunday morning or an adjacent restaurant (off port property) in the evenings. Finally, trespassers are people on port property without permission or invitation (express or implied). Think of the person using a boat launch at night when it is closed or a person that jumps the fence to look around a port building project.

So, with those three basic categories in mind, landowners like the port, owe different duties. First, to a trespasser the duty is limited to “refraining from wantonly and willfully injuring a trespasser.” This means

no structures or devices designed to injure trespassers. Here be careful of unmarked cables across roads or sidewalks that could not be seen at night – that could be a wanton act. Second, to a licensee or social guest, the duty is to “warn or make safe of known dangerous conditions.” So, for the parking lot used on Sundays by the adjoining church where there is a “known dangerous condition,” appropriate signage or fencing to warn or make safe the “known dangerous condition.” Better yet, have an agreement that includes insurance and the usual disclaimer language.

The highest duty is owed to “business or public invitees” and requires the landowner to act reasonably to “inspect and then warn or make safe.” The added element here is “inspection” to uncover dangerous conditions and then warn or make safe. When snow, ice, wind, standing water or other adverse winter conditions exist the port must act reasonably to inspect and then

PORT SPOTLIGHT

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Port of Ephrata. “This is the kind of long-range planning and investment that our ports are so good at.”

The expansion project included nearly every aspect of airport operations, including doubling the size of the terminal, reconfiguring the entry, expanding the concourse and boarding areas, increasing to five boarding gates, adding a large new restaurant, improving and enlarging screening lines, creating a new children’s play area and renovating and enlarging the baggage screening area.

Air service at the Tri-Cities airport includes daily service to six major metropolitan areas, as well as weekly service to several others.

The overall purpose of the renovation was to build a facility that will accommodate the long-term growth of the Tri-Cities region. The Port also recognized the late airport director and WPPA Aviation Committee Chair, Jim Morasch, by naming a conference room after him. ■

UPCOMING EVENTS

Port Day

January 23, 2018

Olympia

Capital Campus, Cherberg Conference Room

Spring Meeting

May 16-18, 2018

Hilton, Vancouver, WA

Finance and Administration Seminar

June 13-15, 2018

Enzian Inn, Leavenworth

Commissioners Seminar

July 22-24, 2018

Suncadia Resort, CleElum

Small Ports Seminar

October 25-26, 2018

Enzian Inn, Leavenworth

warn or make safe regardless of the cause of the condition. The injured person, to prevail in a lawsuit, must show that the condition presented an unreasonable risk of harm, that the injured person could not have been reasonably expected to realize the risk and the property owner failed to “inspect then warn or make safe.” Note, there is no requirement for extraordinary measures like staff overtime or plowing and shoveling all surfaces. What the law does require is that the port act reasonably and deal with the dangers in a responsible manner by “inspecting and then warning or making safe.” So instead of plowing to make safe, a port could warn of the danger. Instead of de-icing a sidewalk in front of a building entrance, the port could close the entrance and cordon off the icy area.

NOW FOR THE PRACTICAL ADVICE. HERE ARE THE STEPS I THINK PORTS SHOULD TAKE:

1. Now, before the full brunt of winter weather hits, have a conversation to **identify known areas of danger**. For example, are there particular areas

that seem to ice up or accumulate snow? Develop a plan now to (i) consider physical modifications to minimize the danger – perhaps fix drainage so icing does not occur or trim trees that provide too much shade, (ii) address how these areas and the rest of the port’s property will be inspected during inclement weather and (iii) consider acquiring appropriate signage and/or the devices necessary to warn or temporarily close problem areas.

2. Now, develop an inclement weather **inspection and response plan**. When the storm does hit is someone at the port tasked with inspecting, and periodically re-inspecting at reasonable intervals, the known problem areas and the rest of the areas of the port where people will likely be present? Are all port employees going to be involved in this process and know where to report an observed dangerous condition? Is there someone empowered to address these reports? Is there a checklist of these inspections?

3. When the inclement weather comes, follow and document the inspection and response plan.

4. When the inclement weather comes, based upon the inspection, decide for each observed dangerous condition is the port going to **“warn”** or **“make safe?”**

As an aside, port tenants have the same responsibility of property they lease. Be cautious about undertaking these duties on behalf of tenants. It may be helpful to educate tenants on their responsibility to “inspect and then warn or make safe” on their leaseholds. Here’s to a happy and safe winter season. Now where did I put those airline tickets for Arizona?

As always, please contact your port counsel with any questions regarding this topic. And, if you have a particular question for a *Knowing the Waters* please email me at fchmelik@chmelik.com. ■

EMPLOYMENT OPPORTUNITIES

Director, Maritime Environmental and Planning
Port of Seattle

Deputy Executive Director
Port of Port Angeles –
updated 10-31-17

CAD Design Manager
Port of Seattle

Senior Cost Engineer Scheduler
Port of Seattle

Accounts Receivable Manager
Port of Seattle

Accounting & Financial Reporting Business Technology Analyst
Port of Seattle

Executive Director
Humboldt Bay Harbor, California

Payroll Technician II
Port of Tacoma

Facilities Management Specialist
Port of Tacoma

HR Manager, Labor & Employee Relations
Port of Tacoma

Project Manager II, Engineering
Port of Tacoma

Director, Port Operations
Northwest Seaport Alliance

If you would like information on any of these positions, visit washingtonports.org/washington-ports/employment-opportunities