



Webinar Series: Guidance on State and Local Paid Sick Leave Laws

Part 12: Major Changes in California, Minnesota, Illinois, and Chicago Lead Us Into 2024

December 13, 2023

Seyfarth Shaw LLP

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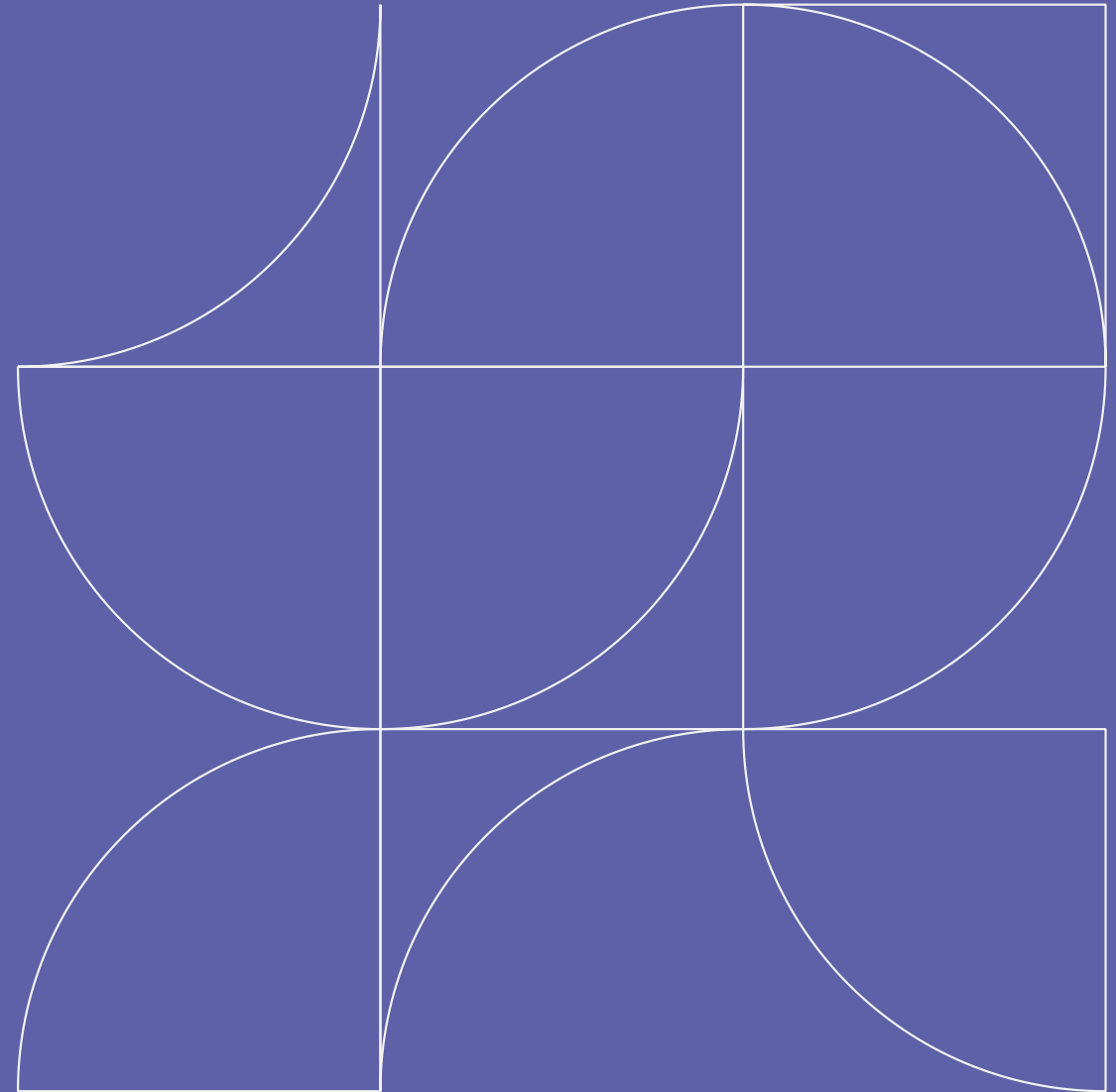


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Agenda

01	Nationwide Paid Sick Leave (PSL) and Paid Time Off (PTO) Overview
02	Illinois PTO Law
03	Chicago PSL + PTO Law
04	Minnesota PSL Updates
05	California PSL Updates
06	PSL and PTO Law Outlook

Nationwide PSL and PTO Law Overview



Mandatory Paid Sick Leave (PSL) and PTO Laws

Total Mandates

As of Dec. 1, 2023:
58 TOTAL PSL & PTO Mandates in the U.S.

- **Why?** Several jurisdictions have enacted multiple mandates.

Ex: General PSL Law + COVID-19 Temporary PSL Law

But the number is constantly changing due to COVID PSL laws.

As of Dec. 2020:
Approx. 69 TOTAL Mandates in U.S.

Federal

- **Executive Order 13706**
PSL for many EEs of certain federal contractors
- **Families First Coronavirus Response Act**
Emergency PSL for EEs of certain sized ERs (sunset as of 12/31/2020; reimbursement for voluntary leave option for select ERs ended 9/30/2021)

19 States + DC

PSL:

- Arizona
- **California**
- Colorado
- Connecticut
- DC
- Maryland
- Massachusetts
- Michigan
- **Minnesota**
- New Jersey
- New Mexico
- New York
- Oregon
- Rhode Island
- Vermont
- Virginia
- Washington

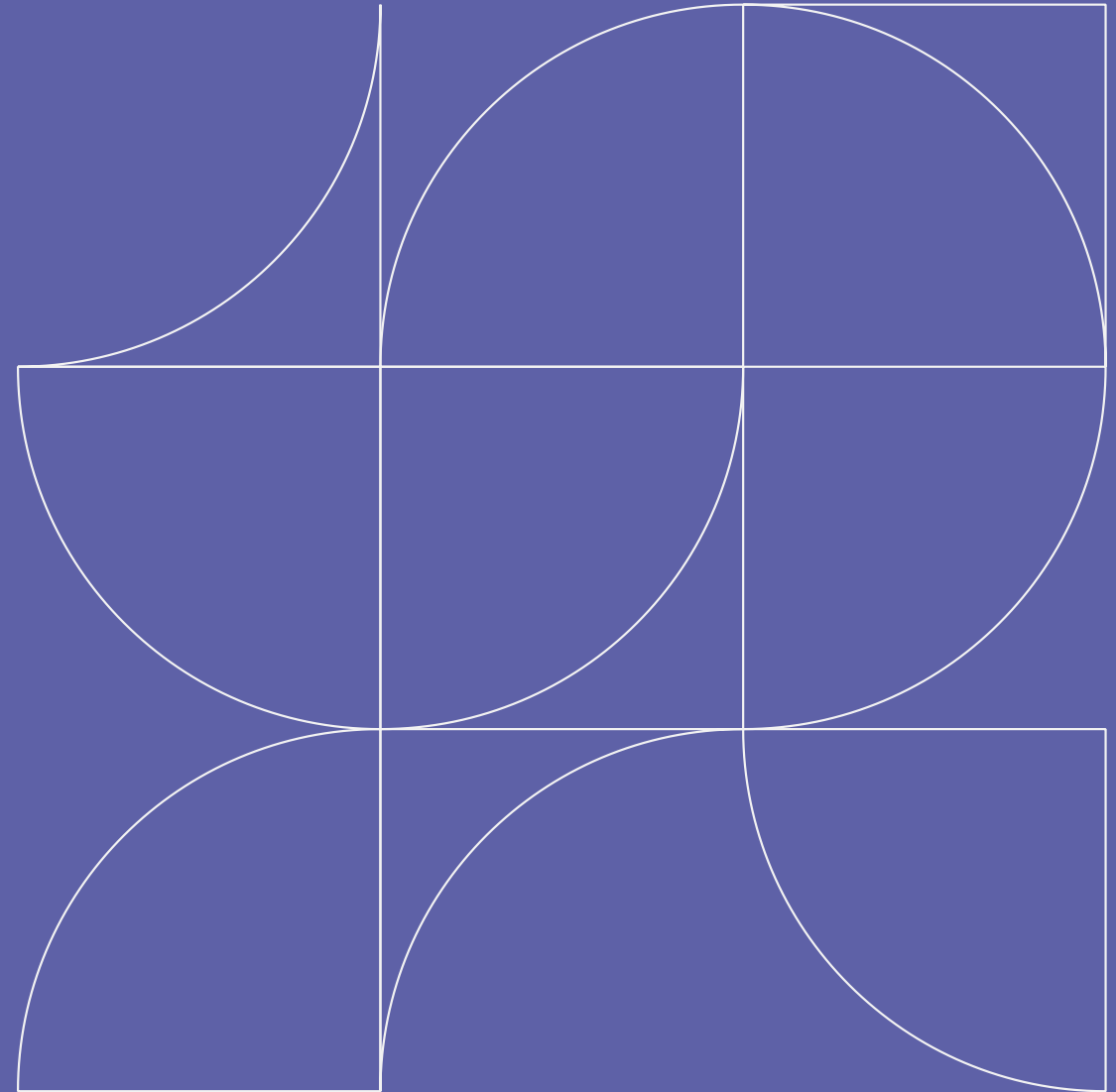
PTO:

- **Illinois**
- Maine
- Nevada

25 Municipalities

(1) San Francisco, CA; **(2)** Seattle, WA; **(3)** Long Beach, CA; **(4)** SeaTac, WA; **(5)** New York City, NY; **(6)** Los Angeles City, CA; **(7)** Oakland, CA; **(8)** Philadelphia, PA; **(9)** Tacoma, WA; **(10)** Emeryville, CA; **(11)** Montgomery County, MD; **(12)** Pittsburgh, PA; **(13)** Santa Monica, CA; **(14)** Minneapolis, MN; **(15)** San Diego, CA; **(16)** **Chicago, IL**; **(17)** Berkeley, CA; **(18)** Saint Paul, MN; **(19)** Cook County, IL; **(20)** Duluth, MN; **(21)** Westchester County, NY; **(22)** Bernalillo County, NM (PTO law); **(23)** Allegheny County, PA; **(24)** West Hollywood, CA (PTO law); **(25)** Bloomington, MN

Illinois & Chicago



Illinois Paid Leave for All Workers Act

- **Effective Jan. 1, 2024**
- **Coverage**
 - Applies to all virtually all employees
 - Covers nearly all employers (not school districts)
- **Leave Entitlement**
 - 40 hours of paid leave per 12-month period
- **Accrual & Use**
 - Accrue 1 hour per 40 hours worked, up to 40 hours per year (+ carryover); **or**
 - Frontload (no carryover; “use it or lose it”)
 - Can limit use to 40 hours per year
- **Increments of Use**
 - Employers can set “reasonable minimum increment” – 2 hours

- ***Reasons for Leave***

- Any reason!

- No documentation; no asking reasons for leave

- ***Rate of Pay***

- Hourly rate or minimum wage

- Law states “this wage shall be treated as the employee’s regular rate of pay”

- ***Waiting Period for Use***

- 90 days after hire **or** 1/1/24, whichever is later

- ***Employee Notice***

- Employers can implement “reasonable” notice requirements

- 7 days for foreseeable time off

- As soon as practicable for unforeseeable time off

- **** must have written policy to require notice for unforeseeable time off ****





- **Separation from Employment**

- **No payment** upon termination

(“Nothing in this Section or any other Illinois law or rule shall be construed as requiring financial or other payment to an employee from an employer upon the employee's termination, resignation, retirement, or other separation from employment for paid leave accrued under this Act that has not been used.”)

- **But**, if using other form of paid time off (e.g., vacation, PTO) – traditional Illinois law applies
- Reinstatement of accrued/unused leave if rehired within 12 months

- **Collective Bargaining Agreements**

- Does not affect CBAs in effect on 1/1/24; waiver permitted for CBAs *after* 1/1/24
- Does not apply to construction employees covered by CBA; employees working for employer in national/int'l delivery, pickup, transportation of parcels/freights

- **Recordkeeping / Notices**

- 3-year retention requirement
 - Available to employees upon request
- Poster requirement
- Notice also required to be included in EE manual or policy

- **Anti-Retaliation**

Can I Deny IL-PTO?

- **Yes**, subject to certain parameters
- Basis for denial must be included in written policy and limited to situations in which leave is denied to meet “core operational needs” (draft Reg.)
 - *Does employer provide need or service critical to safety, health, or welfare?*
 - *How similarly situated employees are treated for approving/denying leave?*
 - *Would it significantly impact employer operations due to employer’s size?*
 - *Has employee had adequate opportunity to use paid leave over 12-month period?*
 - IDOL “Christmas Tree Farmer” example

Enforcement – IL PLAWA

3-year statute of limitations

Administered by IDOL

- No private right of action

Damages

- Underpayment
- Compensatory damages
- Penalties: \$500-\$1,000 to employee; civil penalties - \$2,500 per offense
- Attorneys' fees, costs

Chicago Paid Leave and Paid Sick and Safe Leave Ordinance

- Passed November 9, 2023
- **Effective Date:** Dec. 31, 2023
 - *Postponed start of Paid Leave / PSL to July 1, 2024?*
- **Coverage**
 - Applies to all virtually all employees
 - *2 hrs in 2-week period vs. 80 hrs in 120-day period*
 - Covers nearly all employers
 - Distinctions for Small (50 & <) & Medium (51-100)
- ***Leave Entitlement – 80 Total Hours***
 - 40 hours of Paid Leave per 12-month period
 - Leave for *any reason*
 - 40 hours of Paid Sick & Safe Leave (“PSL”) per 12-month period
 - Same existing sick leave reasons



- **Accrual & Use**

- Accrue 1 hour per 35 hours worked of both Paid Leave and PSL (+ carryover), up to 40 hours of both per year; or
- Frontload (law unclear if no carryover for PSL / “use it or lose it”)
 - **BUT** Draft Rules may resolve
 - PSL Draft Rule: “Unless an Employer frontloads in accordance with PTO 2.04(c), an Employer must allow the Covered Employee to carry over up to 80 hours of unused Paid Sick Leave into the next Benefit Year.”
- **No use limit**

- **Carryover**

- PSL: Up to 80 hours
- PL: Up to 16 hours

- **Increments of Use**

- PSL: 2 hours
- PL: 4 hours



- ***Rate of Pay***
 - Same rate regularly earned during hours worked
 - Non-Exempt 90-day lookback (no OT, premiums, commissions)
- ***Waiting Period for Use***
 - PSL: 30 days
 - *Consider your interns!*
 - PL: 90 days after hire
- ***Employee Notice***
 - ER can implement “reasonable” notice requirements
 - PL: 7 days
 - “reasonable preapproval from ER” to “maintain[] continuity of ER operations” – *We’ll discuss!*
 - PSL: 7 days for foreseeable / as soon as practicable for unforeseeable time off



- ***Separation from Employment***
 - PSL: No
 - PL: Yes
 - Delay for Medium Employers (16 hours for 1st yr); Small Employers exempt
 - Includes “Unlimited” PTO policies!
- ***Collective Bargaining Agreements***
 - Does not affect CBAs in effect; waiver permitted for CBAs *after* effective date
- ***Recordkeeping / Notices***
 - 5-year retention requirement
 - Available to employees upon request
 - Posting & annual paycheck requirement
 - Balance notification requirement
- ***Written Policy Considerations***

Can I Deny Time Off?

- **Paid Leave** policy may establish “reasonable preapproval” requirements to maintain continuity of operations
 - Factors include (per Draft Rules):
 - *Whether the Employer provides a need or service critical to the health, safety, or welfare of the people of Chicago;*
 - *Whether similarly situated employees are treated the same for the purposes of reviewing, approving, and denying Paid Leave;*
 - *Whether granting Paid Leave during a particular time period would significantly impact business operations;*
 - *Whether the Covered Employee has adequate opportunity to use all Paid Leave time the Covered Employee is entitled to over a 12-month period.*

Enforcement – Chicago

3-year statute of limitations

Administered by Business Affairs and Consumer Protection

- Also allows a private right of action
 - PSL – immediate
 - PL – 1 year delay

Damages

- 3x full amount of leave lost; interest; costs; attorneys' fees
- Penalties: \$1,000 - \$3,000 per offense (each day = separate offense); \$500 for first notice violation

A Note About Cook County...

- Cook County is considering an amendment substituting Earned Sick Leave for Earned *Paid Leave*
- Measure would largely align Cook County with IL-PLAWA requirements
 - 40 hours of paid leave per 12-month period
- As drafted, Dec. 31, 2023 effective date



Formulating a Compliance Strategy - Illinois

PLAWA:

“An employer who provides any type of paid leave policy that satisfies the **minimum amount of leave** required by subsection (a) of Section 15 is not required to modify the policy if the policy offers an employee the option, **at the employee's discretion**, to take paid leave for **any reason.**”

- Proposed Reg: “Qualifying pre-existing paid time off policy” = a bona fide paid leave policy in effect before 1/1/24 that “***in practice allows all employees to take at least 40 hours of paid leave for any reason of their choosing.***”
 - Section 200.200(b): Employers with “qualifying pre-existing paid time off policy” do not need to modify policy
 - IDOL FAQ: “If your company has an existing policy that meets or provides the minimum amount of leave required by the Act (40 hours) in a 12-month period and your employees can in fact take that amount of leave for any reason of their choosing, you do not need to modify the terms of your policy.”
- Considerations:
 - *Does it cover all employees? (e.g., part-time, seasonal, temporary workers)*
 - *Does it provide at least 40 hours?*
 - *Does it allow time off to be used for any reason?*
 - *Does it allow time off to be used at employees' discretion?*
 - *Notice / approval requirements?*

Formulating a Compliance Strategy

- **Chicago:** no “grandfathering” of preexisting policy

“If an employer has a policy that grants employees Paid Leave or Paid Sick Leave in an **amount and a manner that meets or exceeds** the requirements of this Chapter, the employer is not required to provide additional Paid Leave or Paid Sick Leave.”



Key Areas for Compliance

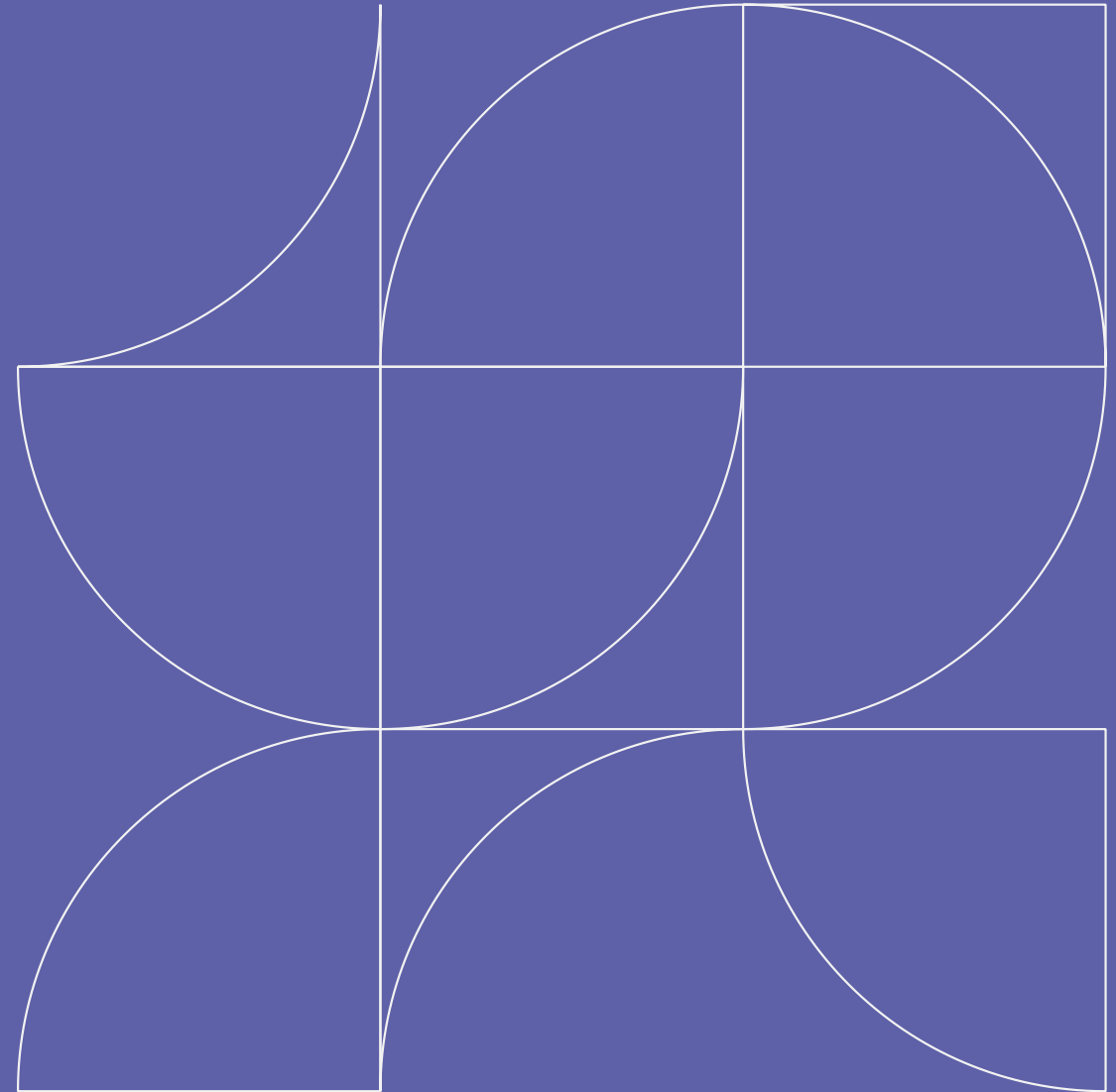
Accrual Rate	Amount of Leave	Carry-Over	Payout at Separation
<ul style="list-style-type: none">• Illinois (Cook County?) – 1 hour per 40 hours worked• Chicago – 1 hour per 35 hours worked for both PSL and PL (<i>2 hours per 35 hours worked if PTO</i>)	<ul style="list-style-type: none">• Paid Leave (for any reason) is the same (40)• Total amount of PTO in Chicago must = <u>80 hours</u>• <i>Don't forget about part-time employees, temporary/ seasonal employees</i>	<ul style="list-style-type: none">• Illinois – likely 80 hours• Chicago Paid Leave – only 16 hours• Chicago PSL – 80 hours<ul style="list-style-type: none">– <i>If PTO – total of <u>96 hours</u></i>	<ul style="list-style-type: none">• Illinois – No (<i>subject to exceptions</i>)• Chicago – Yes (<i>subject to exceptions</i>)

Action Items for Compliance

- Review existing paid leave policies – what works & what does not?
- If employees inside and outside Chicago – develop strategy for compliance
 - One size fits all?
 - Update for Chicago now vs. later
- Notice, posting, balance notice requirements
- System updates (including rate of pay)?
- Training managers
- Monitor for further administrative guidance and rulemaking



Minnesota



Paid Sick and Safe Leave in Minnesota – 5 Laws

- **Statewide Minnesota Paid Sick Leave Law**
 - Effective January 1, 2024
- **Bloomington, MN**
 - Effective July 1, 2023
 - Amended effective January 1, 2024
- **Duluth, MN**
 - Effective January 1, 2020
- **Minneapolis, MN**
 - Effective July 1, 2017
- **Saint Paul, MN**
 - Saint Paul (effective 2017 – 2018, depending on employer size)
 - Amended effective January 1, 2024

Topics	Minnesota Earned Sick and Safe Time (“ESST”)
Effective Date	January 1, 2024
Employer Coverage	<p>"Employer" includes an individual, corporation, partnership, association, business trust, nonprofit organization, group of persons, the state of Minnesota, a county, town, city, school district, or other governmental subdivision that has one or more employees.</p>
Employee Eligibility	<p>"Employee" is defined to include an individual employed by an employer who works for the employer for at least 80 hours in a year in Minnesota.</p>
	<ul style="list-style-type: none"> - Includes temporary and part-time workers. - Does not include independent contractors and individuals employed by an air carrier as a flight deck or cabin crew member if certain conditions are satisfied.

Topics	Minnesota ESST
Start of Accrual	Effective date of law (January 1, 2024) or commencement of employment (whichever is later).
Accrual Rate	One hour of ESST for every 30 hours worked. <i>FAQs: If most of an employee's hours are worked in another state, employee only accrues ESST for hours worked in Minnesota.</i>
Accrual Cap	48 hours (annual) and 80 hours (point-in-time). <i>FAQs: Employers that start their accrual year prior to 1/1/2024 can count ESST accrued before 1/1/2024 toward the 48-hour annual cap.</i>
Carryover	Yes, but total amount of ESST can be capped at 80 hours.
Usage Cap	Unclear, but likely none.
Usage Waiting Period	None.

Topics	Minnesota ESST
Frontloading ESST	<p>Instead of accruing, an employer may elect to <u>either</u>: (a) frontload 48 hours of ESST at the beginning of the subsequent year <u>and</u> pay out the employee's unused ESST balance at year-end; <u>or</u> (b) frontload 80 hours of ESST at the beginning of the subsequent year.</p> <ul style="list-style-type: none"> • Option (a) eliminates year-end carryover. • Option (b) eliminates year-end carryover and cash out obligations. <p><u>FAQs:</u></p> <ul style="list-style-type: none"> • <i>If an employer has a designated accrual year that started before 1/1/2024, the employer can count leave time already provided and available for use as meeting the obligation under the frontloading options.</i> • <i>Employers cannot prorate the frontload amount for new hires or part-timers.</i>
Time Increment Limitation	<p>Earned sick leave may be used in the smaller of (a) 4-hour increments or (b) the smallest increment of time tracked by the employer's payroll system.</p>
Payment of ESST	<p>Same hourly rate as employee normally earns, not less than minimum wage.</p> <p><u>FAQs:</u> <i>ESST must be paid at the hourly rate of pay for the shift in which the leave is being used (the shift for which the employee was scheduled to work but used ESST).</i></p>

Topics	Minnesota ESST
<p>Notice/Posting</p>	<p>Employers must provide notice of rights by later of effective date or upon hire. Can satisfy requirement by (a) posting, (b) paper notice, <u>or</u> (c) electronic notice on web-based app or platform through which employee performs work.</p> <p>Model notice available on ESST website—<i>must be customized</i> to describe employer’s accrual/frontloading system, benefit year, and notice requirements.</p> <p><i>FAQs: Employers are not required to use the sample notice as long as their notice contains all of the required information.</i></p> <p>Separate educational poster also available on ESST website.</p>
<p>Employee Handbooks</p>	<p>If an employer provides its employees with an employee handbook, it <u>must</u> include notice of employee rights and remedies under the ESST in the handbook.</p>
<p>Available Balance Notification</p>	<p>Must provide on earnings statement each pay period: (a) total number of ESST hours accrued & available for use, <u>and</u> (b) total number of ESST hours used during pay period.</p> <p><i>FAQs: This information must be on the earnings statement—access to an online portal only is not sufficient.</i></p>

Bloomington, MN ESST Amendments Effective 1/1/2024

- **No Usage Waiting Period**
- **Reasons for Use**
 - Aligned with Minnesota ESST
- **Definition of Family Member**
 - Generally aligned with Minnesota ESST
- **All ESST Must Be Paid**
 - Removed unpaid leave option for employers with fewer than 5 employees
- **Frontloading to Eliminate Year-End Carryover**
 - Two options, aligned with Minnesota ESST
- **Reasons for Use**
 - Aligned with Minnesota ESST
- **Balance Reinstatement if Rehired within 180 Days**

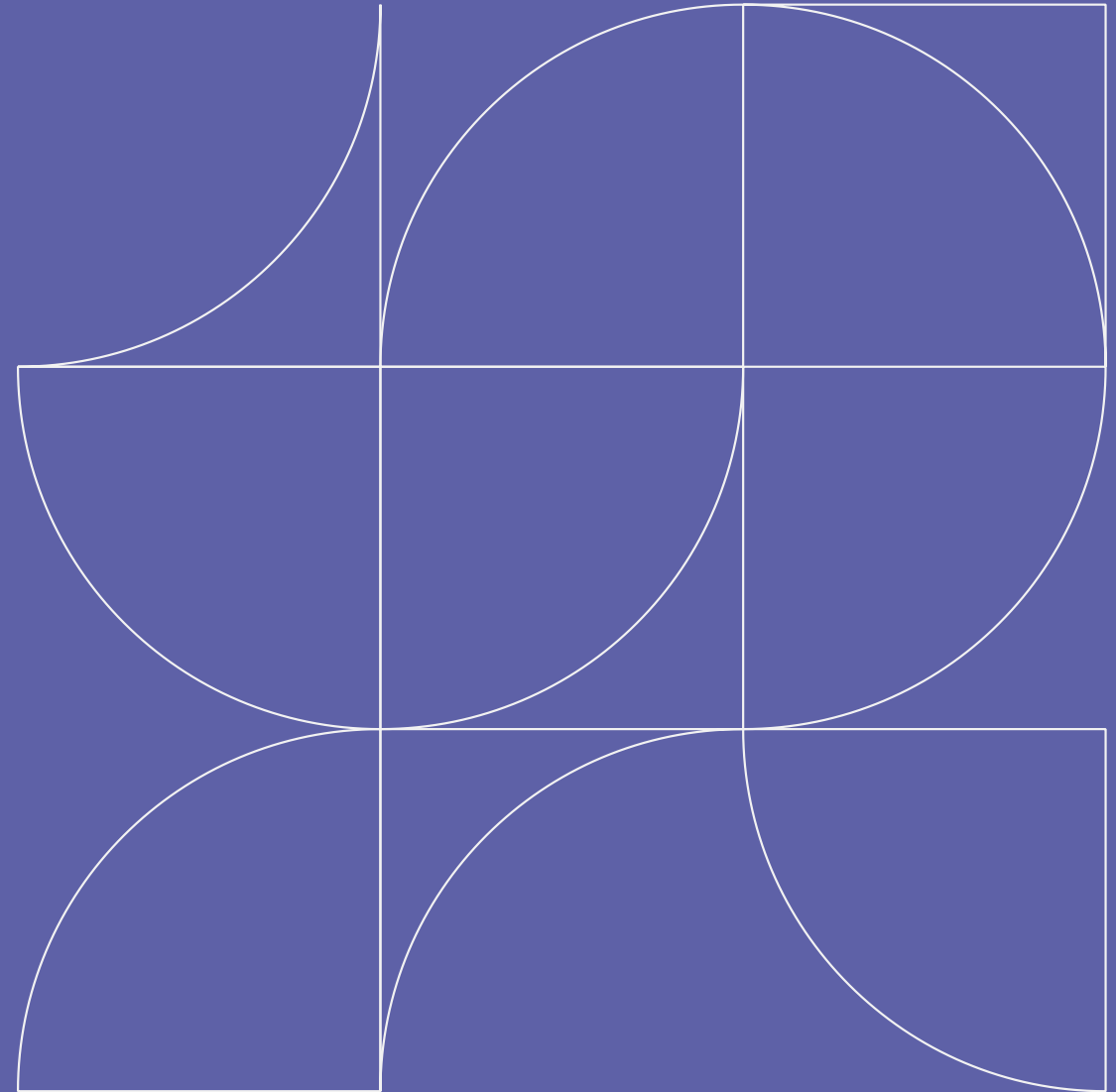
Saint Paul, MN ESST Amendments Effective 1/1/2024

- **No Usage Waiting Period**
- **Reasons for Use**
 - Aligned with Minnesota ESST
- **Definition of Family Member**
 - Aligned with Minnesota ESST
- **Increments of Use**
 - Aligned with Minnesota ESST
- **Frontloading to Eliminate Year-End Carryover**
 - Two options, aligned with Minnesota ESST
- **Notice & Documentation Requirements**
 - Aligned with Minnesota ESST
- **Notice & Posting**
 - Aligned with Minnesota ESST
- **Balance Reinstatement if Rehired within 180 Days**

Key Differences Between MN State and Local ESST Laws

- **Employer Coverage**
- **Employee Coverage**
- **Accrual Rate**
- **Year-End Carryover**
- **Balance Reinstatement**
- **Reasons for Use**
- **Covered Family Members**
- **Annual Usage Limits**
- **Usage Waiting Period**
- **Balance Notification**
- **Frontloading**

California



Healthy Workplaces Healthy Families Act of 2014 – A Refresh

- Covers virtually **all** employees (*except some CBA*)
 - employer and employee are defined broadly
 - includes PT, temporary and staffing agency workers
- Employee **must** work 30 days per year in CA
 - can have 90-day hold on use
- **Broad list of reasons** for taking paid sick leave
 - includes dealing with issues arising from domestic violence, stalking and sexual assault, and caring for family members, preventive care (*now bereavement leave)
- **Cannot** deny the right to use accrued sick days
 - cannot discharge, threaten to discharge, discipline or discriminate against employees for using or attempting to use accrued sick days
- **Rebuttable presumption of unlawful retaliation**
 - if adverse action occurs within 30 days of protected activity

Local Paid Sick Leave Laws

Overview

- **Emeryville** Paid Sick Leave Ordinance (in effect since July 1, 2015)
- **Los Angeles (city)** Paid Sick Leave Ordinance (in effect for larger employers since July 1, 2016; smaller employers since July 1, 2017); also LAWA ordinance and Hotel Workers
- **San Diego** Paid Sick Leave Ordinance (in effect since July 11, 2016)
- **San Francisco** Paid Sick Leave Ordinance (in effect since 2007; amended in 2017 and 2018)
- **Berkeley** Paid Sick Leave Ordinance (effective October 1, 2017)
- **Oakland** Sick Leave Ordinance (effective since March 2, 2015)
- **Santa Monica** Sick Leave Ordinance (effective January 1, 2017)
- **West Hollywood** PTO Ordinance (eff. July 1, 2022 for non-hotel)

California PSL Amendments

Key Amendments to Paid Sick Leave Law

- Governor signed bill into law on October 4, 2023.
- Effective January 1, 2024
- **Increased Amount of PSL:** Annual amount of CA PSL increasing from **(a) 3 days or 24 hours** to **(b) 5 days or 40 hours**.
 - Impacts annual usage **and** frontloading
 - No current guidance on “top off” or “partial grant” for mid-year compliance

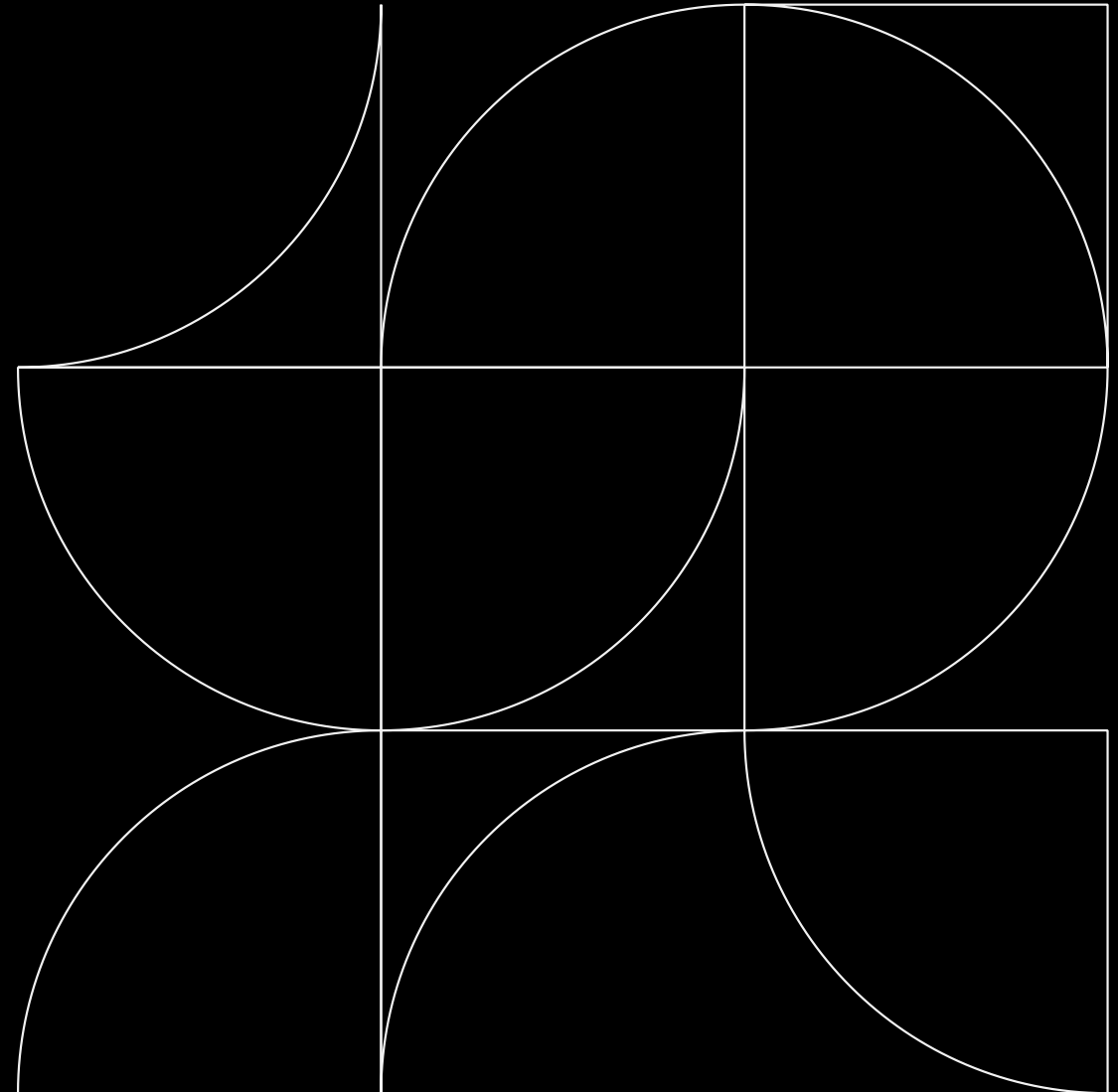
California PSL Amendments

Key Amendments to Paid Sick Leave Law

- **Increased “Rolling” Accrual Cap:** Rolling (i.e., point-in-time) accrual cap increasing from **(a) 6 days or 48 hours** to **(b) 10 days or 80 hours**.
 - Will impact all accrual-based policies in local jurisdictions as well, with accrual caps below 80 hours (SF, Oakland, Emeryville, Santa Monica, Berkeley, Los Angeles)
- **CBA Exemption:** Rules for exemption remain the same, but some protections extended regardless of the exemption.
 - reasons for use
 - anti-retaliation
 - no requirements for replacements

CLE Code

Paid Sick Leave and PTO Law Outlook





Paid Sick Leave and PTO Outlook – 2024 and On

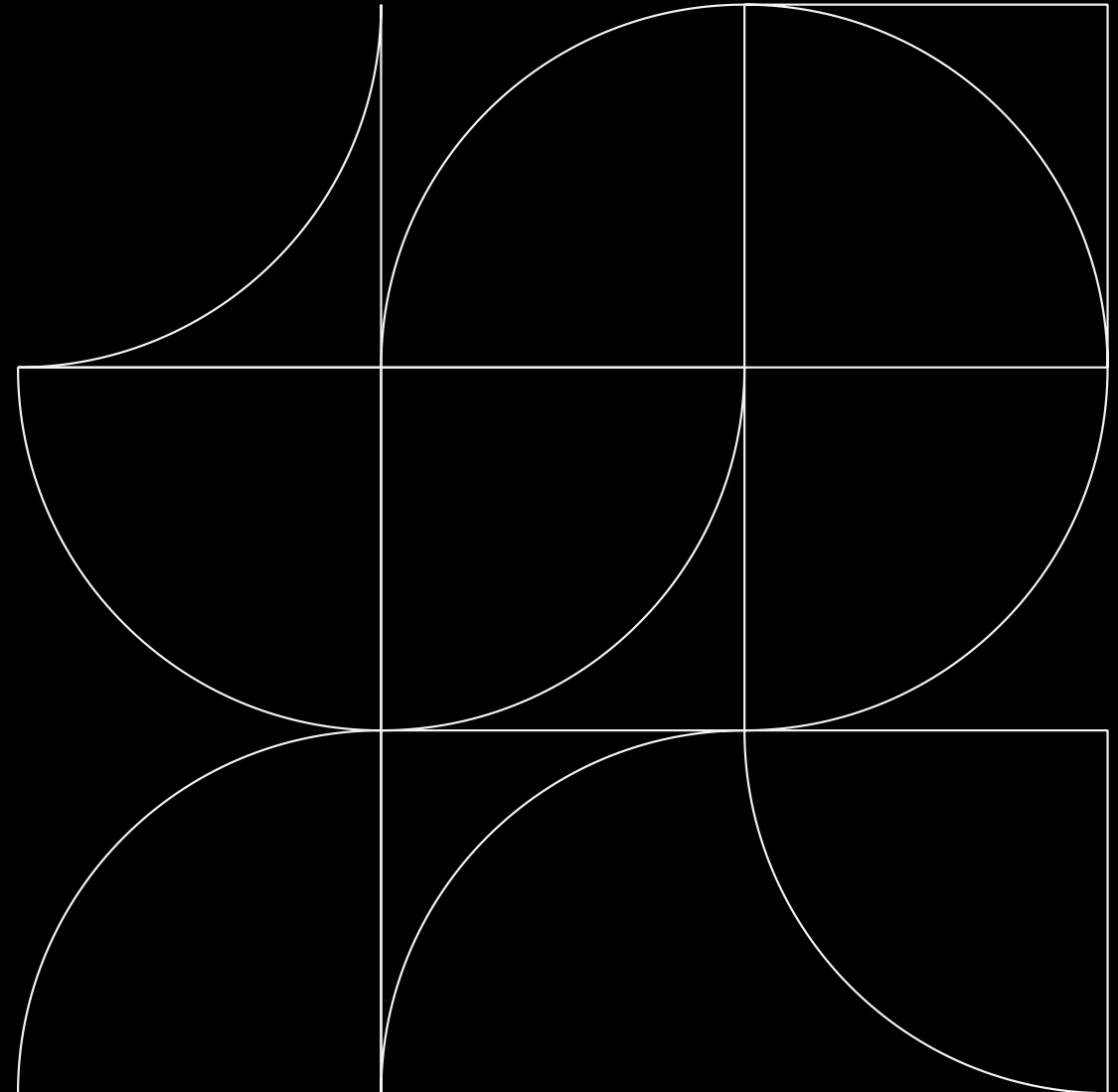
Laws scheduled to go into effect:

- Chicago, IL (PTO / PSL Law – 12/31/2023, but really 7/1/2024)
- Illinois (PTO law – 1/1/2024)
- Minnesota (General PSL + Select local amendments – 1/1/2024)

Next locations likely to adopt:

- **Federal:** Potential for nationwide PSL mandate. Key 2023 legislation – The Healthy Families Act (S.1664)
- **State:** **(1)** Delaware; **(2)** Nebraska; **(3)** Virginia (for all private ERs); **(4)** Hawaii; **(5)** Pennsylvania; **(6)** Connecticut (Amendments)
- **Municipal:** **(1)** Cook County, IL (amendments?); **(2)** New York City, NY (PTO law?); **(3)** CA localities with existing or prior COVID-19 PSL laws that may seek to adopt general non-COVID PSL laws

Seyfarth Paid Leave Resources



Seyfarth Paid Leave Resources



If you have questions about or would like assistance with the country's **Paid Sick Leave “Patchwork”** here are some ways Seyfarth can help:

(A) Premium PSL Survey: Seyfarth maintains a *comprehensive PSL survey* breaking down the specific requirements of *each* existing state and local PSL law.

For more information contact: paidleave@seyfarth.com

(B) Paid Leave Mailing List: Seyfarth regularly publishes Legal Updates and Blog Posts on PSL and other paid leave law developments.

You can sign up here:

<https://connect.seyfarth.com/9/7/landing-pages/subscription.asp>

Seyfarth Paid Leave Resources



(C) Webinar Series - Guidance on PSL: This webinar series is a great tool for you!

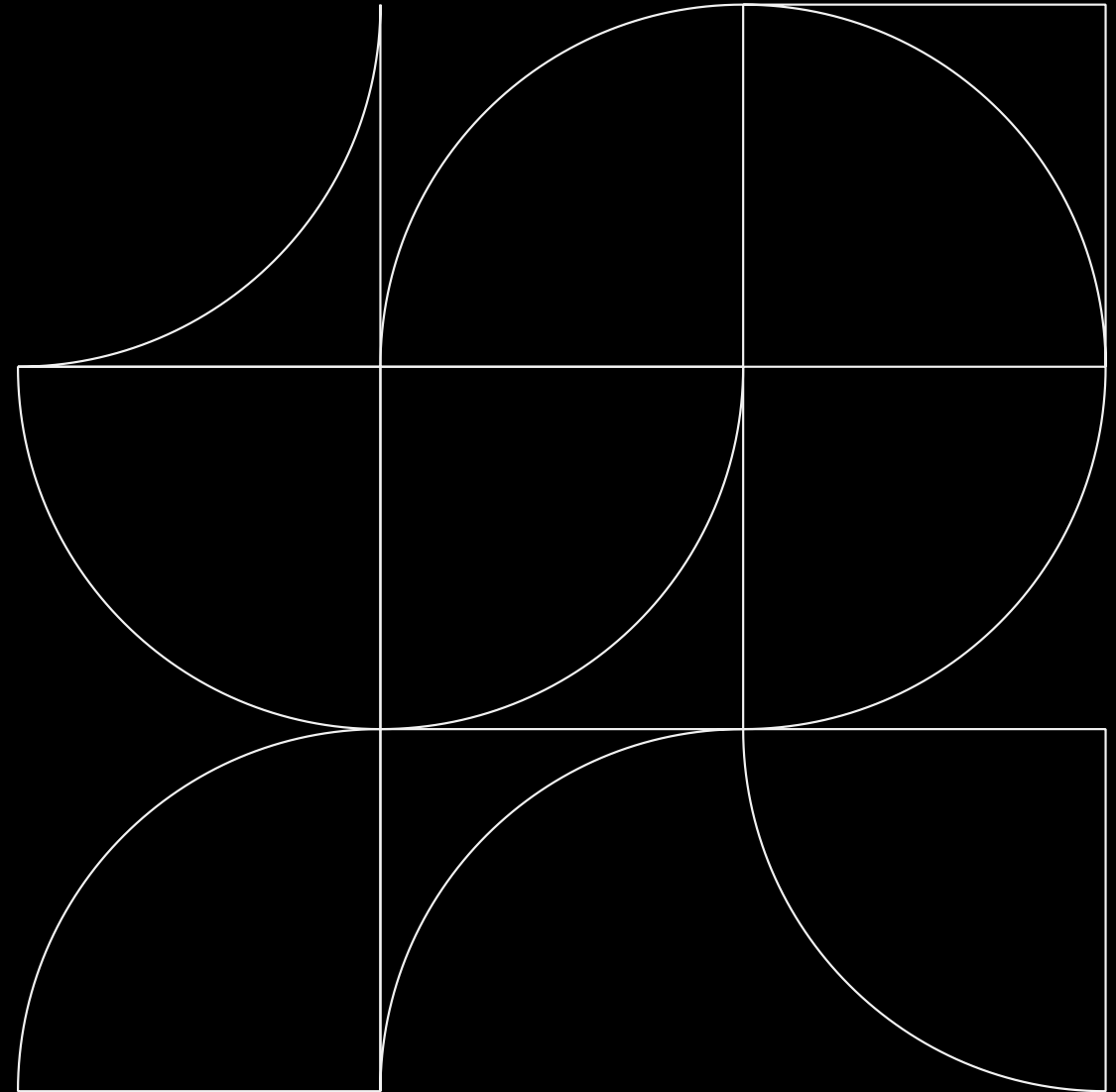
- Part 1 – NY State and Local PSL at the end of 2020
- Part 2 – CO, ME and NY PSL updates
- Part 3 – COVID-19 Supplemental PSL mandates
- Part 4 – Prospects for Federal Paid Leave
- Part 5 – Practical tips on navigating the PSL “patchwork”
- Part 6 – NY COVID and General PSL in 2022
- Part 7 – Navigating Two Years of COVID-19 Paid Leave Mandates, Plus Recent Developments
- Part 8 – NM and West Hollywood, CA
- Part 9 – PSL Law Impact on CBAs Under RLA and NLRA
- Part 10 – What’s New with Paid Sick Leave in 2023
- Part 11 – 10 Year of PSL
- Part 12 – TODAY!

Note: We have a separate Webinar Series focused on Paid Family Leave guidance.

(D) “Take It or Leave It” Podcast: In late 2021, Seyfarth launched a podcast focused exclusively on workplace leaves, absence management, and accommodations. Episodes streaming on Spotify, SoundCloud, and Apple Podcasts, and available on Seyfarth’s website.

More info at: <https://www.seyfarth.com/trends/take-it-or-leave-it-podcast.html>

Questions?



**thank
you**

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