



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

Part 10: What's New with Paid Sick Leave in 2023

June 20, 2023

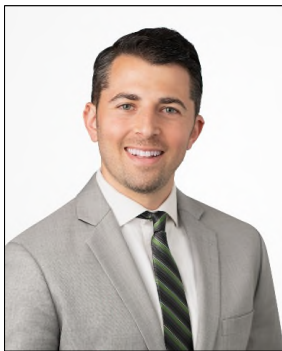
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Speakers



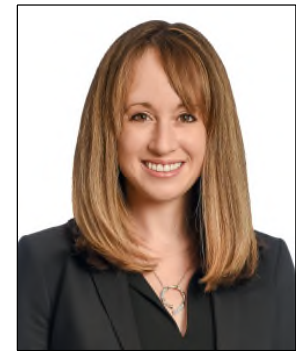
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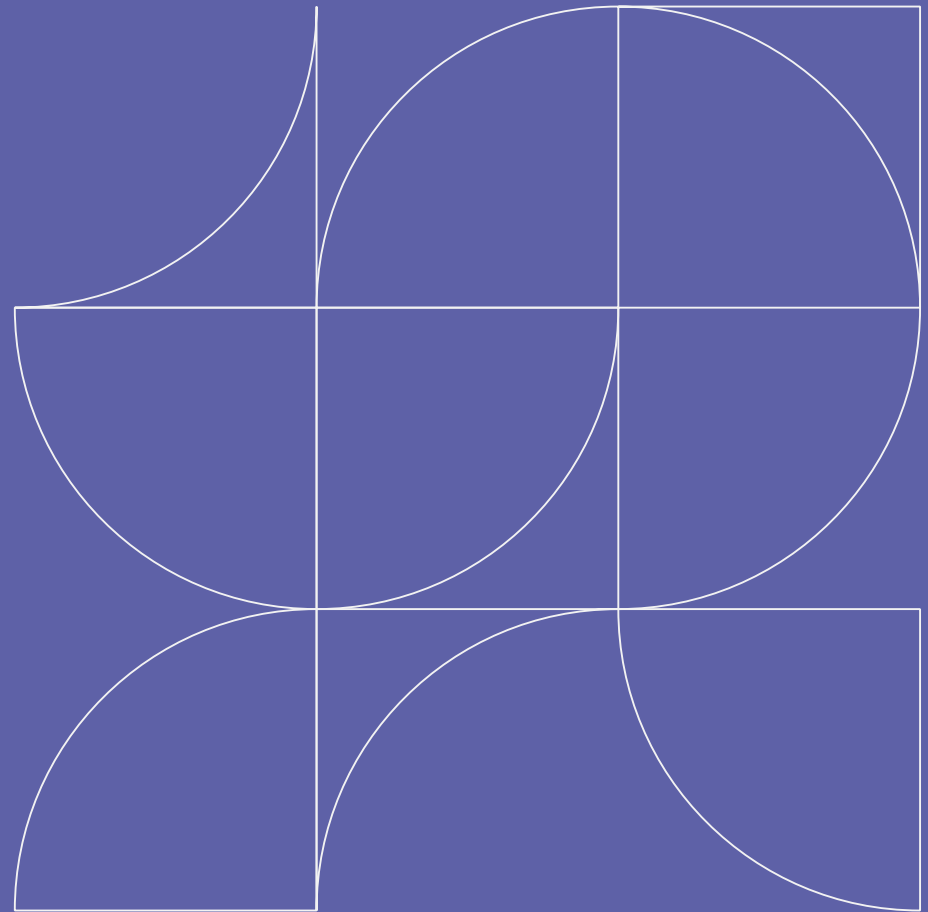
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Nationwide General and COVID-19 Paid Sick Leave Overview



Mandatory Paid Sick Leave (PSL) and PTO Laws

Total Mandates

As of June 15, 2023:
59 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

COVID-19 State and Local Leave Overview

Types of State and Local Leave Laws Affected by COVID-19 Developments:

- Paid sick and safe time laws (at least 40 locations with developments)
- Paid time off laws (i.e., NV guidance)
- Paid family and medical leave laws (i.e., NY and NJ expansion)
- State disability insurance laws (i.e., NY and NJ expansion)
- Unpaid family and medical leave laws (i.e., Washington, D.C. and NJ expansion)

COVID-19 State and Local Leave Overview

Paid Sick Leave / PTO Laws and COVID-19 Developments

Four Main Groups:

Group 1 –

Entirely new laws / executive or other emergency orders dealing with non-vaccine COVID-19 absences

Group 2 –

Entirely new mandate exclusively for COVID-19 vaccine paid leave

Group 3 –

Amendments to existing laws or regulations

Group 4 –

General non-binding guidance regarding applicability of an existing PSL law in light of COVID-19

COVID-19 State and Local Leave Overview

PSL / PTO Laws and COVID Developments – 2020 Year-End: 34 locations

(1) Arizona - State; (2) California - State; (3) California - Emeryville; (4) California - Long Beach; (5) California - Los Angeles City; (6) California - Los Angeles County; (7) California - Oakland; (8) California - Sacramento City; (9) California – Sacramento County; (10) California - San Diego; (11) California - San Francisco; (12) California - San Jose; (13) California - San Mateo County; (14) California - Santa Rosa; (15) California – Sonoma County; (16) Colorado - State; (17) Illinois - Chicago; (18) Illinois - Cook County; (19) Maryland - State; (20) Massachusetts - State; (21) Michigan - State; (22) Minnesota - Duluth; (23) Minnesota - Minneapolis; (24) Minnesota - Saint Paul; (25) Nevada - State; (26) New Jersey - State; (27) New York - State; (28) New York - New York City; (29) Oregon - State; (30) Pennsylvania - Philadelphia; (31) Pennsylvania - Pittsburgh; (32) Washington - State; (33) Washington - Seattle; (34) Washington, D.C.

COVID-19 State and Local Leave Overview

PSL / PTO Laws and COVID Developments – June 2022: 41 (or 27) locations

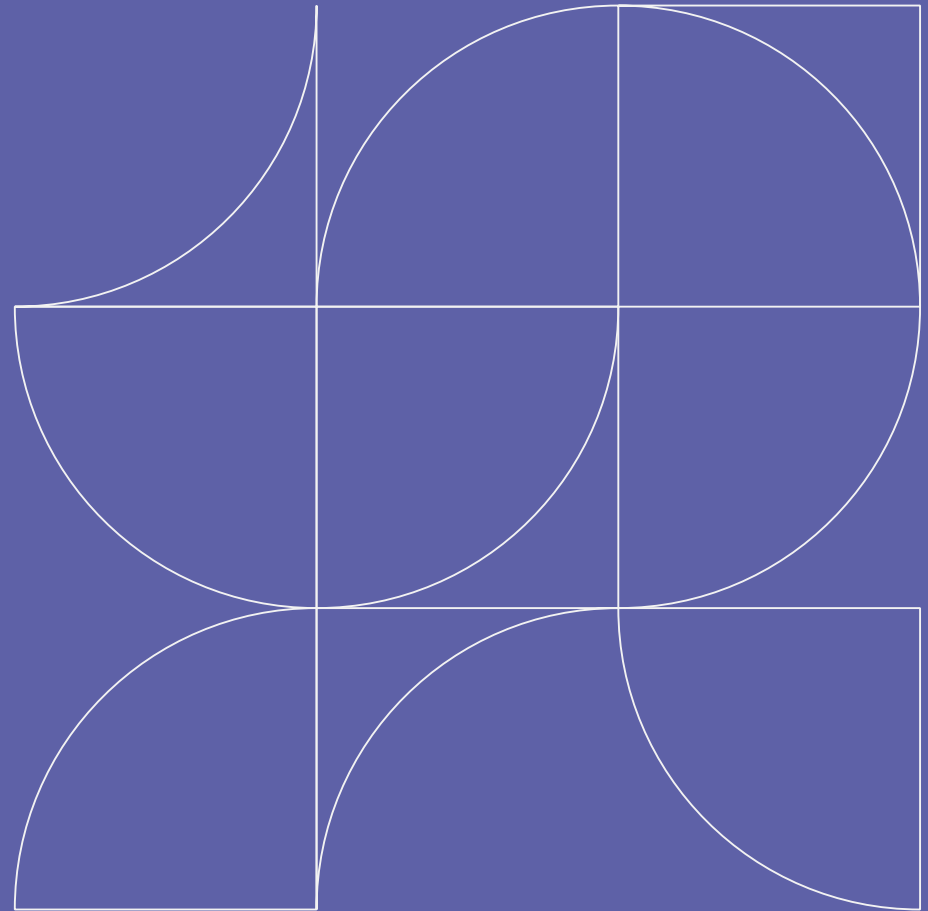
(1) Arizona - State; (2) California - State; ~~(3) California - Daly City;~~
(4) California - Emeryville; ~~(5) California - Long Beach;~~
(6) California - Los Angeles City; (7) California - Los Angeles
County; ~~(8) California - Millbrae;~~ (9) California - Oakland;
~~(10) California - Sacramento City;~~ ~~(11) California - Sacramento
County;~~ (12) California - San Diego; (13) California - San
Francisco; ~~(14) California - San Jose;~~ ~~(15) California - San Mateo
County;~~ ~~(16) California - San Mateo City;~~ ~~(17) California - Santa
Rosa;~~ ~~(18) California - Sonoma County;~~ ~~(19) California - South
San Francisco;~~ (20) Colorado - State; (21) Illinois - Chicago*;
(22) Illinois - Cook County*; (23) Maryland - State; (24)
Massachusetts - State; (25) Michigan - State; (26) Minnesota -
Duluth; (27) Minnesota - Minneapolis; (28) Minnesota - Saint
Paul; (29) Nevada - State; (30) New Jersey - State; (31) New York
- State; (32) New York - New York City; (33) Oregon - State;
(34) Pennsylvania - Philadelphia; (35) Pennsylvania - Pittsburgh;
(36) Washington - State; (37) Washington - Seattle;
(38) Washington, D.C.; ~~(39) Marin County, CA;~~ ~~(40) Fairfax, CA;~~
~~(41) San Anselmo, CA;~~

COVID-19 State and Local Leave Overview

COVID-19 Paid Leave Mandates – As of June 2023:

- CA – Oakland: COVID SPSL
- CA – San Francisco: PHEL
- CO – State: PHEL
- IL – Chicago: COVID Vaccine IF ER mandates vaccine
- IL – Cook County: Same as Chicago
- MD – State: PHEL (permanent) (needs funding)
- NV – State: COVID Vaccine
- NY – State: COVID SPSL and COVID Vaccine
- PA – Philadelphia: COVID SPSL

Illinois



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**
 - 1 hour per 40 hours worked (+ 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

- ***Rate of Pay***

- Hourly rate or minimum wage

- ***Waiting Period for Use***

- 90 days after hire

- ***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

- **Recordkeeping / Notices**

- 3-year retention requirement
 - Available to employees upon request
- Poster requirement

- **Anti-Retaliation**

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

Formulating a Compliance Strategy

“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**.”

- Use of existing paid time off policies?
 - *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?*

- **How does this fit together with existing paid time off policies?**

- *Chicago/Cook County exemptions*
- *IL + National*

- **Confirming no payout upon separation?**

- **Recommendations**

- Review existing policies applicable to Illinois employees
- Develop plan for compliance by 1/1/24
- Monitor for further State guidance



IDOL Guidance



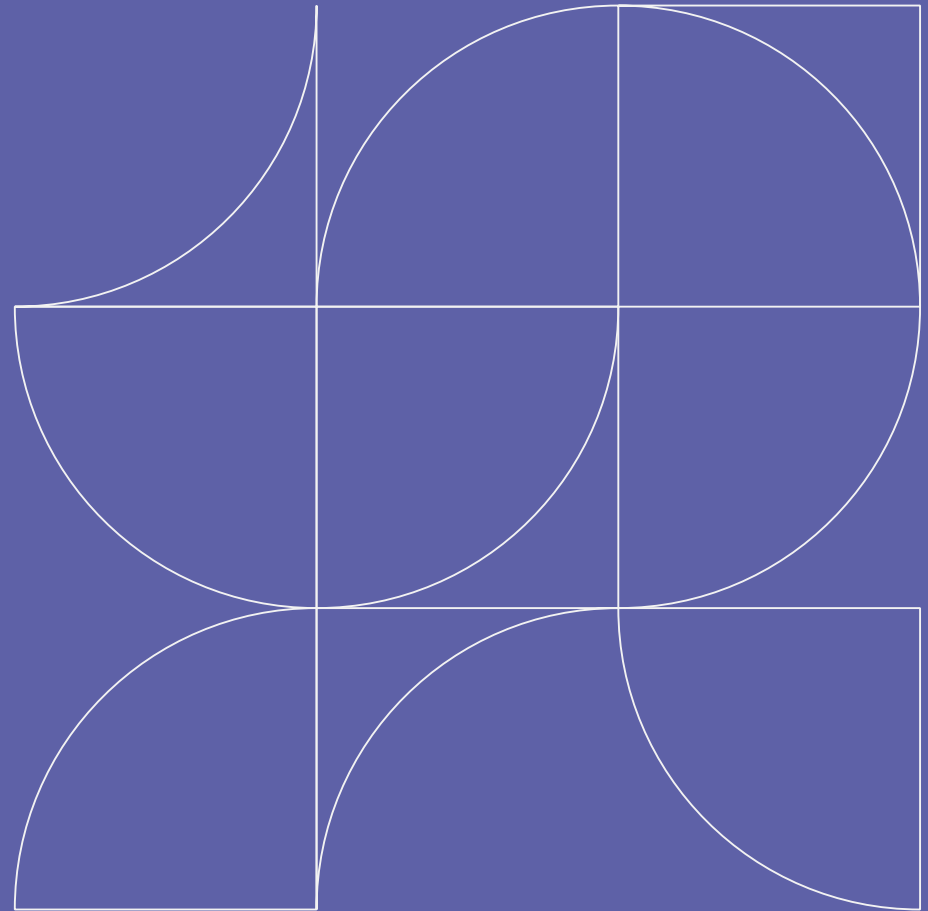
- FAQs published 5/23/23
 - <https://labor.illinois.gov/faqs/paidleavefaq.html>

Q: My employer already provides paid time off. Do they have to add another 40 hours of leave under the Act?

A: An employer who already offers paid leave benefits that meet the minimum **requirements** of the Act does not have to add additional time.

- More administrative rules forthcoming?
- Questions / comments
to: DOL.PaidLeave@illinois.gov

Minnesota



Paid Sick and Safe Leave

- **Statewide Minnesota Paid Sick Leave Law**
 - Effective January 1, 2024
- **Bloomington, MN Newest Minnesota Local Paid Sick Leave Law**
 - Enacted June 6, 2022
 - Amended Jan. 2023
 - Effective July 1, 2023
- **Additional Minnesota Paid Sick Leave Laws**
 - Minneapolis (effective July 1, 2017)
 - Saint Paul (effective 2017 – 2018, depending on employer size)
 - Duluth (effective January 1, 2020)

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	Bloomington, MN Earned Sick & Safe Leave (ESSL) Law
Effective Date	July 1, 2023
Employer Coverage	Applies to all private employers with one or more employees.
Employee Eligibility	"Employee" is defined to include an individual employed by an employer who performs work at a location or locations within the geographic boundaries of the city for at least 80 hours in a year for that employer.
	<ul style="list-style-type: none"> - Includes temporary and part-time workers. - Does not include amongst others, independent contractors or student interns.

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.
Accrual Cap	48 hours (annual) and 80 hours (point-in-time).
Carryover	No provision (but most likely can cap at 80 hours due to point-in-time accrual cap).
Usage Cap	Unclear, but likely none.
Usage Waiting Period	None.

Topics	Bloomington, MN ESSL
Start of Accrual	Effective date of law (July 1, 2023) or commencement of employment (whichever is later).
Accrual Rate	One hour of ESST for every 30 hours worked.
Accrual Cap	48 hours (annual) and 80 hours (point-in-time).
Carryover	80 hours
Usage Cap	No usage cap.
Usage Waiting Period	90 days usage waiting period

Topics	Minnesota ESST
Frontloading ESST	<p>Instead of accruing, an employer may elect to either: (a) frontload 48 hours of ESST at the beginning of the subsequent year and pay out the employee's unused ESST balance at year-end; or (b) frontload 80 hours of ESST at the beginning of the subsequent year.</p>
	<p>Option (a) eliminates year-end carryover.</p> <p>Option (b) <u>likely</u> eliminates year-end carryover and cash out obligations.</p>
CBAs	<p>Generally, must meet or exceed and not otherwise conflict with provisions of ESST law.</p>
Payment of ESST	<p>Same hourly rate as the employee normally earns, not less than minimum wage.</p>
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>

Topics	Bloomington, MN ESSL
Frontloading ESST	Employers may provide at least 48 hours of sick and safe time following the initial 90 days of employment for use by the employee during the first calendar year then provide at least 80 hours of sick and safe time beginning each subsequent calendar year.
	FAQs suggest frontloading gets rid of carryover if ER provides full amount of ESSL.
CBAs	Generally, must meet or exceed and not otherwise conflict with provisions of ESSL law.
Payment of ESST	ERs with less than 5 employees: Unpaid leave.
	ERs with 5 or more employees: Paid Leave The employee's hourly rate, including payments for shift differentials, for an hourly employee or an equivalent rate for an exempt employee.
Time Increment Limitation	An employer must allow an employee to use sick and safe time in increments consistent with current payroll practices as defined by industry standards or existing employer policies, provided such increment is not more than four (4) hours.

Topics	Minnesota ESST
Reasons for Use	<p>(1) For employee’s or family member’s: (a) mental or physical illness, injury or health condition; (b) medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or (c) preventive medical care;</p> <p>(2) Absence due to domestic abuse, sexual assault, or stalking of the employee or family member;</p> <p>(3) When employee’s place of business or family member’s school or place of care is closed due to weather or public emergency.</p> <p>(4) Employee’s inability to work or telework when: (a) employer prohibits employee from working due to concerns related to transmission of communicable disease related to a public health emergency (“PHE”); or (b) seeking testing or awaiting diagnosis of disease related to PHE if exposed or employer requested test/diagnosis.</p> <p>(5) Determination by health authorities/health care professional that presence of employee/family member in community would jeopardize health of others because of exposure to communicable disease.</p>

Topics	Bloomington, MN ESST	
<p>Reasons for Use</p>	<p>Generally same reasons to Minnesota State ESST Reasons for Use, but with a few subtle differences.</p> <p>Ex) Care of family member whose school or place of care has been closed due to inclement weather, loss of power, loss of heating, loss of water, or other unexpected closure.</p>	
<p>Covered Family Members</p>	<ul style="list-style-type: none"> • Child • Spouse • Sibling • Parent • Step-Parent 	<ul style="list-style-type: none"> • Grandchild • Grandparent • Guardian • Ward • Members of the employee’s household

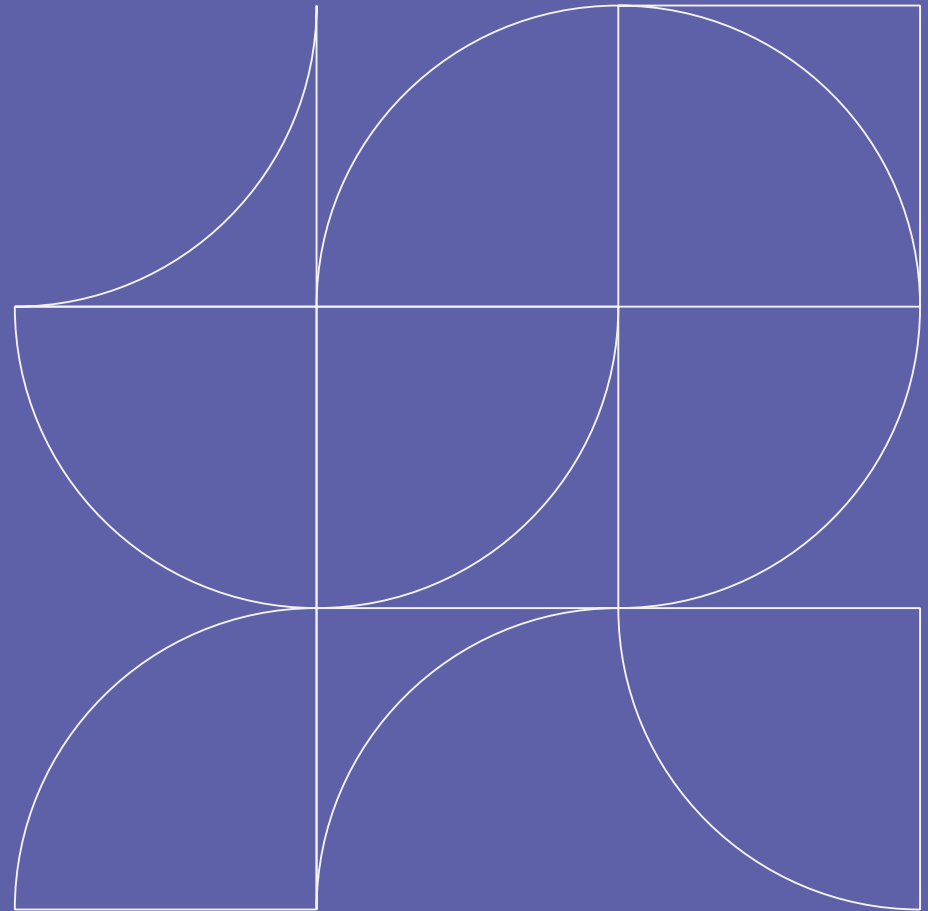
Topics	Minnesota ESST		
Family Members	<ul style="list-style-type: none"> • Child • Spouse • Sibling • Parent 	<ul style="list-style-type: none"> • Grandchild • Grandparent • Child of Sibling • Sibling of Parent 	<ul style="list-style-type: none"> • Child-in-law / Sibling-in-law • Any other individual related by blood or whose close association is equivalent of family relationship • Designated person (one annually)
Employee Notice to Employer	<p>Foreseeable Leave: 7 days.</p> <p>Unforeseeable Leave: As soon as practicable.</p> <p>Written Policy Requirement: If employer requires employees to provide notice, then written policy must contain reasonable procedures for employees to provide the notice, and employer must provide employees with a written copy of the policy.</p>		
Documentation Requirements	<p>Employer may require reasonable documentation that ESST has been used for a covered purpose if the employee uses more than 3 consecutive days of ESST.</p>		

Topics	Bloomington, MN ESST
<p>Employee Notice to Employer</p>	<p>Foreseeable Leave: 7 days.</p> <p>Unforeseeable Leave: As soon as practicable.</p> <p>Written Policy Requirement: If employer requires employees to provide notice, then written policy must contain reasonable procedures for employees to provide the notice, and employer must provide employees with a written copy of the policy.</p>
<p>Documentation Requirements</p>	<p>Employer may require reasonable documentation that ESST has been used for a covered purpose if the employee uses more than 3 consecutive days of ESST.</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>Minnesota DOL to prepare model notice.</p>
<p>Employee Handbooks</p>	<p>If an employer provides its employees with an employee handbook, it must 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>Use of PTO or Other Paid Leave</p>	<p>PTO or other paid leave policies can be used for compliance and no additional ESST is required IF EEs receive paid leave that (a) may be used for same purposes and under same conditions as ESST, and (b) meets or exceeds, and does not otherwise conflict with, the Act’s minimum standards and requirements</p>
<p>Recordkeeping</p>	<p>Employers must retain records documenting hours worked by employees, hours of ESST taken by employees, etc.</p> <p>Retention period likely 3 years in addition to current calendar year.</p>

Topics	Bloomington, MN ESST
Notice/Posting	Must post notice published by City Attorney's Office in a conspicuous place at all workplaces / job sites.
Employee Handbooks	If an employer provides its employees with an employee handbook, it must include notice of employee rights and remedies under the ESST in the handbook.
Available Balance Notification	Must provide on earnings statement each pay period: (a) total number of ESST hours accrued & available for use, and (b) total number of ESST hours used during pay period.
Use of PTO or Other Paid Leave	ERs not required to provide additional time if they provide their employees sick and safe time under a paid time off policy, other paid leave policy, or CBA that (a) is sufficient to meet the accrual requirements for sick and safe time and (b) may be used by the employee for (1) the same purposes and (2) under the same conditions as sick and safe time.
Recordkeeping	Employers must retain records documenting hours worked by non-exempt employees, hours of ESST taken by employees, and hours of leave available for sick and safe time purposes. Retention period likely 3 years in addition to current calendar year.

California



Healthy Workplaces Healthy Families Act of 2014

- 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

California Paid Sick Leave

- **Two ways to comply:**

- 1 hour **accrues** per 30 hours worked
 - works out to a little more than eight days a year for full time employees
 - can cap accrual at 48 hours
 - can limit the amount of paid sick leave employees can take in one year to 24 hours (three days)
 - unused balance carries over year to year

OR

- **Annual lump sum grant** of at least 24 hours (3 days)
 - no accruals
 - no carryover of unused balance



California Paid Sick Leave

- Employers must track accrual and keep records:

- must show on employee’s pay stub or a document issued the same day as the paycheck, how much sick leave has been accrued.
- must keep records showing how many hours employees earned and used for three years.
- must reinstate balance for employee who terminates but returns within 12 months.



California Paid Sick Leave

- Can require that sick leave be taken in **increments** of at least 2 hours
- **Rate of pay complication:**
 - how exempt employee is typically paid for other paid time off,
 - employee's regular rate in the week leave is taken, or
 - by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment

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
- **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)

Recent COVID-19 SPSL Updates

- **(Most) COVID paid sick leave has sunset**
 - CA SPSL
 - potential relief for nonprofits and small businesses (26-49 employees from January 1, 2021- December 31, 2022)
 - <https://caspsl.com/>
 - Cal/OSHA Earnings Continuation
 - Los Angeles City
 - Los Angeles County
 - Long Beach
- **Oakland's COVID SPSL remains in effect (tied to period of emergency)**

San Francisco Public Health Emergency Leave Ordinance

- **Eff. 10/1/22** (after COVID SPSL expired), **new permanent standard**
- Applies to employers with over 100 employees, CBA and certain health care carve outs
- Familiar covered reasons (per order, seeking diagnosis, HCP advice, family member care, school or care provider closure)
- Will apply to new public emergencies (now that COVID-19 emergency declared over) **and** Air Quality Alerts for “vulnerable” individuals primarily outside
- **Up to 80 hours a year** for full time, or those considered full time (pro rated for part time)
- Available balance on the wage statement

AB 1041-

Family Leave and Sick Leave Designated Persons



Amended Section 12945.2 of the Government Code and Section 245.5 of the Labor Code

- **Effective January 1, 2023, California's Paid Sick Leave Law was amended** to include a “designated person” for whom an employee may take leave or days off
 - Designated person for PSL: Any person designated by the employee
- **Effective January 1, 2023, CFRA eligible employees** (those who have been with you at least a year and worked 1250 hours within that year) may now take time off to care for a “designated person”
 - Designated person for CFRA: “any individual related by blood or whose association with the employee is the equivalent of a family relationship”

AB 1041 – Designated Person



- **Employee must be allowed to designate a person at the time the request is made.**
 - Employers therefore cannot require employees to designate a person in advance.
 - Employers are free to limit designated persons to just one in the period of a year, employees are entitled to select a new designated person every twelve months
- **Handbook Implication:**
 - CFRA has a mandatory written policy requirement
 - Employers should ensure this new covered family member is included
 - Include in the policy the once-a-year limitation on designation

AB 1949

Bereavement Leave



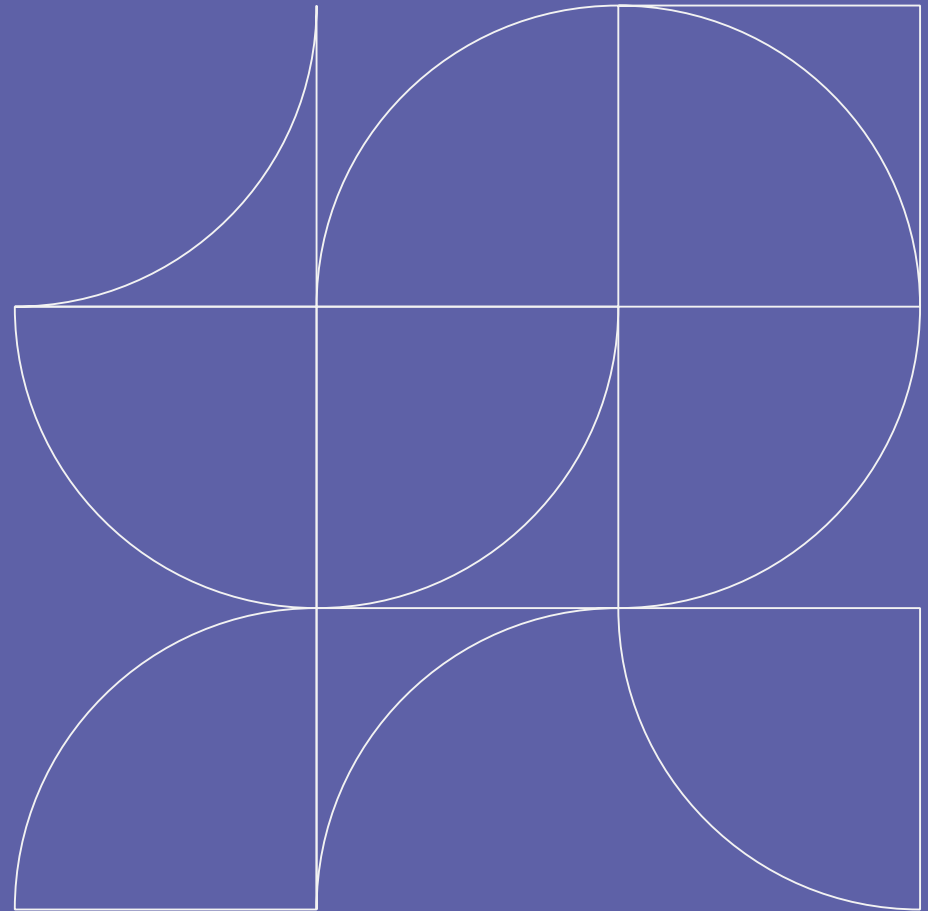
*Amends Sections 12945.21
and 19859.3 of, and adds
Section 12945.7 to, the
Government Code*

- **Effective January 1, 2023**, CFRA was amended to provide for up to five days of bereavement leave upon the death of a family member for employees working 30+ days
- **Family Member:** spouse or a child, parent, sibling, grandparent, grandchild, domestic partner, or parent-in-law
- Leave **must** be completed within three months of the date of death of the family member, does not need to be consecutive
- If the employer does not have a paid bereavement policy, the leave may be unpaid
 - **Employee may use vacation, personal leave, accrued and available sick leave, or compensatory time off that is otherwise available to the employee**
- Requests for documentation are permitted

Looking Ahead

- **SB 616** would increase mandatory paid sick leave, and an employer's authorized limitation on the **use** of annual carryover sick leave, **from 24 hours or 3 days each year of employment to 56 hours or 7 days.**
- The bill would also increase sick leave **accrual** thresholds **from 48 hours or 6 days to 112 hours or 14 days.**
- Future of PSL & PAGA penalties?

Colorado



Amendments to Colorado Healthy Families and Workplaces Act (HFWA)

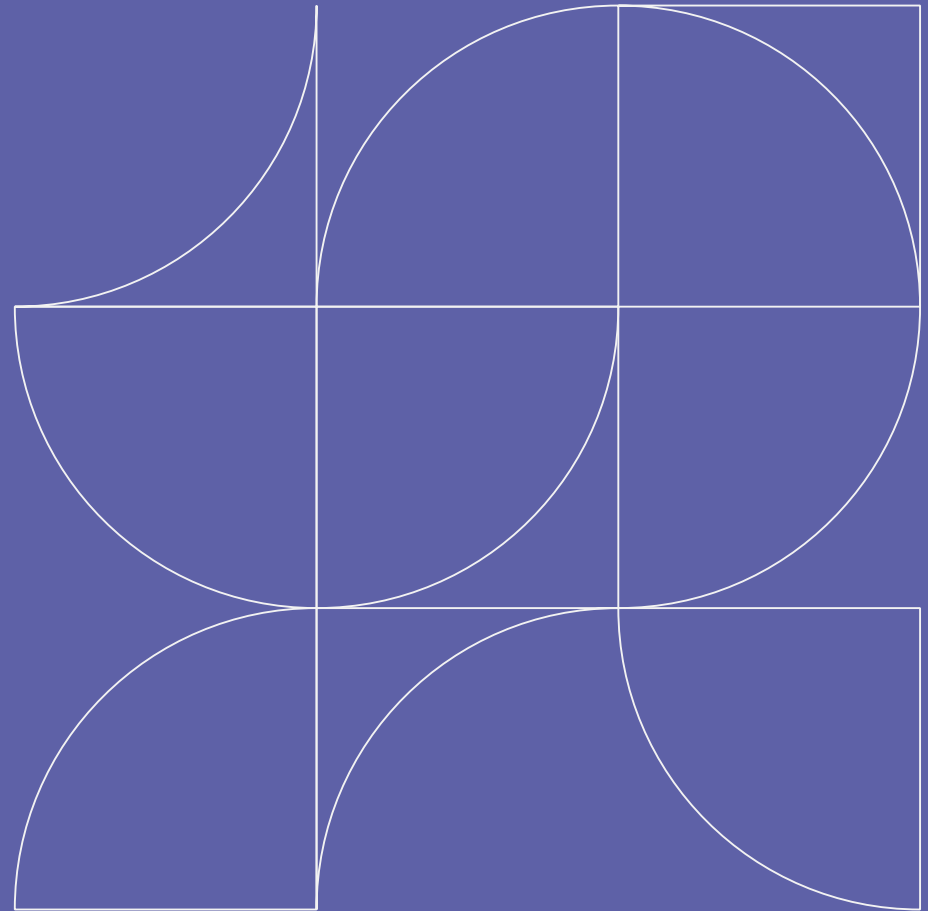
Effective August 7, 2023, employees must be permitted to use general paid sick leave for the following covered reasons (in addition to the reasons that are already covered by the HFWA):

- **Bereavement:** The employee needs to grieve, attend funeral services or a memorial, or deal with financial and legal matters that arise after the death of a family member;
- **Family Member School / Place of Care Closures Due to Unexpected Occurrences:** The employee needs to care for a family member whose school or place of care has been closed due to inclement weather, loss of power, loss of heating, loss of water, or other unexpected occurrence or event that results in the closure of the family member's school or place of care; and
- **Evacuate Place of Residence Due to Unexecuted Occurrence:** The employee needs to evacuate the employee's place of residence due to inclement weather, loss of power, loss of heating, loss of water, or other unexpected occurrence or event that results in the need to evacuate the employee's residence.

End of CO PHEL for COVID-19 Reasons

- **CO PHEL for COVID-19 absences has sunset.**
 - Was available for employees to use for COVID-19 related reasons until 4 weeks after May 11, 2023 (i.e., Thursday, June 8, 2023).
- **Why sunset?**
 - The federal DHHS COVID-19 public health emergency (“PHE”) declaration expired on May 11, 2023.
 - The Colorado statewide declaration of COVID PHE sunset on May 5, 2023. Governor Polis has not renewed the declaration.
 - No local declarations of COVID PHE
- **Permanent Mandate:** CO PHEL will remain on the books and be triggered in the event of a future qualifying federal, state or local PHE declaration.

Michigan



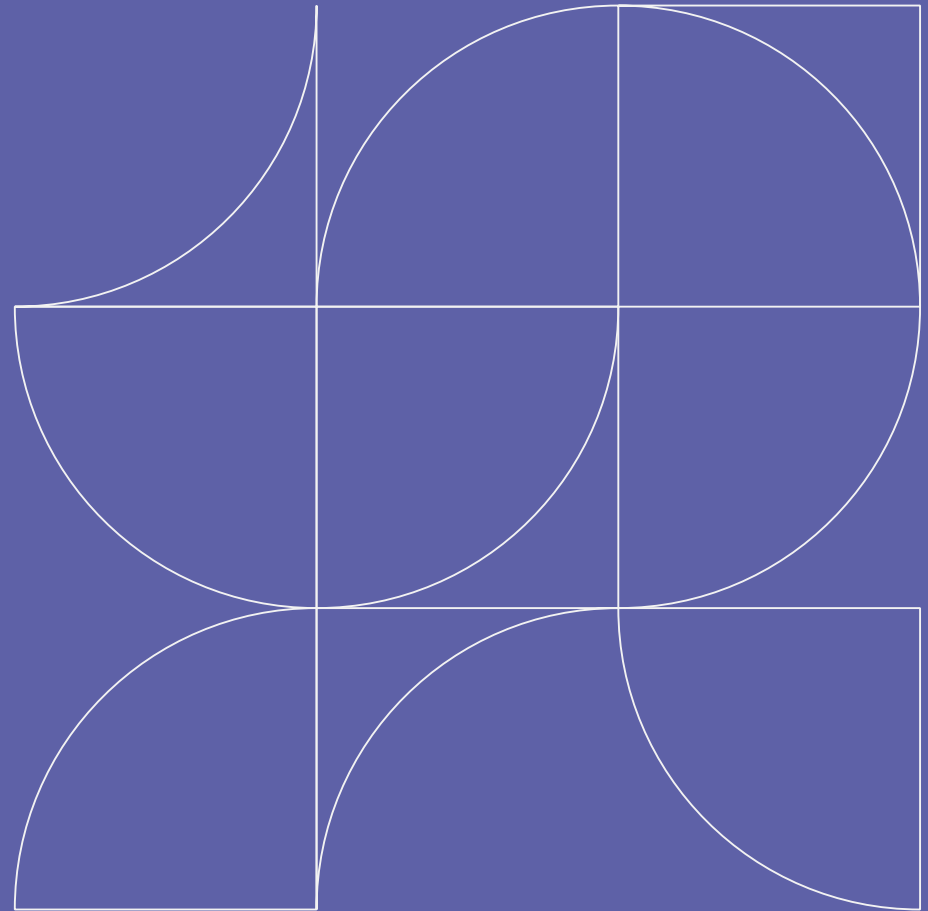
Michigan Paid Sick Leave: A History

Chronology	
Sept. 2018	MI Legislature approves ballot initiative, MI Earned Sick Time Act (“ESTA”)
Dec. 2018	MI Legislature amends ESTA – adopts MI Paid Medical Leave Act (“PMLA”) <ul style="list-style-type: none">- Reduced usage cap from 72 to 40 hours- Instituted 40-hour accrual cap
Mar. 29, 2019	PMLA goes into effect
Jul. 19, 2022	MI Court of Claims rules changes to ESTA / implementation of PMLA were unconstitutional (<i>Mothering Justice v. Nessel</i>) <ul style="list-style-type: none">- Enforcement stayed until Feb. 2023
Jan. 26, 2023	MI Court of Appeals reversed – upheld PMLA
Feb. 10, 2023	Appeal filed to MI Supreme Court; case remains pending

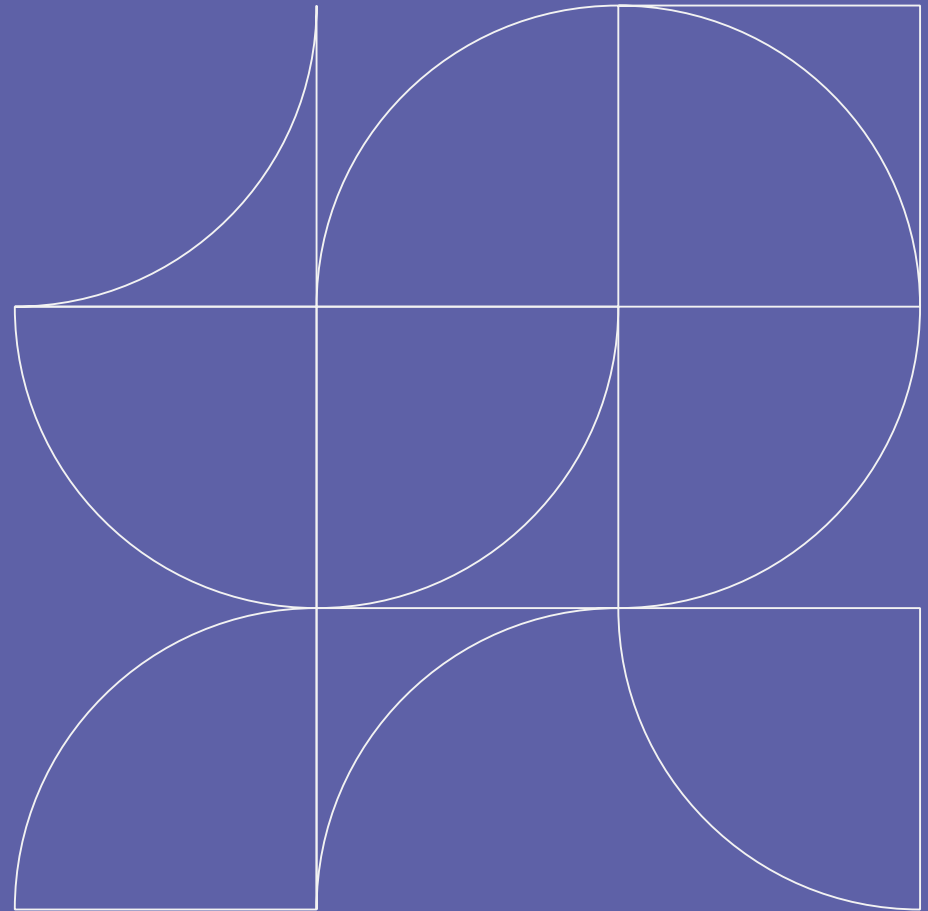
Michigan Paid Sick Leave: What Now?

- Status quo, for now
 - 40 hours of PSL
- Monitor *Mothers Justice v. Nessel* for decision from MI Supreme Court
- Monitor MI Legislature for any legislative changes amending PMLA

CLE CODE



New York



Overview of Select New York State Leave Laws

- **NY Statewide Paid Sick Leave Law (PSL):** Employees accrue and can use up to 40 or 56 hours of paid or unpaid sick leave per year (depending on employer size).
- **NY Statewide COVID-19 Emergency Leave Law:** PSL and/or PFL due to quarantine or isolation due to COVID-19. Amount and type of leave varies based on ER size.
- **NY Statewide COVID-19 Vaccine Leave Law:** As of 3/12/2021, EEs may receive up to 4 hours of paid leave per COVID-19 vaccine injection.
- **NY Paid Family Leave (PFL) Law:** As of 1/1/2021, provides up to 12 weeks of paid leave for eligible EEs who take leave for covered reasons, including bonding with a new child or to care for a family member with a serious health condition.
- **NY Disability Benefits:** Temporary cash benefits paid to an eligible wage earner, when the wage earner is disabled by an off-the-job injury or illness.

Overview of Select New York Local Leave Laws

- **NYC Earned Safe and Sick Time Act:** EEs accrue and can use up to 40 or 56 hours of paid sick leave (depending on employer size).
- **NYC Temporary Schedule Change Law:** EEs are entitled to temporary changes to their work schedule for certain “personal events.”
- **Westchester County Safe Time Leave Law:** EEs are entitled to up to 40 hours of paid leave for certain safe time absences.
 - **Westchester County Sick Time Act:** Not in effect – preempted by NYS PSL law.

NYC ESSTA: Proposed Amended Regulations

- Proposed amended regulations to the NYC ESSTA were introduced in late 2022. ***Not yet finalized.***
- **Employer Size:** Proposed rules seek to apply a “nationwide” rather than “employed within NYC” standard to determining employer size → highly burdensome for ERs with a small footprint in NYC but at least 100 EEs nationwide.
- **Accrual Programming:** Proposed rules would require fractional accruals for time worked that is less than a 30-hour increment and rounding accruals to as little as the nearest five minutes → would require significant adjustments to ERs’ payroll systems and software programs used to track absences due to time off.
- **Rate of Pay:** Proposed rules appear to use a “rate in effect” standard → inconsistency between law’s “regular rate of pay” standard and proposed rules’ “same hourly rate” standard.

NYC ESSTA: Proposed Amended Regulations, Penalties

- **Successor Employers:** Successor ERs would be **liable** in an acquisition or transfer of the original business and EEs **if the original business failed to keep appropriate records.**
- **Penalties:** Proposed rules would create a “**reasonable inference**” that an ER who **(a)** does not maintain a compliant ESST policy and adequate records of EEs’ accrued ESST use and balances; or **(b)** fails to maintain and distribute an ESST policy to EEs, does not provide ESST in accordance with the right to ESST and accrual section of the ESSTA as a matter of official or unofficial policy or practice.
 - “Reasonable inference” → relief of **\$500 / EE covered by such policy *per calendar year.***

NYS COVID-19 Emergency Leave Law



- **If ER has 100 or more employees:** At least 14 (calendar) days of paid sick leave. While unclear under the law, appears that paid family benefits are available to care for child subject to covered order.
- COVID-19 paid sick leave available to EEs who are subject to **multiple** mandatory or precautionary orders of quarantine or isolation, **but** with limits:
- **(a)** Up to a certain cap, **and**
 - Paid sick leave only available to EE for **maximum of three orders of quarantine or isolation**, and again, only in select circumstances.
- **(b)** In certain situations.
 - EE **must** test positive for COVID in order to use COVID leave during second and third mandatory or precautionary order of quarantine or isolation.
- Since late 2022, practical limits on orders due to quarantine based on CDC and NYSDOH guidance

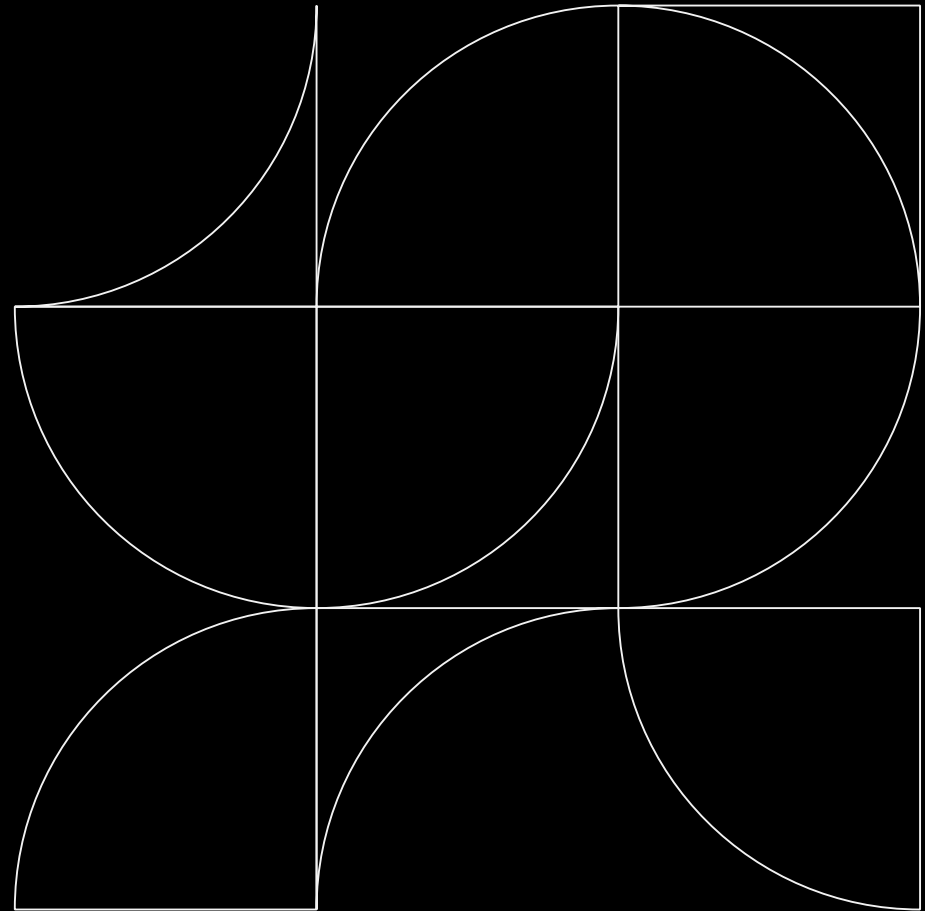
New York State COVID-19 Vaccine Paid Leave Law

- **Effective Date:** March 12, 2021
- **Sunset Date:** (original) December 31, 2022 **but** extended to December 31, 2023.
- **Amount of Leave:** Sufficient period of time, not to exceed 4 hours per vaccine injection.
- **Reasons for Leave:** Leave is available to employees for absences needed from work in order for the employee to receive their own COVID-19 vaccine injection.
- **Rate of Pay:** Generally, leave must be paid at the employee's regular rate of pay.
- **Notice:** FAQs provide that the law does not prevent an employer from requiring notice.
- **Documentation:** FAQs provide that the law does not prevent an employer from requiring proof of vaccination. However, employers are encouraged to consider any confidentiality requirements applicable to such records prior to requesting proof of vaccination.

New York Anti-Retaliation Law: Amendment Overview

- **Effective Date:** February 19, 2023
- **Amendments:** Add additional anti-retaliation obligations for employers.
 - Employers are prohibited from retaliating against any employee “because such employee has used any **legally protected absence** pursuant to federal, local, or state law.”
 - Employers are prohibited from “assessing any demerit, occurrence, any other point, or deducting from an allotted bank of time, which subjects or could subject an employee to disciplinary action, which may include but not be limited to failure to receive a promotion or loss of pay.”

Paid Sick Leave and PTO Law Outlook





Paid Sick Leave and PTO Outlook – 2023 and On

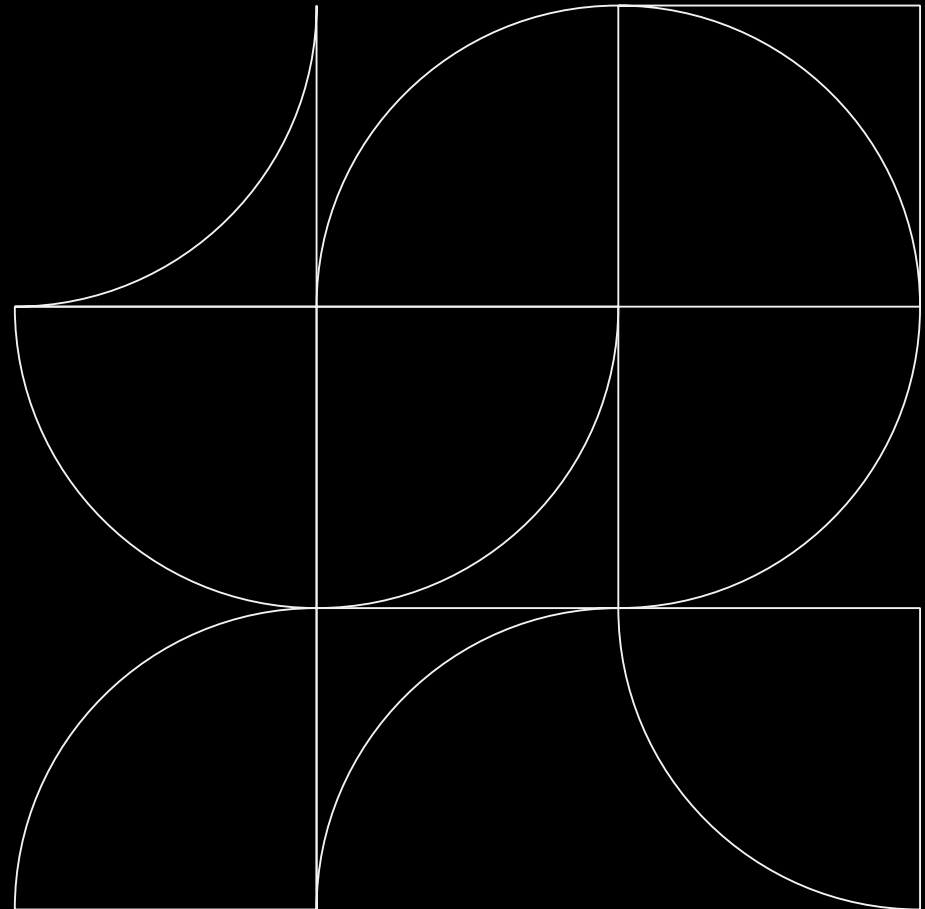
Laws scheduled to go into effect:

- Bloomington, MN (General PSL – 7/1/2023)
- Colorado (General PSL Amendments – 8/7/2023)
- Illinois (PTO law – 1/1/2024)
- Minnesota (General PSL – 1/1/2024)
- Unclear whether remaining COVID-19 PSL Mandates (nationwide overview section) will be extended further into 2023 or 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)** Virginia (for all private ERs); **(3)** California (Amendments); **(4)** Connecticut (Amendments)
- **Municipal:** 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) 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**](mailto: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**](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 – 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.

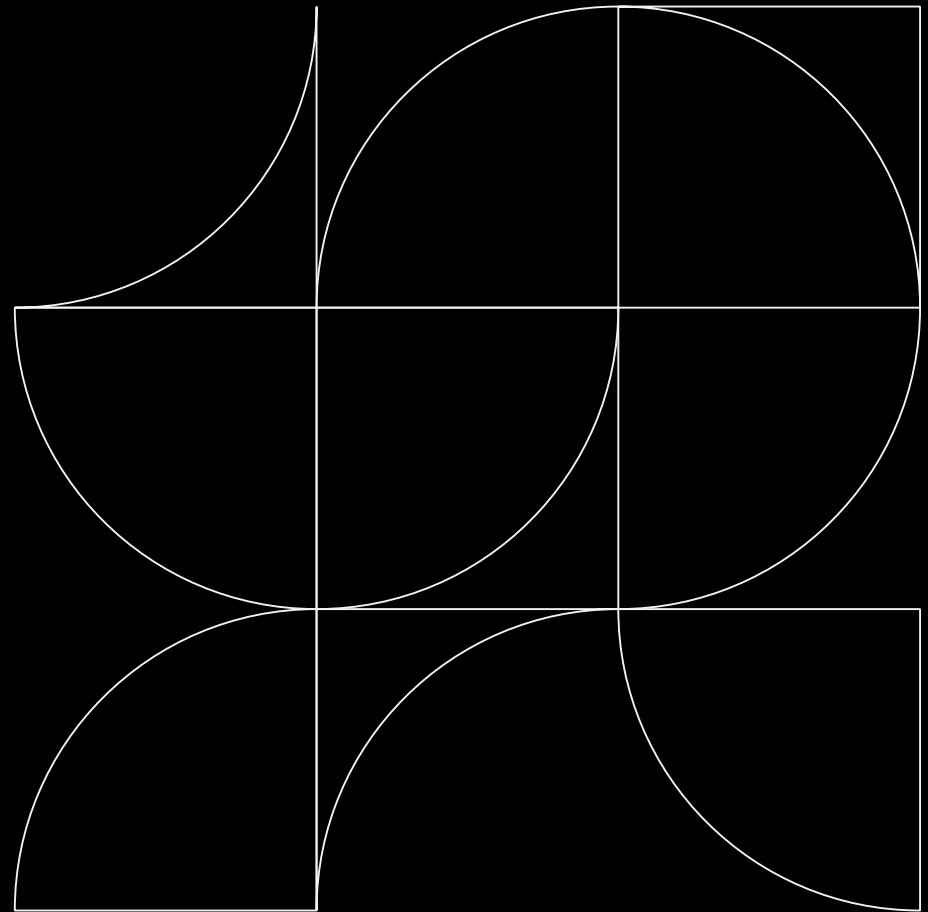
More info at: <https://www.seyfarth.com/trends/take-it-or-leave-it-podcast.html>

Cal-Peculiarities



- **Seyfarth's 2022 Cal-Peculiarities E-Book**
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Questions?



thank
you

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