



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

Part 7: Navigating Two Years of COVID-19 Paid Leave Mandates, Plus Recent Developments

March 24, 2022

Seyfarth Shaw LLP

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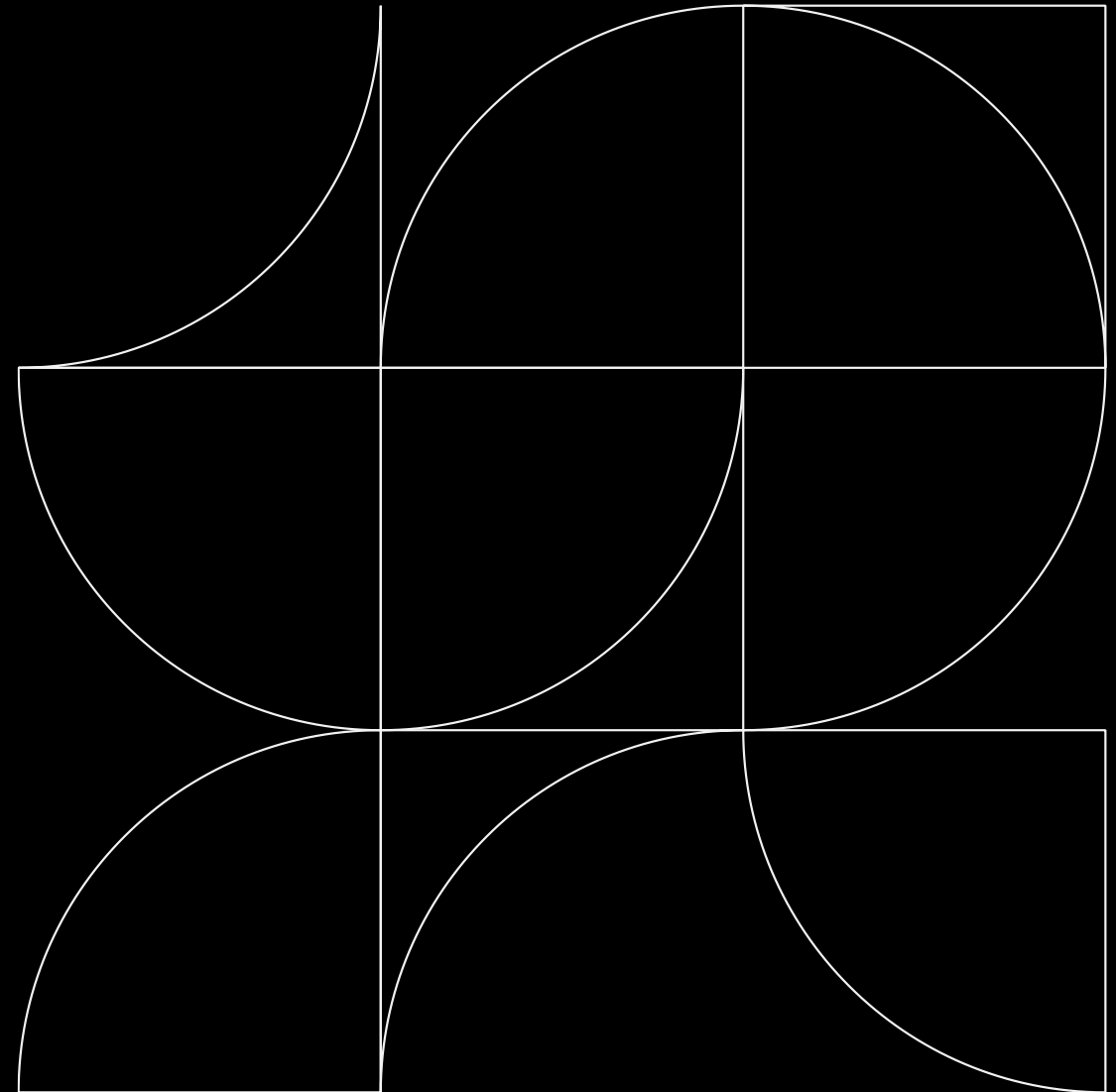


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02	California State and Local COVID-19 Paid Leave
03	Massachusetts COVID-19 Emergency PSL Sunset
04	Philadelphia, PA COVID-19 Paid Leave Update
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Nationwide General and COVID-19 Paid Sick Leave Overview



Mandatory Paid Sick Leave (PSL) and PTO Laws

Total Mandates

As of Mar. 15, 2022:
65 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)

17 States + DC

PSL:

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

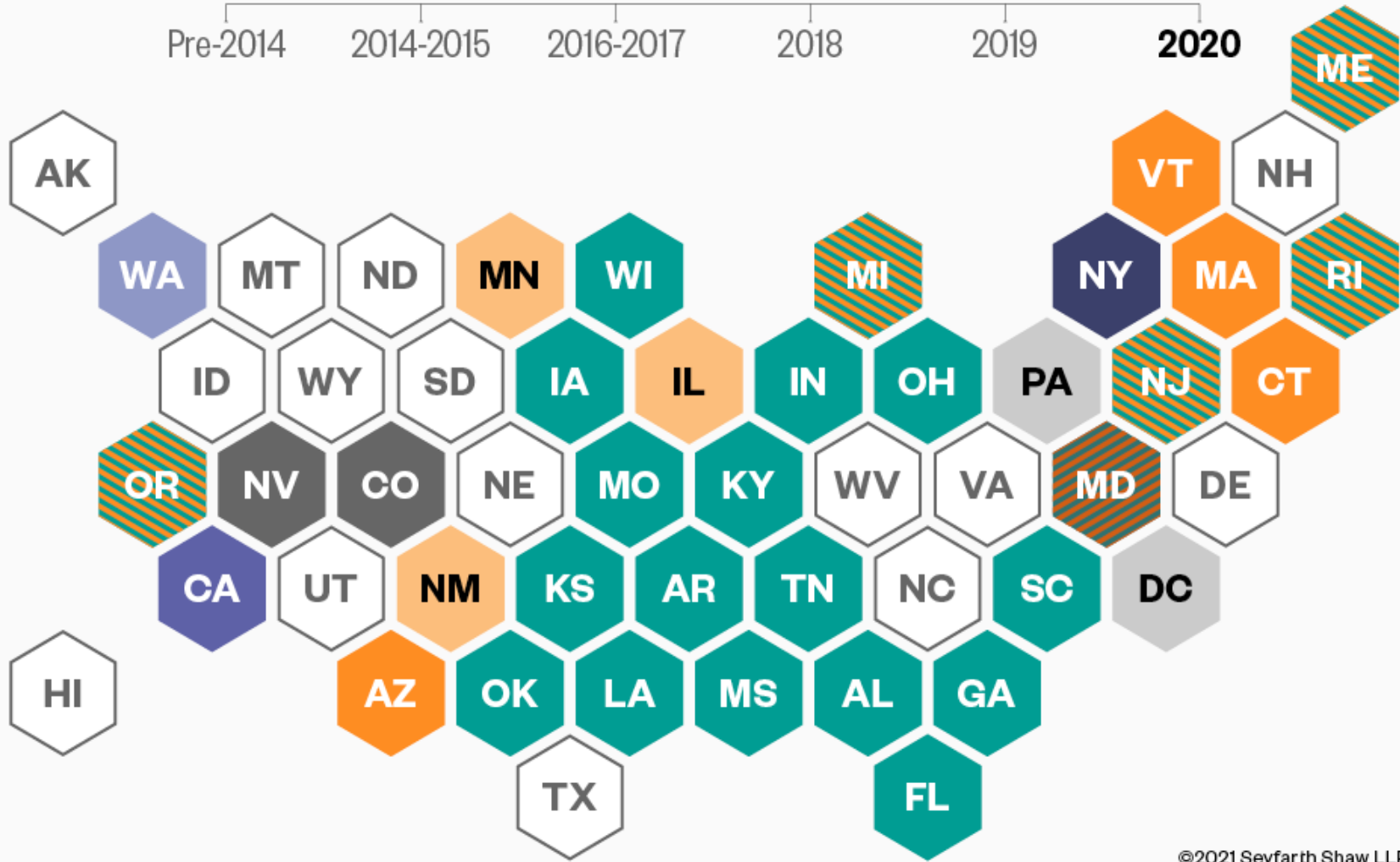
PTO:

- Maine
- Nevada

28 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)** Los Angeles County, CA; **(8)** Oakland, CA; **(9)** Philadelphia, PA; **(10)** Tacoma, WA; **(11)** Emeryville, CA; **(12)** Montgomery County, MD; **(13)** Pittsburgh, PA; **(14)** Santa Monica, CA; **(15)** Minneapolis, MN; **(16)** San Diego, CA; **(17)** Chicago, IL; **(18)** Berkeley, CA; **(19)** Saint Paul, MN; **(20)** Cook County, IL; **(21)** Austin, TX; **(22)** Duluth, MN; **(23)** San Antonio, TX; **(24)** Dallas, TX; **(25)** Westchester County, NY; **(26)** Bernalillo County, NM (PTO law); **(27)** Allegheny County, PA; **(28)** West Hollywood, CA (PTO law)

The Spread of Sick/Personal Leave & Anti-Local Leave Laws



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<https://www.seyfarth.com/news-insights/2020-census-the-whereabouts-of-paid-sick-and-personal-leave-laws-and-state-gatekeepers.html>

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.

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15 MONTHS LATER

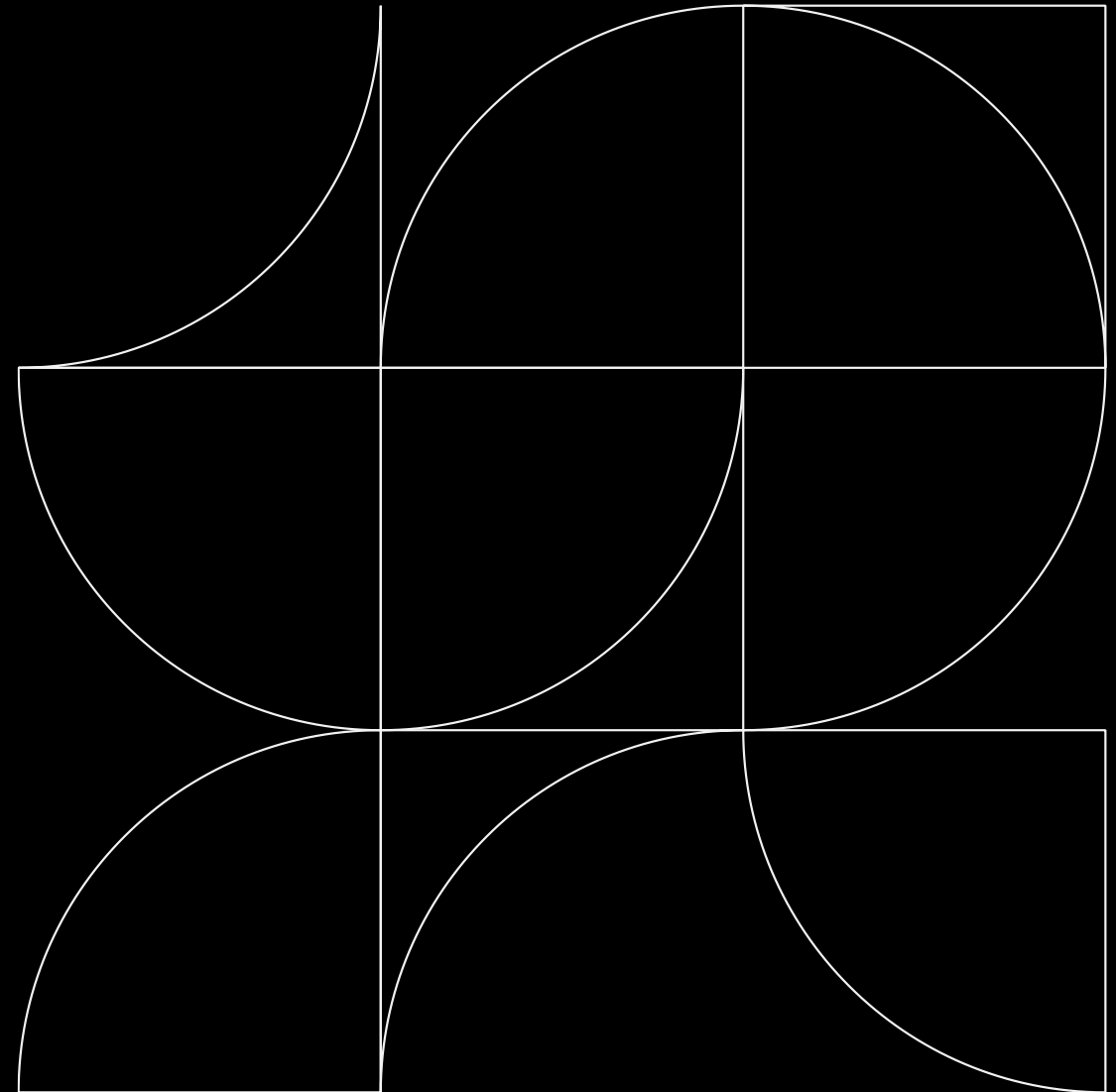
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COVID-19 State and Local Leave Overview

PSL / PTO Laws and COVID Developments – March 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;~~

California State and Local COVID-19 Paid Leave



Regular CA Paid Sick Leave (Non-COVID-19)

Healthy Workplaces Families Act (2014)

- Notice requirements, amended Wage Theft Prevention Act Notice
- Employees who work for the same employer for 30 days or more within a year are eligible
- Leave accrues at one hour of PSL for every 30 hours worked, or an annual lump sum (3 days or 24 hours)
- Accrue upon hire, use after 90th day
- Can cap accrual at 48 hours
- Method of payment- regular rate or 90 day look back, salaried employees receive normal amount of pay
- Available balance must be provided on “separate writing” or wage statement
- Reasonable minimum use of two hours
- Covered uses include: an employee’s own illness, care for an ill child, parent, spouse or registered domestic partner, grandparent, grandchild, and sibling
- Not paid out at separation, if rehired within a year, balance must be restored
- Certain carve outs, including CBAs

Regular Local CA Paid Sick Leave Laws (Non-COVID-19)

- **Berkeley**
 - One hour per 30 hours worked. Small businesses may cap accrual and use at 48 hours; larger businesses cap accrual at 72.
- **Emeryville**
 - Accrual cap 48 hours for small businesses, 72 for larger employers. Carry over not required if front loaded. May cover guide dog.
- **Long Beach**- Hotel worker ordinance; 5 days.
- **City of Los Angeles**
 - Up to 48 hours, employers can cap at 72.
 - (Also note **Citywide Hotel Worker Minimum Wage Ordinance**).
- **Oakland**
 - One hour per 30 hours worked. Small employers can cap yearly carry over at 40 hours, larger employers can cap carryover at 72 hours.
- **City of San Diego**
 - Additional exemptions, rate for workweek; carryover cap of 80 hours, 40 hours of use, COVID-19 reasons and emergency closure orders.
- **San Francisco**
 - Basis for statewide leave. One hour per 30 hours worked accrual; small employers can cap yearly carry over at 40 hours, larger employers can cap carryover at 72 hours.
- **Santa Monica**
 - Small businesses ramped up to 40 hours, 72 hours for larger businesses in 2018.
- **West Hollywood**- PTO mandate; In effect for Hotel employers as of 1/1/2022 and all other entities 7/1/2022; Provisions comparable to LA City Hotel Worker Minimum Wage Ordinance

A Brief History California Supplemental Paid Sick Leave (COVID-19)

- Patchwork of local leaves
- Food Sector Worker- Executive Order April 16, 2020- over 500 employees
- 2020 version aimed to fill gaps left by FFCRA (expired 12/31/20)
- 2021 version enacted in March 2021, retroactive to 1/1/21, expired 9/30/21

2022 California Supplemental Paid Sick Leave (COVID-19)

- Up to 80 hours total; pro rated for part time employees
 - Variable part time employees vs. employees with a regular schedule
- Paid at the regular rate or using a 90 day lookback
- Same \$511/\$5,110 caps as previous versions
- Wage statement (or contemporaneous writing) must state amount of leave used
- Retroactive to January 1, 2022; sunset on September 30, 2022
- Credit for previously provided leave since January 1, 2022 is possible
- An employer cannot require covered employees to exhaust their COVID-19 supplemental paid sick leave before (or instead of) providing earnings continuation under the Cal/OSHA ETS
- Poster requirement
- Some documentation may be requested under certain circumstances
- Two banks of leave

Covered Reasons for Leave

- **Bank 1- Testing Positive.** One bank of up to 40 hours will be available if an employee or a family member tests positive for COVID-19.
- **Bank 2 - Quarantine or Isolation.** The covered employee is subject to a quarantine or isolation period related to COVID-19 as defined by an order or guidelines of the State Department of Public Health, the federal Centers for Disease Control and Prevention, or a local health officer who has jurisdiction over the workplace. If the covered employee is subject to more than one quarantine or isolation order or guideline, the covered employee shall be permitted to use COVID-19 supplemental paid sick leave for the minimum time period under the order or guidelines that provides for the longest such minimum period.
- **Advice from Health Care Provider.** The covered employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
- **Caring for a Family Member.** The covered employee is caring for a family member who is subject to an order or guidelines or who has been advised by a health care provider to self-quarantine.
- **Vaccination.** The covered employee is attending an appointment for themselves or a family member to receive a vaccine for protection against contracting COVID-19.
- **Vaccine Symptoms.** The covered employee is experiencing symptoms, or caring for a family member experiencing symptoms, related to a COVID-19 vaccine that prevent the employee from being able to work or telework.
- **Symptoms.** The covered employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
- **School Closure Due to COVID on Site.** The covered employee is caring for a child whose school or place of care is closed or otherwise unavailable for reasons related to COVID-19 on the premises.

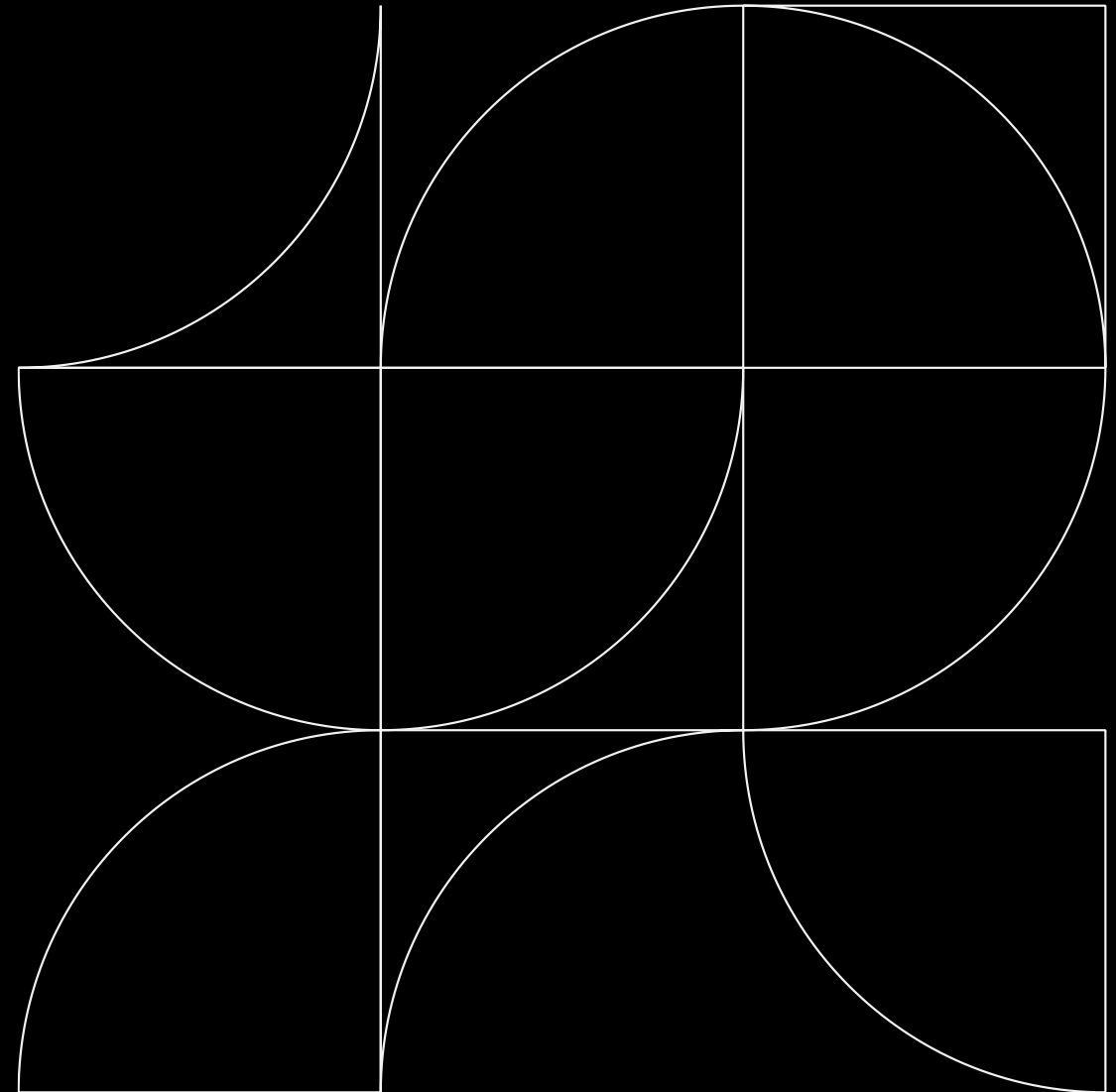
Ca/OSHA Earnings Continuation (COVID-19)

- November 30, 2020 Emergency Temporary Standards, most recent amendment eff. January 14, 2022; in effect until May 5, 2022
- “Earnings continuation” for employees who are removed from the workplace pursuant to Cal/OSHA requirements:
https://www.dir.ca.gov/dosh/dosh_publications/Isolation-and-Quarantine-fs.pdf
- “Regular rate” and benefits
- No requirement to provide earnings continuation if the employer can show it is more likely than not the exposure was outside of the workplace, or the employee is receiving workers compensation and disability benefits
- Per FAQs, designed to cover a normal or typical amount of leave needed

Local Leaves (COVID-19)

- **Long Beach** recently expired
- **Los Angeles City** (vaccine leave expired, COVID leave remains until two weeks after period of emergency ends)
- **Los Angeles County** (vaccine leave and COVID leave active until two weeks after period of emergency ends)
- **Oakland** (active until period of emergency ends unless otherwise extended)
- Recently updated **San Francisco** guidance- 6 days to request documentation; attestation sufficient for COVID reasons
- Note differences between state and local leaves (e.g., rate of pay, eligibility, requesting documentation)

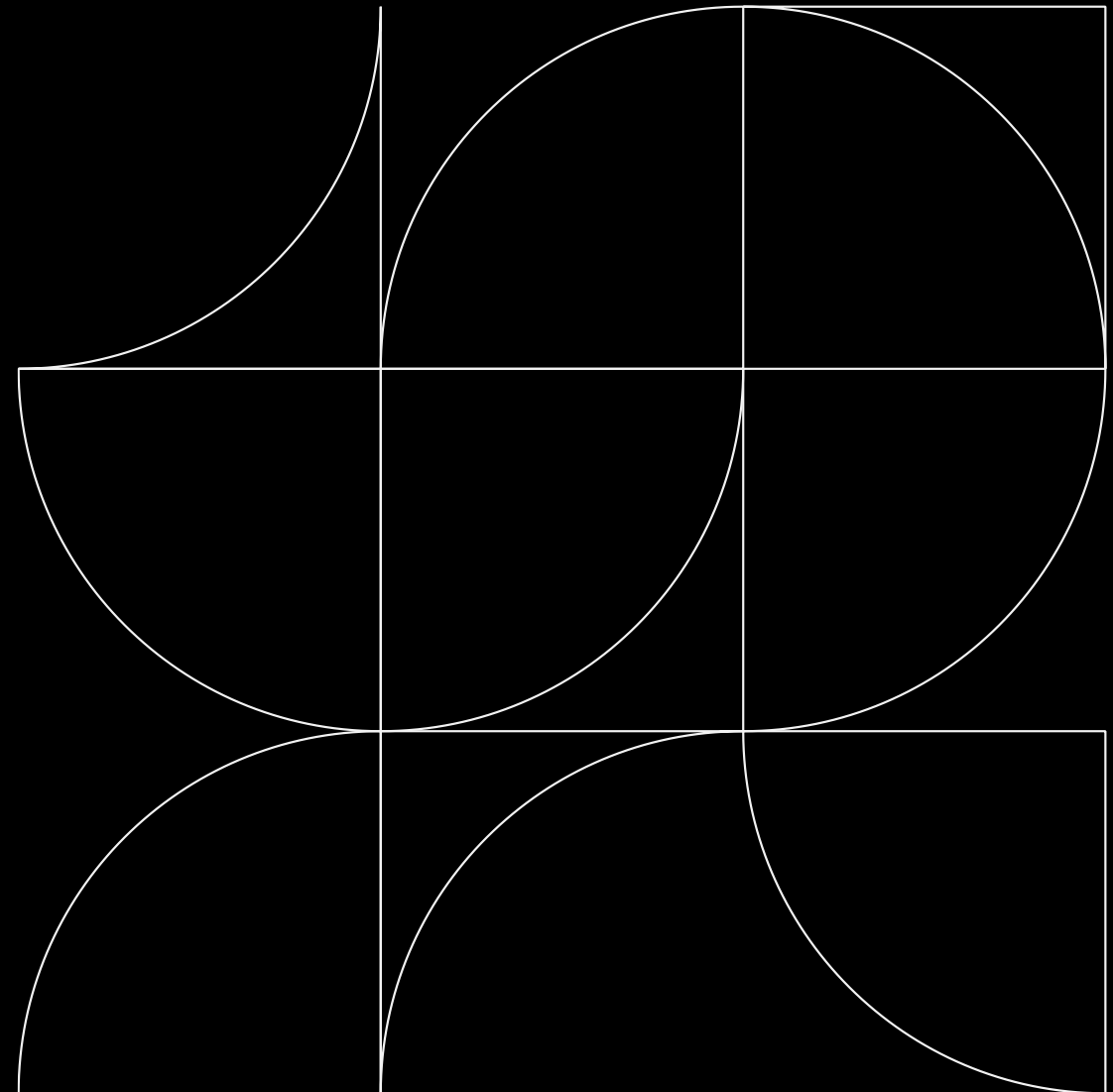
Massachusetts COVID-19 Emergency PSL Sunset



Massachusetts COVID-19 Paid Sick Leave Has Expired

- **Benefits Ended:** March 15, 2022
- **Reimbursement Deadline:** April 29, 2022
- **Overview of Law:**
 - Effective Dates: May 28, 2021 through April 1, 2022 (or the exhaustion of program funds)
 - Amount of Leave: 40 hours for full-time employees
 - Covered Reasons for Use:
 - Isolation/quarantine (employee or family member)
 - Diagnosis, care, or treatment of COVID-19 symptoms (employee or family member)
 - Employee's inability to work or telework due to COVID-19 symptoms
 - Obtain or recover from COVID-19 vaccine (employee or family member)
 - Reimbursement: up to \$850 per employee

Philadelphia COVID-19 Paid Leave Update



Philadelphia COVID-19 Paid Sick Leave Returns

- **Effective and Sunset Dates:** March 9, 2022 – December 31, 2023
- **Covered Employers:** 25+ employees
- **Eligible Employees:**
 - Work in Philadelphia; OR
 - Normally work in Philadelphia but telework elsewhere due to COVID-19; OR
 - Work from multiple/mobile locations with 51%+ time in Philadelphia.
- **Amount of Leave:**
 - 40 hours for full-time employees
 - Prorated for part-time employees
 - Likely a single bucket for the duration of the mandate

Use of Philadelphia COVID-19 Leave



Covered Reasons:

- Employee's or family member's **presence would jeopardize health of others due to COVID-19 exposure/symptoms**
- Employee or family member must **self-isolate due to being diagnosed with, testing positive for, or experiencing symptoms of COVID-19**
- Employee or family member experiencing symptoms of an illness related to COVID-19 and needs **medical diagnosis, care, or treatment**
- **School/childcare closure**
- **Receive/recover from COVID-19 vaccination** (employee only)

Documentation: self-certified statement only.

Rate of Pay: regular rate with benefits.

Philadelphia COVID-19 Leave Coordination of Benefits



COVID-19 leave is **in addition to** any other paid leave an employer offers and **will not be reduced** by the amount of any paid leave previously received by an employee.

- Employer-Provided COVID-19 Paid Leave Policies
- Teleworkers
- Generous Leave Exemption

Philadelphia COVID-19 Leave Notice & Posting



Notice of Rights must be provided **TODAY**

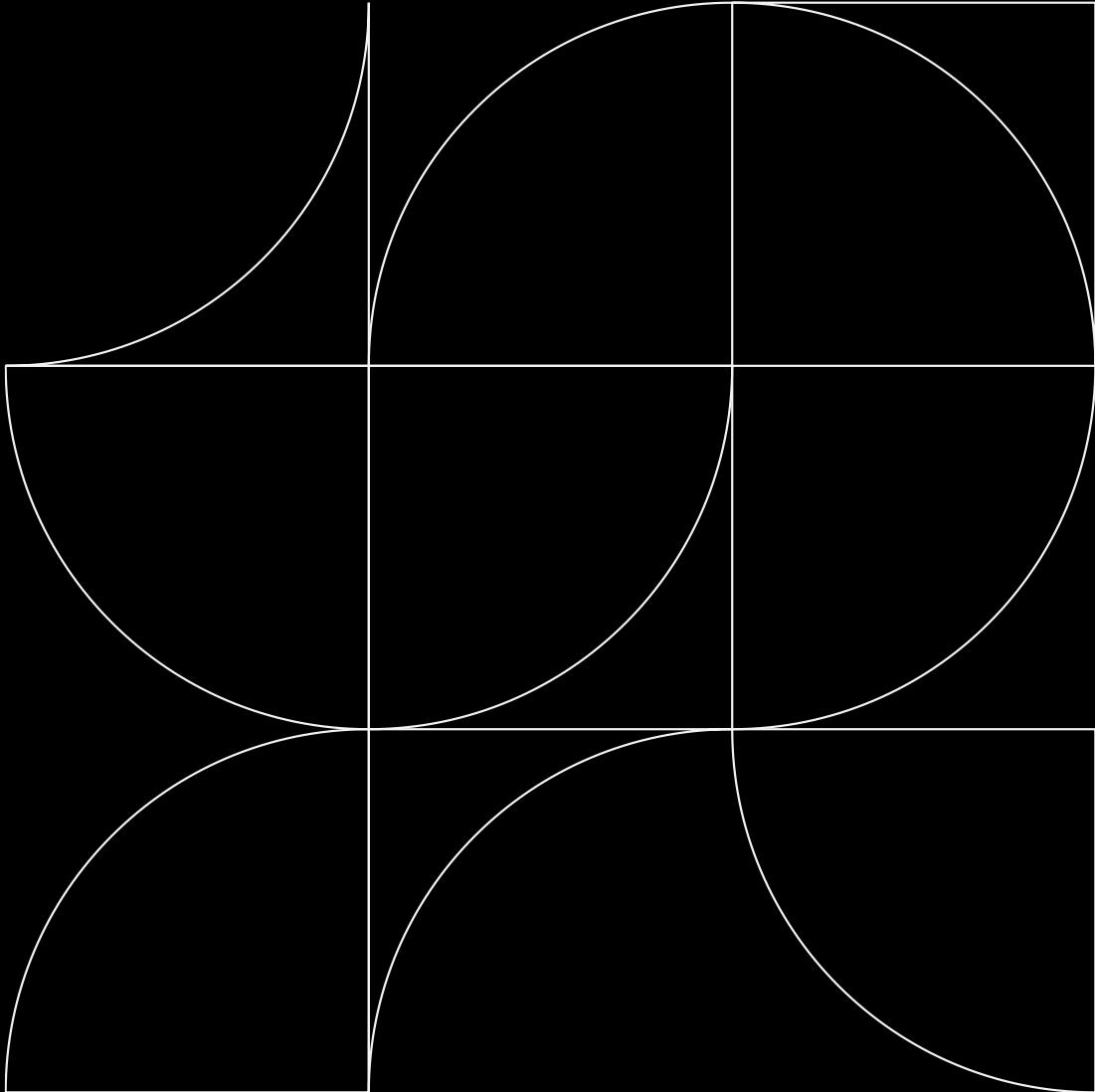
**Notice/Posting Provisions of General PSL Law
Apply to COVID-19 Leave**

- Employee Handbook
- Poster/Notice
- Remote Workers

Pandemic PSL Notice Poster – Link:

<https://www.phila.gov/media/20220315165758/2022-COVID-19-Pandemic-Paid-Sick-Leave-NOTICE-POSTER-ENG.pdf>

**Washington, D.C.
COVID-19 Paid
Leave Update**



Wash., D.C. Public Health Emergency Leave Has Expired

- **Sunset Date:** November 5, 2021
- **Overview of Law:**
 - Effective Date: April 10, 2020 (with many extensions over the next approx. 18 months)
 - Amount of Leave: 80 hours for full-time employees (prorated for non-full-time)
 - Covered Reasons for Use = Tied to (now sunset) FFCRA
 - EE subject to a quarantine or isolation order related to COVID–19, or caring for an individual subject to such an order.
 - EE advised by a health care provider to self-quarantine due to concerns related to COVID–19, or caring for an individual who has been so advised
 - EE experiencing symptoms of COVID–19 and seeking a medical diagnosis,
 - April 2021 FFCRA Expansion: EE seeking or awaiting the results of a diagnostic test for, or a test or diagnosis, or EE obtaining immunization related to COVID-19 or recovering from side effects related to such immunization.
 - EE caring for child whose school or place of care has been closed, or child care provider is unavailable, due to COVID-19.

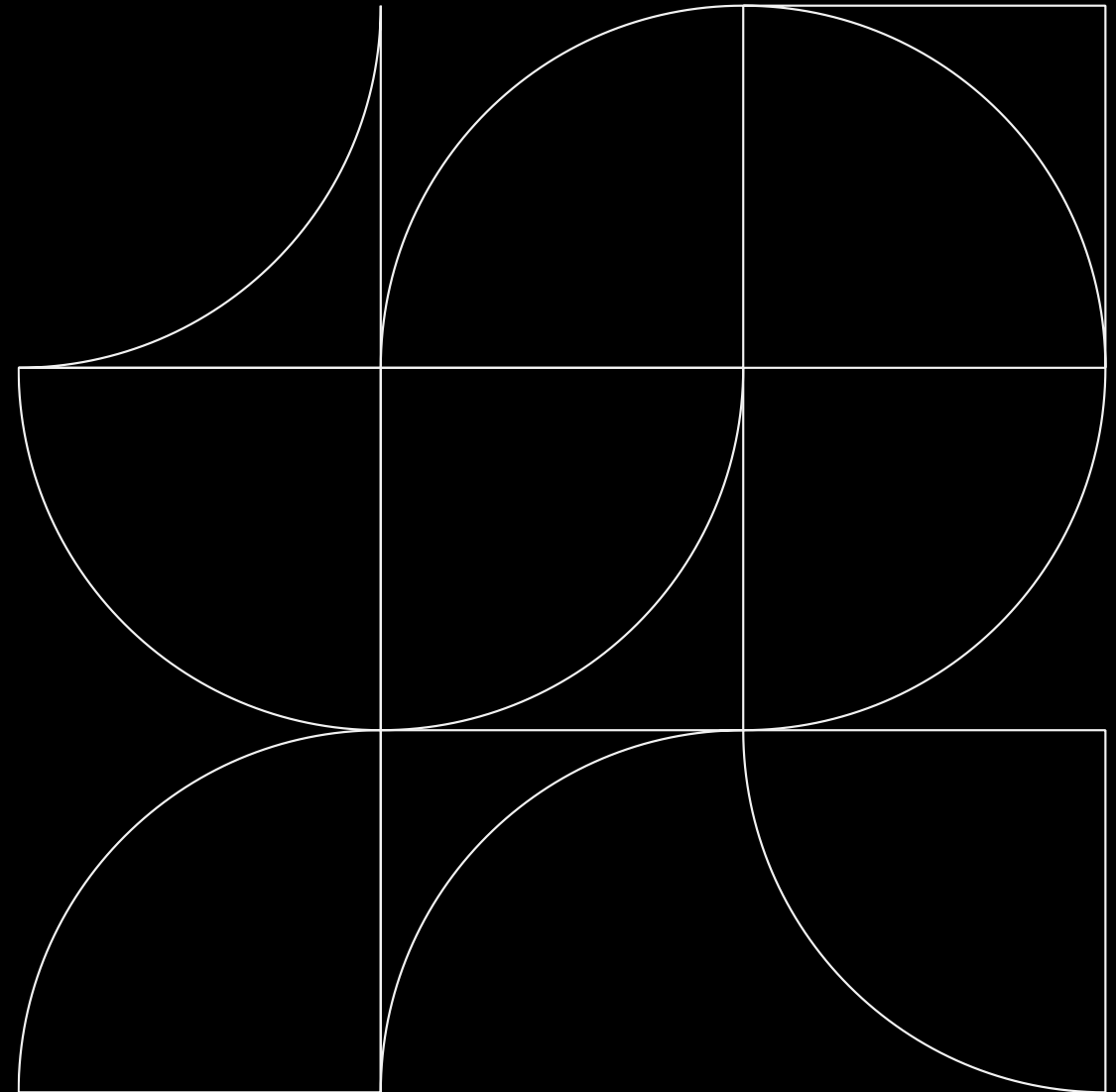
Washington, D.C. COVID-19 Vaccine Paid Leave Law

- **Effective Date:** Signed November 18, 2021; Retroactive to November 5, 2021
- **Sunset Date:** October 1, 2022
- **Amount of Leave:**
 - **Annual Max:** 48 hours
 - **Per Event:** Amount depends on nature of leave.
 - **For vaccination leave:** Up to 2 hours per injection; and
 - **For vaccination recovery leave:** Up to 8 hours per injection during the 24-hour period following the 2-hour vaccination leave period.
- **Reasons for Leave:** Mandate covers both “vaccination leave” and “vaccination recovery leave” for the employee and their covered child.

Washington, D.C. COVID-19 Vaccine Paid Leave Law

- **Reasons for Leave (con't):**
 - **“Vaccination leave” means:** Leave for an EE or their child to receive a COVID vaccine injection, including approved booster injection.
 - **“Vaccination recovery leave” means:** Leave for an EE to recover, or for an EE to care for a child recovering, from side effects from a COVID-19 vaccination, which precludes the EE from performing their work.
- **Coordination of Benefits:** DC vaccine paid leave is “in addition to any other paid leave an employer provides an employee under an existing leave policy”
 - **Exception:** Paid leave policy satisfies the mandate IF it **(a)** exclusively and expressly provides for COVID vaccination and recovery leave in amounts equal to or greater than DC vaccine paid leave, **and (b)** does not reduce other available paid leave;
- **Rate of Pay:** Generally, leave must be paid at the employee's regular rate of pay.
- **Documentation:** ER can require EE who uses DC vaccine paid leave to provide reasonable documentation upon return to work of the need for leave.

Paid Sick Leave and PTO Law Outlook





Paid Sick Leave and PTO Outlook – 2022 and On

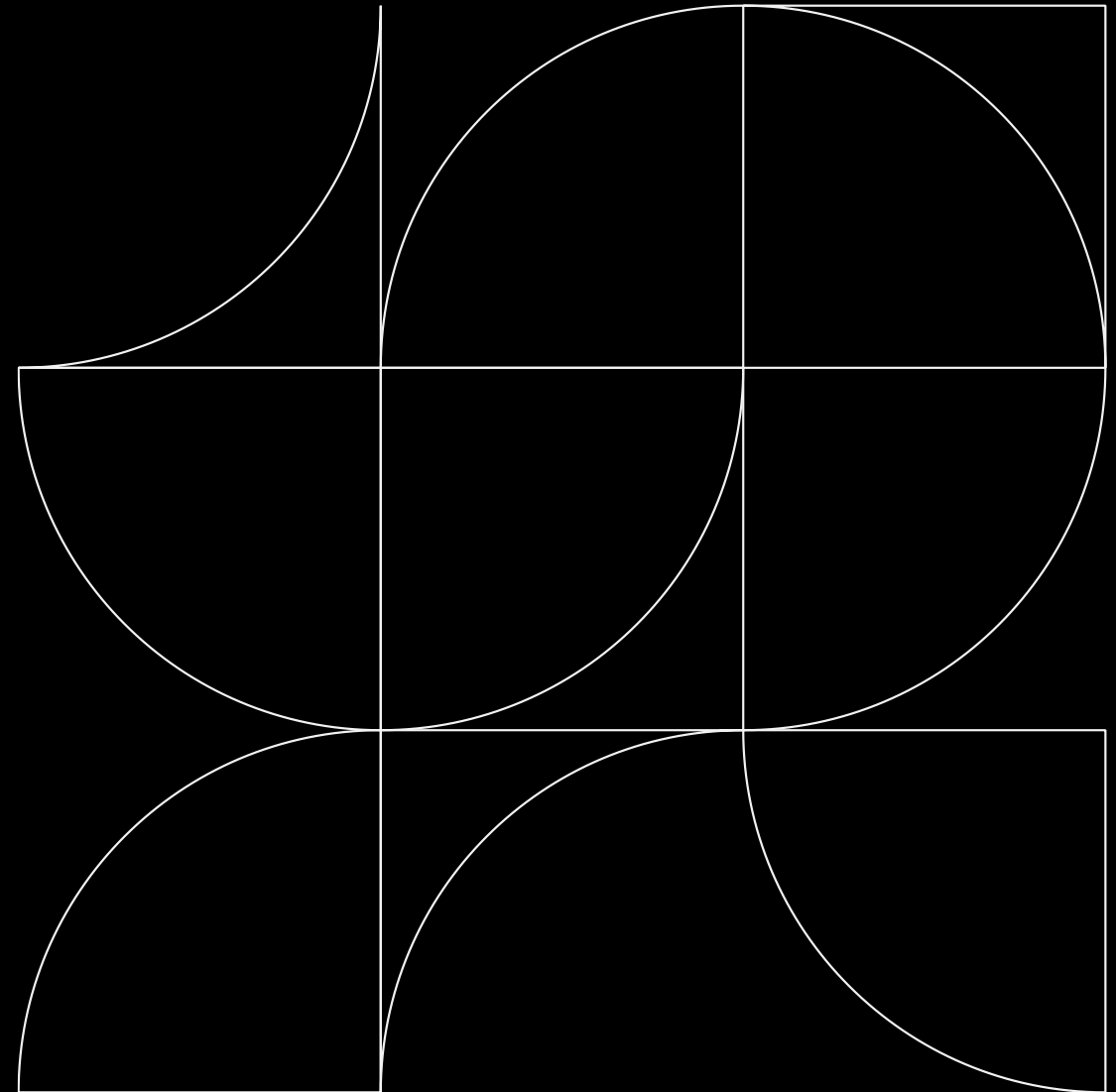
- **Laws scheduled to go into effect:**

- New Mexico (General PSL – 7/1/2022)
- West Hollywood, CA (PTO law – 1/1/2022 or 7/1/2022)
- Unclear whether a number of COVID-19 PSL Mandates (nationwide overview section) will be extended further into 2022 or 2023

- **Next locations likely to adopt:**

- **Federal:** Potential for nationwide PSL mandate. Key 2021 legislation – The Healthy Families Act (H.R. 1784/S.840)
- **State:** (1) Illinois; (2) Hawaii; (3) Virginia (for all private ERs); (4) New Jersey (Amendments + State of Emergency PSL); (5) California (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 – Today!

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

(D) “Take It or Leave It” Podcast: In late 2021, Seyfarth launched a new 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>

THANK YOU!

