



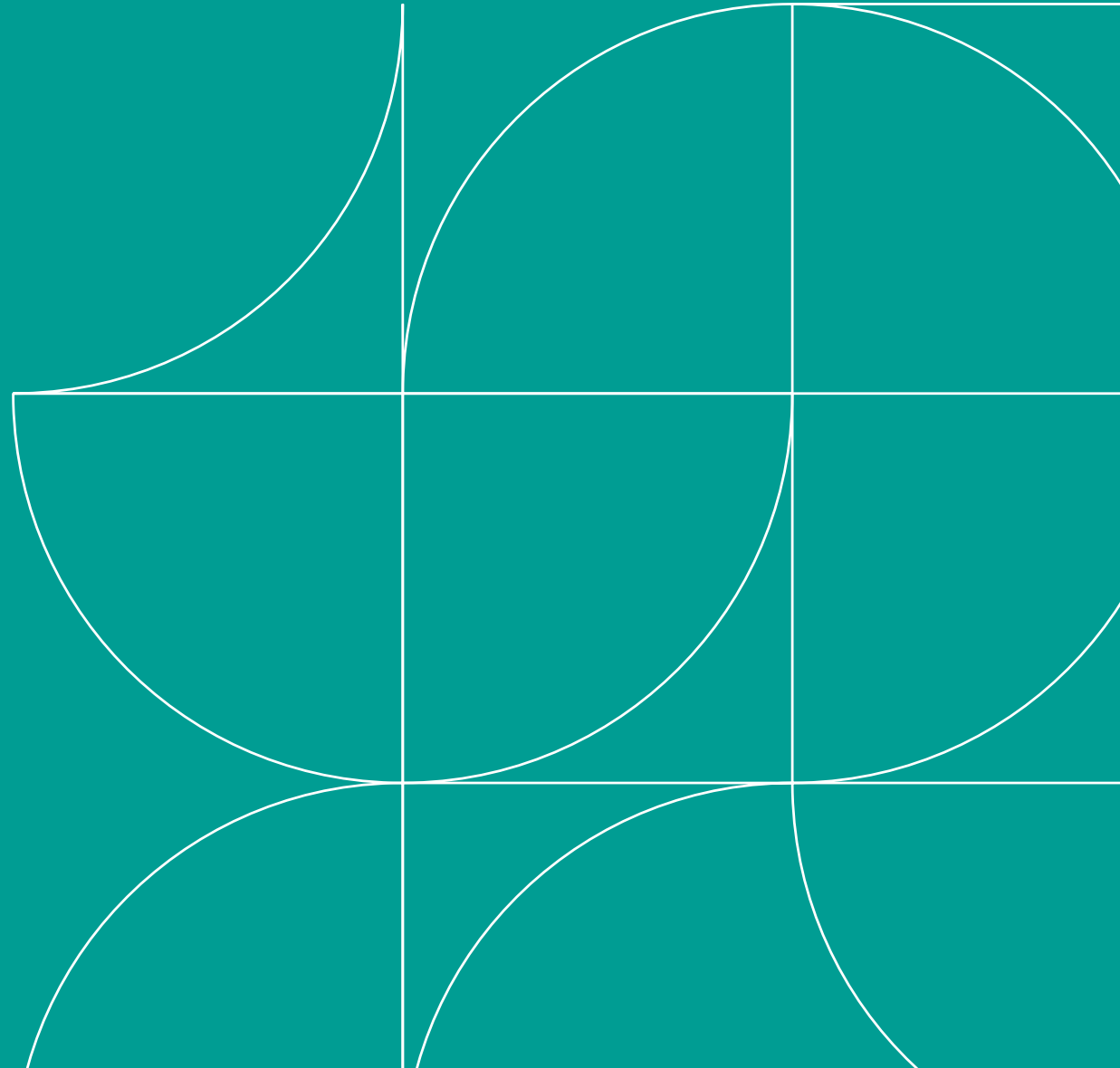
Spotlighting Colorado, Maine & New York Paid Sick and Personal Leave Developments

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Seyfarth Shaw LLP

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Paid Sick Leave: Nationwide Overview

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Mandatory Paid Sick Leave (PSL) and PTO Laws

Total Mandates

- As of Dec. 2020:
69 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

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)

15 States + DC

- | <u>PSL:</u> | <u>PTO:</u> |
|-------------------|----------------|
| • California | • Maine |
| • DC | • Nevada |
| • Massachusetts | |
| • Connecticut | |
| • Oregon | |
| • Vermont | |
| • Arizona | |
| • Washington | |
| • Rhode Island | |
| • Maryland | |
| • New Jersey | |
| • Michigan | |
| • New York | |
| • Colorado | |

32 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 (2 laws – sick time law and safe time law); (26) Bernalillo County, NM (PTO law); (27) San Jose, CA; (28) Sacramento City, CA; (29) Sacramento County, CA; (30) San Mateo County, CA; (31) Santa Rosa, CA; (32) Sonoma County, CA

COVID-19 State and Local Leave Overview

Paid Sick Leave / PTO Laws and COVID-19 Developments

Three Main Groups:

Group 1 –

Entirely new laws / executive or other emergency orders

Group 2 –

Amendments to existing laws or regulations

Group 3 –

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

COVID-19 State and Local Leave Overview

Paid Sick Leave / PTO Laws and COVID-19 Developments in 2020: 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.

Certain COVID-19 PSL laws sunset on 12/31/2020. Many have been extended or are under consideration for extension.

Polling Question



In how many states does your Company or Organization operate?

- 1. Fewer than 5 states**
- 2. 6 - 15 states**
- 3. 16 – 25 states**
- 4. More than 25 states**

Polling Question



In which of these locations (Colorado, Maine, & New York) does your Company or Organization have employees?

- 1. Colorado Only**
- 2. New York Only**
- 3. Maine Only**
- 4. At least 2 of Colorado, Maine & New York**
- 5. All 3 -- Colorado, Maine, & New York**

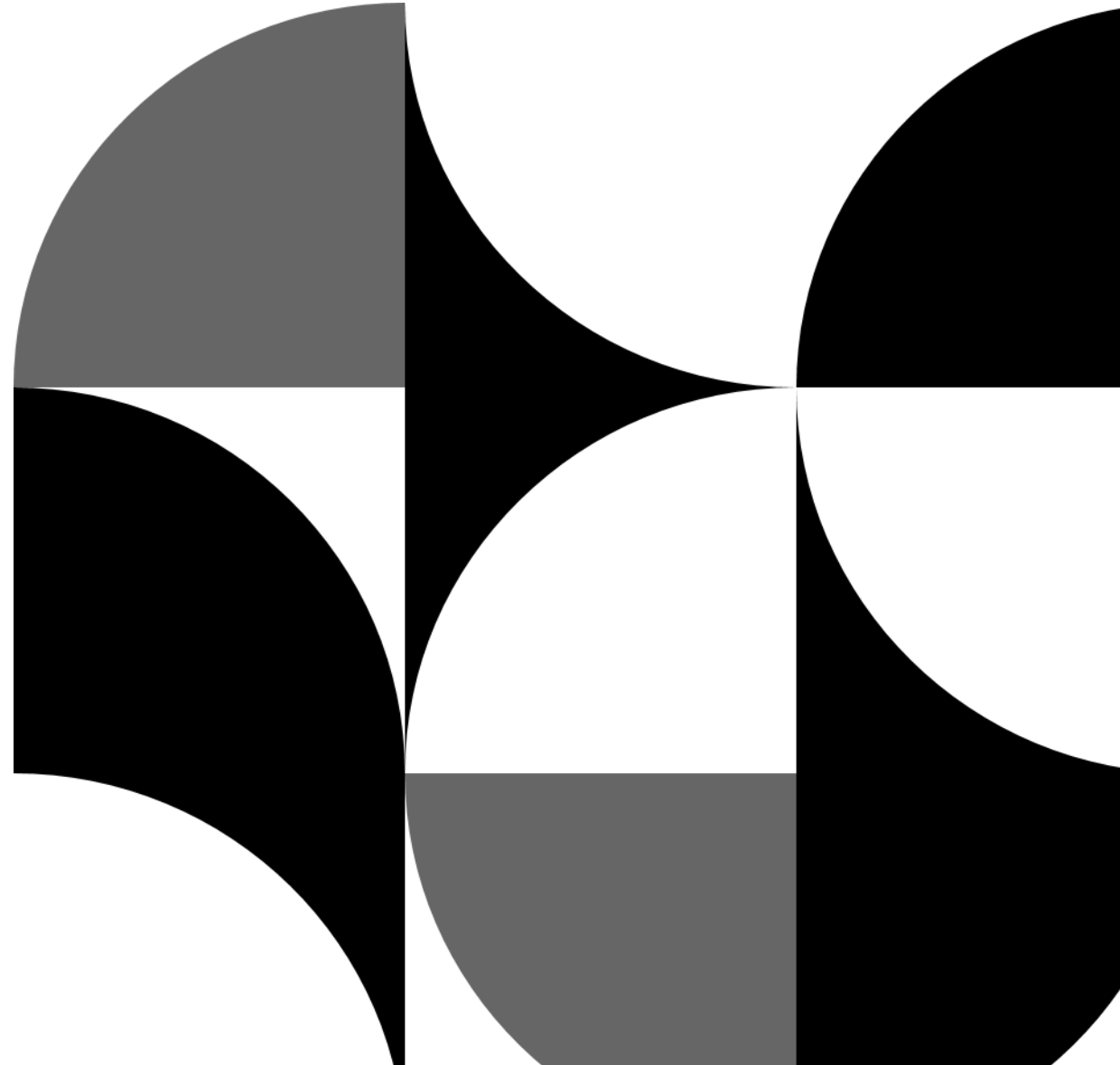


Colorado Healthy Families and Workplaces Act (HFWA)

COVID-19 Paid Sick Leave, General Paid Sick Leave, and Public Health Emergency Leave in 2021 and Beyond

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Healthy Families and Workplaces Act (HFWA)

- HWFA enacted July 14, 2020
- Consists of three different leave entitlements
 - 1 COVID-19 Paid Sick Leave (**Expired** 12/31/20)
 - 2 General Paid Sick Leave (**Eff.** 1/1/21*)
 - 3 Public Health Emergency Leave (**Eff.** 1/1/21*)

COVID-19 Paid Sick Leave

HFWA Mandate *Expired December 31, 2020*

1

2

3

- **Temporary Health Emergency Leave with Pay (“HELP”) Rules**
 - Enacted March 11, 2020 but ultimately **terminated on July 14, 2020.**
 - **Replaced by** HFWA, which provided broader COVID-19 leave
- **HFWA COVID-19 Leave**
 - Effective July 14, 2020 but **expired December 31, 2020**
 - Mirrors FFCRA, and generally extended “each employer in the state, regardless of size”
- **HWFA Public Health Emergency Leave (“PHEL”)**
 - Replaced COVID-19 Leave **effective January 1, 2021**
 - PHEL is not specific to COVID-19 but provides leave for the current COVID-19 public health emergency
 - **No credit or offset** for time provided in 2020 pursuant to the COVID-19 specific mandate of the HFWA – PHEL requires new entitlement as of 1/1/21 (subject to offset unrelated to time provided in 2020)

General Paid Sick Leave

Effective January 1, 2021

1

2

3

- “General” paid sick leave law (**PSL**)
- Unrelated to COVID-19 or Public Health Emergencies (“PHE”), although it provides leave for certain PHE related reasons
- All Colorado employers are covered – except if 16 or less employees, not until 1/1/2022
- Applies to all Colorado employees
 - No hours worked eligibility requirements
 - Not independent contractors

2

General Paid Sick Leave (PSL)

| Legal Requirements | Colorado PSL |
|----------------------|---|
| Accrual Rate | 1 hour of sick leave for every 30 hours worked. |
| Start of Accrual | Start of employment |
| Accrual Cap | 48 hours / year |
| Usage Cap | 48 hours / year |
| Usage Waiting Period | Must be immediately available for use (i.e., no waiting period) |
| Year-End Carry Over | Carryover earned, unused PSL up to 48 hours at year-end |
| Frontloading | Permitted, but <i>unclear</i> if frontloading gets rid of an employer's carryover obligations |

2

General Paid Sick Leave (PSL)

| Legal Requirements | Colorado PSL |
|--------------------|--|
| Reasons for Use | <ul style="list-style-type: none"><li data-bbox="1480 168 2491 401">(a) EE/Family Member is Sick: EE or covered family member has a mental or physical illness, injury, or health condition that prevents the employee from working;<li data-bbox="1480 411 2491 758">(b) Diagnosis, Treatment, Preventative Care: EE/Family Member needs to obtain a medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or needs to obtain preventive medical care;<li data-bbox="1480 768 2491 939">(c) Safe Time: EE/Family Member has been the victim of domestic abuse, sexual assault, or harassment.<li data-bbox="1480 949 2491 1296">(d) Public Health Emergency: A public official has ordered closure of: (i) the EE's place of business; or (ii) the school or place of care of the EE's child and the EE needs to be absent from work to care for the EE's child. |

2

General Paid Sick Leave (PSL)

| Legal Requirements | Colorado PSL |
|--------------------------------|---|
| Covered Family Member | <p>(1) an EE's immediate family (related by blood, adoption, marriage, or civil union);</p> <p>(2) a child to whom the EE stands in loco parentis or a person who stood in loco parentis to the EE when the EE was a minor; and</p> <p>(3) a person for whom the EE is responsible for providing or arranging health or safety-related care.</p> |
| Public Health Emergency | <p>(1) An act of bioterrorism, a pandemic influenza, or an epidemic caused by a novel and highly fatal infectious agent, for which: (a) an emergency is declared by a federal, state or local public health agency; or (b) a disaster emergency is declared by the Governor; or</p> <p>(2) a highly infectious illness or agent with epidemic or pandemic potential for which a disaster emergency is declared by the Governor.</p> |

2

General Paid Sick Leave (PSL)

| Legal Requirements | Colorado PSL |
|---|--|
| Increments of Use | 1 hour minimum increments of use |
| Notice to Employer | When the use of PSL is foreseeable , the EE shall make a good-faith effort to provide notice of the need for PSL in advance. Law is silent on unforeseeable absences. |
| Documentation | For PSL of 4 or more consecutive work days, an employer may require “reasonable documentation.” Cannot require the documentation in advance of taking PSL. |
| Using Existing Policy For Compliance | <u>Can use existing policy for compliance if:</u> (a) makes available to its employees, through its paid leave policy, an amount of paid leave sufficient to satisfy the law and meet the accrual requirements, and (b) allows its employees to use the paid leave for the same purposes and under the same conditions required by the law. |

2

General Paid Sick Leave (PSL)

| Legal Requirements | Colorado PSL |
|-----------------------------------|--|
| Payment of Sick Leave | PSL is paid at the same hourly rate or salary and with the same benefits the employee normally earns during hours worked, which must be at least minimum wage, but need not include overtime, bonuses, or holiday pay. |
| Available Balance Notice | Upon an employee's request, not more than once a month, an employer must provide the amount of paid leave the employee has (1) available for use (including accrued leave), and (2) already used during the current benefit year, including PHEL . |
| Notice and Posting | HFWA requires employers to both (1) notify employees in writing of the right to take paid leave, in the amounts and for the purposes in HFWA, without retaliation, and (2) display an informational Division poster. |
| Record Keeping | For a two (2) year period ER must retain documentation showing hours worked, paid sick leave accrued, and paid sick leave uses |
| Written Policy Requirement | Best practice is to maintain written policy; HFWA and guidance <u>expressly</u> discuss – (1) If benefit year is different than calendar year; (2) increments of use otherwise will be 6 minutes, and (3) if using PTO for compliance. |

Public Health Emergency Leave (PHEL)

Effective January 1, 2021

1

2

3

- Requires employers to provide all employees **additional paid time off for any covered Public Health Emergency (PHE)** declared following the effective date (1/1/21).
 - **Definition of PHE:** An act of bioterrorism, a pandemic influenza, or an epidemic caused by a novel and highly fatal infectious agent, for which: **(I)** an emergency is declared by a federal, state or local public health agency; **or (II)** a disaster emergency is declared by the Governor ; or a highly infectious illness or agent with epidemic or pandemic potential for which a disaster emergency is declared by the Governor.
- **“Date of declaration”** for the current COVID-19 PHE is **January 1, 2021** *.
 - All Colorado employees are entitled to additional paid time off for PHE related reasons on 1/1/21
 - Employees are entitled to PHEL once during entirety of the PHE until **4 weeks after PHE is declared over.**
- **Additional Entitlement** (as of 1/1/21 for current PHE, although offsets may be possible):
 - Full time employees (40 or more hours/wk): 80 hours
 - Employees working <40 hours: Prorated amount of 80 hours based on hours worked

3

PHEL Reasons for Use

1. EE needs to self-isolate due to either being diagnosed with, or having symptoms of, a communicable illness that is the cause of a public health emergency;
2. EE is seeking a diagnosis, treatment, or care (including preventive care) of such an illness;
3. A local, state, or federal public official or health authority, **or** the company, determines that EE's presence on the job or in the community would jeopardize the health of others due to EE having exposure to, or symptoms of, such an illness (whether or not they are actually diagnosed with the illness);
4. EE is unable to work due to a health condition that may increase susceptibility or risk of such an illness; **or**
5. EE needs to care for a child or other covered family member** in categories 1., 2., or 3., above, **or** whose school, child care provider, or other care provider is either unavailable, closed, or providing remote instruction due to the public health emergency.

3

PHEL Potential Offset

- PHEL is generally **in addition** to paid sick leave (and other PTO*).
- However, employers can **offset** PHEL time for each hour of earned but unused paid sick leave (or other PTO) available to the employee on the date a PHE is declared.
- Any earned, unused paid sick leave (or other PTO) counted towards the PHEL entitlement **must be treated as protected PHEL** (notice, documentation, reasons for use, etc.) when used for PHEL covered reasons.

3

PHEL Potential Off-Set *Examples*

Example 1: FT EE has 48 hours of PSL* available on June 1, at which time a PHE is declared. EE will receive an additional 32 hours PHEL. EE can use 48 hours either for a PSL* covered absences **or** for PHEL covered absence and 32 hours for PHEL covered absences **only**.

Example 2: FT EE has 0 hours of PSL* available on June 1, at which time a PHE is declared. EE will receive 80 hours of PHEL, which can only be used for PHEL covered absences.

Example 3: EE scheduled to work 30 hours each week has 48 hours of PSL* available on June 1, when a PHE is declared. EE will receive an additional 12 hours of PHEL. EE can use 48 hours of PSL* either for PSL covered absences **or** for PHEL covered absences and 12 hours for PHEL covered absences **only**.

Example 4: EE scheduled to work 20 hours each week has 48 hours of PSL* available on June 1, at which time a PHE is declared. EE will not receive additional PHEL, but EE can use their PSL* for PHEL covered absences **or** PSL covered absences.

3

PHEL EE Notice and Documentation Requirements

- **Reporting Absences**
 - If place of business has not been closed and the need for PHEL is **foreseeable**, the employee shall make a **good-faith effort** to provide notice of the need for paid sick leave in advance.
 - The law is silent regarding absences that are **unforeseeable** so risk in requiring notice in written policy.
 - Cannot deny paid sick leave for non-compliance with notice policy.
- **Documentation - cannot require** EEs to provide documentation when taking PHEL.

3

PHEL Notice/Poster & Available Balance Requirements

- **Notice/Poster** - Same as general PSL
- **Available Balance Notice**
 - The requirements related to general PSL apply to PHEL time
 - Available balance must be provided upon employee request, no more than once per month
 - Can comply by including on pay stub or internet information system where employees have access.



Maine Earned Paid Leave Law

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Maine Earned Paid Leave Law



| Legal Requirements | Maine Earned Paid Leave Law |
|--------------------|---|
| Enacted | May 2019 |
| Effective Date | January 1, 2021 |
| Accrual Rate | 1 hour of paid leave for every 40 hours worked |
| Accrual Cap | 40 hours per year |
| Usage Cap | No provision in the law, but regulations state 40 hours per year |
| Carry Over | No provision in the law, but administrative guidance states 40 hour max |
| Reasons for Use | Per administrative guidance – “Employees can use their accrued Earned Paid Leave for any reason such as an emergency, illness, sudden necessity, planned vacation, etc.” |

Maine Earned Paid Leave Law



| Legal Requirements | Maine Earned Paid Leave Law |
|----------------------------------|---|
| <p>Increments of Use</p> | <p>Employees may use earned paid leave in increments of <u>at least one hour</u>, unless the employer chooses to allow smaller increments.</p> |
| <p>Notice to Employer</p> | <p>Absent an emergency, illness or other sudden necessity for taking earned leave, an employee must give <u>reasonable notice</u> to the employee's supervisor of the employee's intent to use earned leave. Use of leave must be scheduled to prevent undue hardship on the employer as reasonably determined by the employer.</p> |
| <p>Documentation</p> | <p>No provision in law and regulations/guidance do not address requirements</p> |

Maine Earned Paid Leave Law



| Legal Requirements | Maine Earned Paid Leave Law |
|---------------------------------|--|
| Available Balance Notice | No provision. |
| Notice and Posting | Employer must post and keep posted in a place accessible to the employer's employees a copy of the poster or notice furnished by the bureau. |
| Written Policy Mandate | No provision. |



New York State and Local Paid Sick and Safe Leave Laws Overview

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NYS Paid Sick Leave Law



| Legal Requirements | New York State Paid Sick Leave |
|-----------------------------|--|
| Accrual Rate | 1 hour of sick leave for every 30 hours worked. |
| Accrual Cap | 40 or 56 hours of <u>paid or unpaid</u> sick leave, depending on employer size |
| Usage Cap | <u>ER with Fewer than 100 EEs</u> : Up to 40 hours of sick leave per year (paid or unpaid varies on employer size) <u>ER with 100+ EEs</u> : Up to 56 hours of paid sick leave per year |
| Usage Waiting Period | No waiting period |
| Year-End Carryover | No carryover cap. |
| Frontloading | Permitted. Unclear if frontloading gets rid of an employer's carry over obligations. |

NYC Earned Safe and Sick Time Act

(Follow NYS if More Generous)



| Legal Requirements | New York City Paid Sick Leave |
|-----------------------------|---|
| Accrual Rate | 1 hour of sick leave for every 30 hours worked. |
| Accrual Cap | 40 or 56 hours of paid or unpaid sick leave, depending on employer size |
| Usage Cap | <p><u>ER with Fewer than 100 EEs</u>: Up to 40 hours of sick leave per year (paid or unpaid varies on employer size)</p> <p><u>ER with 100+ EEs</u>: Up to 56 hours of paid sick leave per year</p> |
| Usage Waiting Period | No waiting period |
| Year-End Carryover | Law provides that employees can carry over up to 40 or 56 hours, depending on employer size, however there is uncertainty regarding this topic. |
| Frontloading | Likely permitted. Unclear if frontloading gets rid of an employer's carry over obligations. |

NYS Paid Sick Leave Law



| Legal Requirements | New York State Paid Sick Leave |
|---------------------------|---|
| Increments of Use | Reasonable minimum increment for the use of sick leave which shall <u>not</u> exceed 4 hours. |
| Notice to Employer | Employer <u>must</u> provide leave for the permitted purposes upon oral or written request of an employee. |
| Documentation | <u>No standard</u> BUT law does restrict employers from disclosing confidential information. <u>Proposed regulations</u> suggest forthcoming standard. |

NYC Earned Safe and Sick Time Act

(Follow NYS if More Generous)



| Legal Requirements | New York City Paid Sick Leave |
|---------------------------|---|
| Increments of Use | Initial reasonable increment not to exceed 4 hours; thereafter in increments of 30 minutes. |
| Notice to Employer | <u>Foreseeable Absences</u> : Cannot require more than 7 days' advance notice. <u>Unforeseeable Absences</u> : As soon as practicable. |
| Documentation | For an absence of more than 3 consecutive workdays for sick or safe time, an employer may require reasonable documentation. |

NYS Paid Sick Leave Law



| Legal Requirements | New York State Paid Sick Leave |
|--|---|
| <p>Available Balance Notice</p> | <p><i>Upon the oral or written request of an employee, an employer must provide a summary of the amounts of sick leave accrued <u>and</u> used by such employee in the current calendar year <u>and/or</u> any previous calendar year.</i></p> <p>Must be provided <i>within 3 business days of such request.</i></p> |
| <p>Notice and Posting</p> | <p>No provision</p> |
| <p>Written Policy Mandate</p> | <p>Yes.</p> |

NYC Earned Safe and Sick Time Act

(Follow NYS if More Generous)



| Legal Requirements | New York State Paid Sick Leave |
|--|--|
| <p>Available Balance Notice</p> | <p>(a) Amount of safe/sick time accrued <u>and</u> used during a pay period and (b) an employee's total safe/sick time must be included on a pay statement <u>or</u> other form of written documentation provided to the employee each pay period.</p> |
| <p>Notice and Posting</p> | <p>Notice: written notice EE rights under the amended law. Must be provided at the commencement of employment or within 30 days of the amendments' effective date (BUT NYC website says by 1/1/2021).</p> <p>Posting: Must conspicuously post at ERs place of business in an area accessible to EEs (NYC website says by 1/1/2021)</p> |
| <p>Written Policy Mandate</p> | <p>Yes.</p> |

Westchester County Safe Time Leave Law

- **Separate** ordinance from the County's Earned Sick Leave Law
- Effective October 2019
- Safe time leave is **in addition to** sick leave provided for under the Westchester County, NY Earned Sick Leave Law (which appears to have sunset in light of NYS PSL)
- STLL does **not** contain accrual or carryover provisions.
- Employees are entitled to take up to 40 hours of paid safe time leave in a year.
- Employees who are victims of domestic violence or victims of human trafficking are entitled to take up to 40 hours of paid leave in order to:
 - (1) attend/testify in criminal and/or civil court proceedings relating to domestic violence or human trafficking; and/or
 - (2) move to a safe location.
- The law also contains a number of other requirements and obligations, including, but not limited to, usage increments, payment of STLL, notice, posting, etc.



Status of Federal Paid Sick Leave and 2021 Outlook

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Status of Federal Paid Sick Leave

- **Federal Contractor Paid Sick Leave (Executive Order 13706)**
 - In effect since January 2017
 - Requires certain federal contractors and subcontractors to provide PSL to eligible employees working on or in connection with those contracts
- **Families First Coronavirus Response Act and Emergency Paid Sick Leave**
 - Effective April 1, 2020 but expired December 31, 2020
 - Limited ER coverage; Required up to 80 hours of PSL for certain COVID-19 absences
- **Healthy Families Act (H.R. 1784/S.840)**
 - PSL proposal in Congress that **could** come under increased focus during new administration
 - No preemption of state or local laws in current bill
 - ERs with 15 or more EEs to provide 1 hour of PSL for every 30 hours worked up to 56 hours/year
 - Appears to establish 56 hour “point-in-time” accrual cap
 - Silent on annual usage cap, whether frontloading gets rid of carryover, increments of use, and other topics

Paid Sick Leave and PTO Outlook – 2021 and On

Laws scheduled to go into effect:

- New York State (Usage began – 1/1/2021)
- Maine (PTO Law – 1/1/2021)
- Colorado (General PSL + Supplemental Public Health Emergency PSL – 1/1/2021)
- New York City (Increased Usage Cap for Larger ERs began – 1/1/2021)
- *Unclear whether a number of COVID-19 PSL Mandates will be extended into 2021*

Next Locations Likely to Adopt

- **Federal:** Potential for nationwide PSL mandate with new administration. Key current legislation – The Healthy Families Act (H.R. 1784/S.840)
- **State:** (1) Illinois; (2) Hawaii; (3) Virginia; (4) New Mexico; (5) New Jersey (Amendments + State of Emergency PSL)
- **Municipal:** (1) New York City, NY (PTO Proposal); (2) Albuquerque, NM (PTO Proposal)



Seyfarth Paid Sick Leave Resources



If you're struggling with NY PSL or 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 mandatory PSL, COVID-19 PSL, and PTO law.

For more information contact:

paidleave@seyfarth.com

(B) **PSL Mailing List**: Seyfarth regularly publishes Legal Updates and Blog Posts on PSL law developments.

You can sign up here:

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

**thank
you**

Contact Information

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