

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

Part 8: Spotighting New Mexico and West Hollywood, CA

June 29, 2022

Seyfarth Shaw LLP

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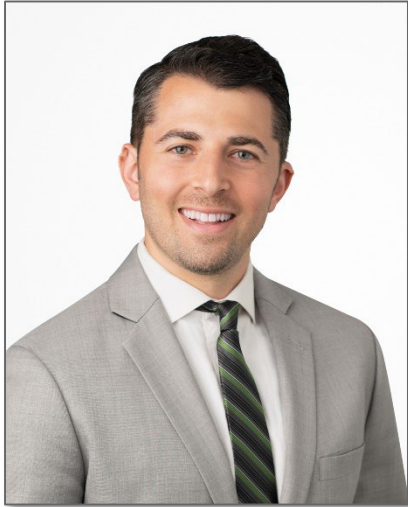
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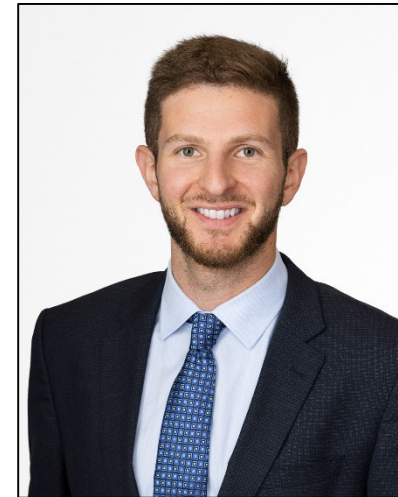
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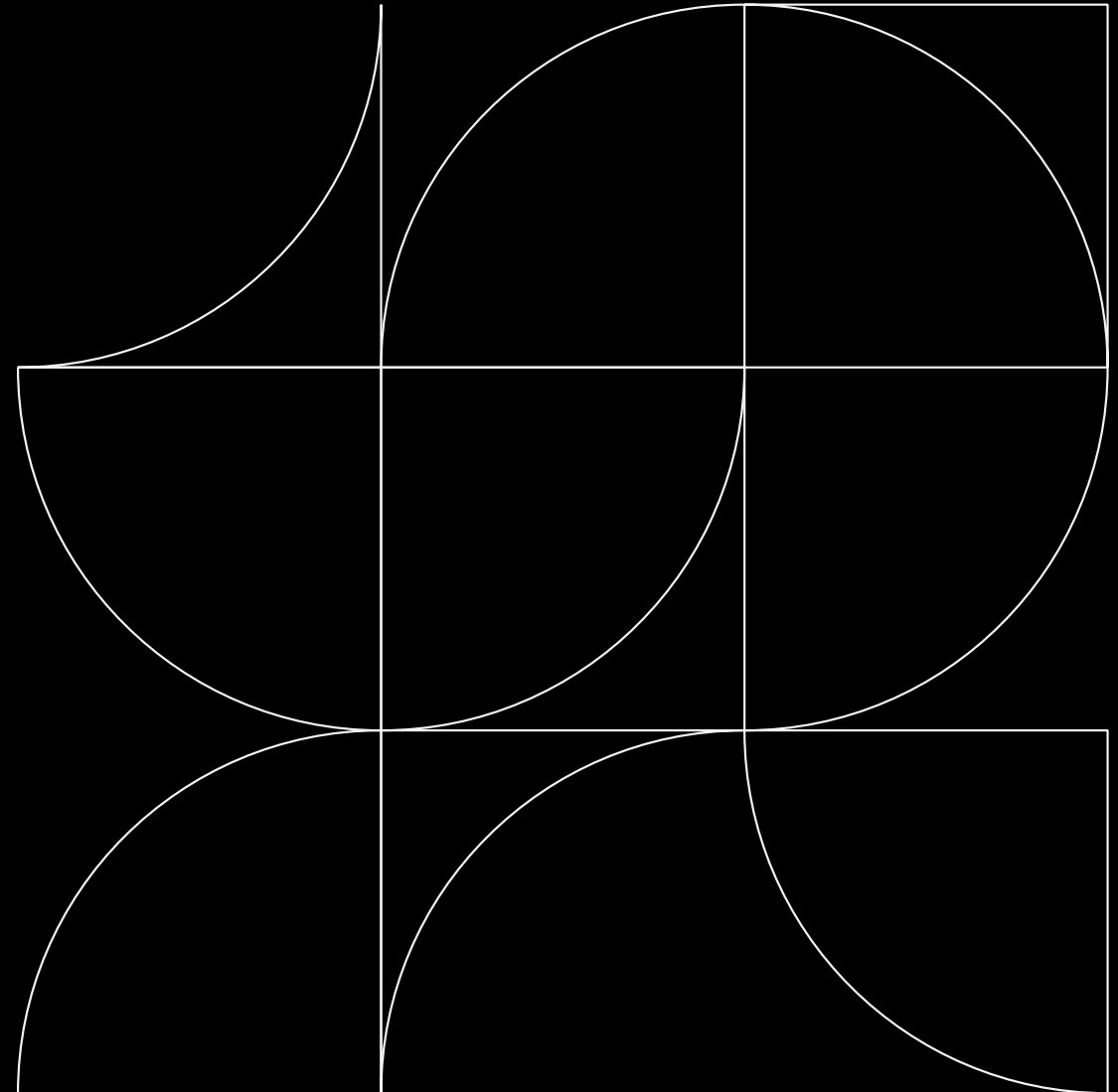


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Agenda

01	Nationwide General and COVID-19 Paid Sick Leave (PSL) Overview
02	New Mexico Healthy Workplaces Act
03	West Hollywood, CA Compensated Time Off Mandate
04	Bloomington, MN Earned Sick and Safe Leave Law
05	Paid Sick Leave and PTO Law Outlook

Nationwide General and COVID-19 Paid Sick Leave Overview



Mandatory Paid Sick Leave (PSL) and PTO Laws

Total Mandates

As of June 24, 2022:
66 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

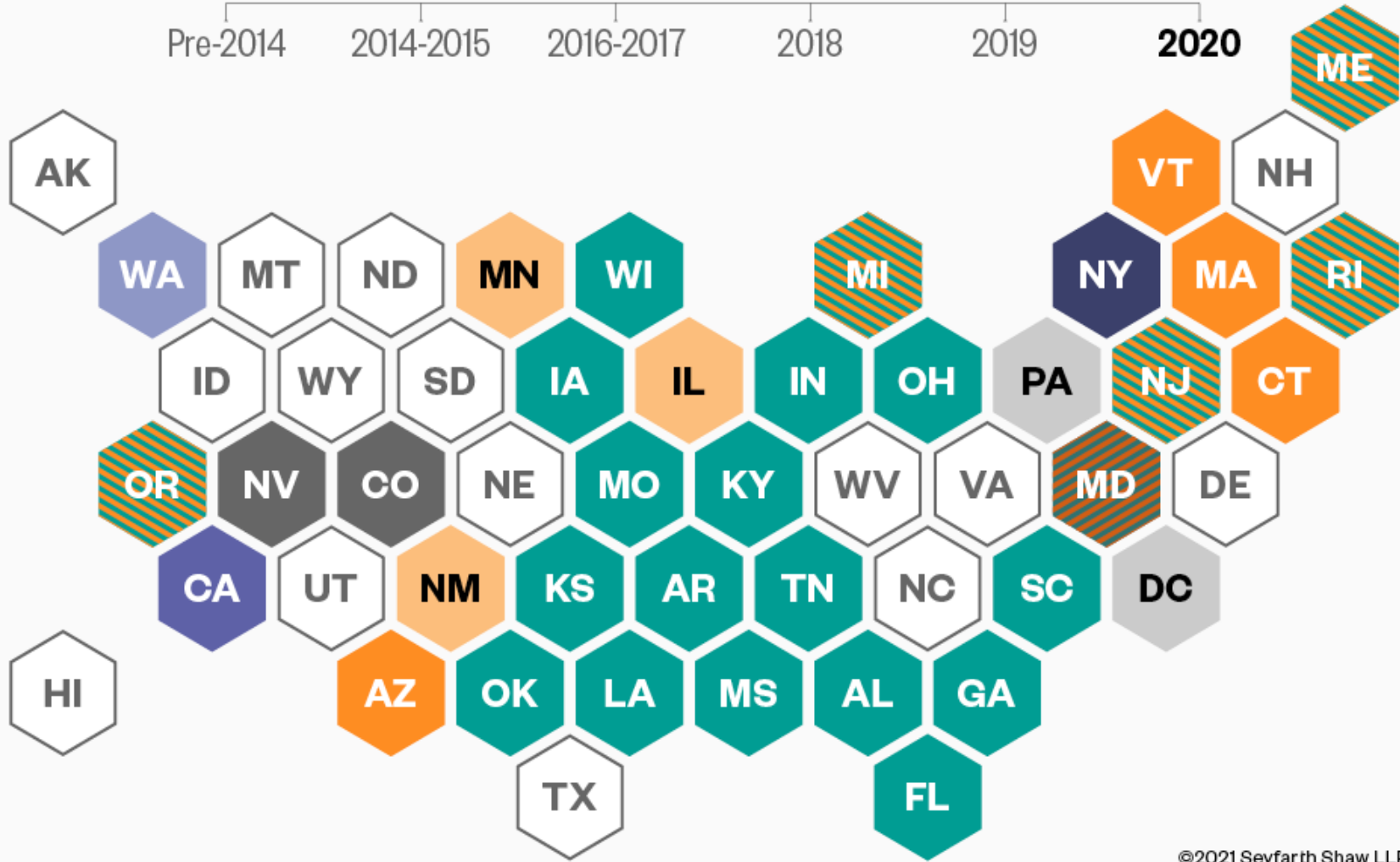
PTO:

- Maine
- Nevada

29 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); (29) Bloomington, MN

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*

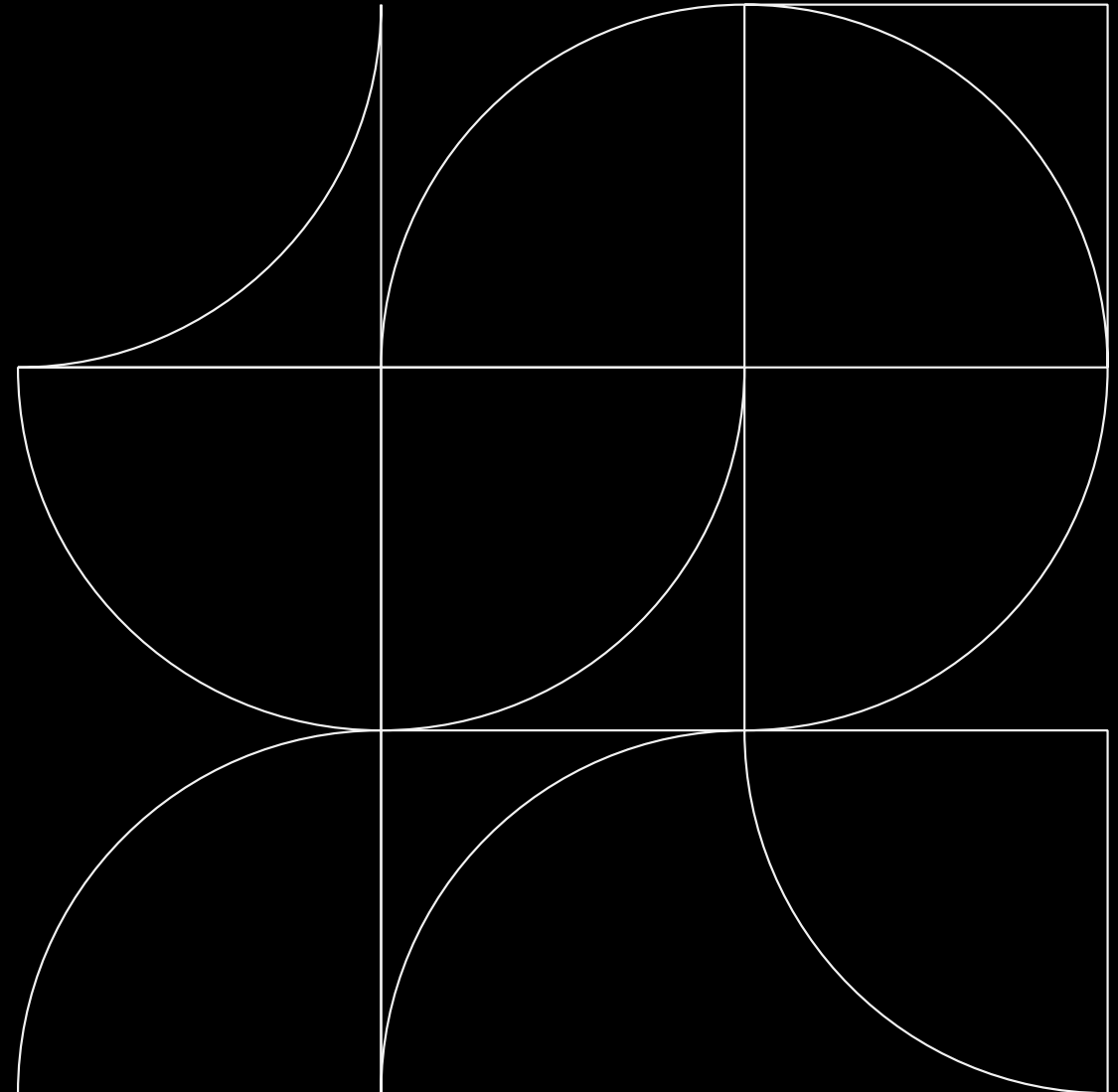
(1) Arizona - State; (2) California - State; (3) California - Emeryville; (4) California - Long Beach; (5) California - Los Angeles City; (6) California - Los Angeles County; (7) California - Oakland; (8) California - Sacramento City; (9) California – Sacramento County; (10) California - San Diego; (11) 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.

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;~~

New Mexico Paid Sick Leave Law



Topics	New Mexico Paid Sick Leave Law
Effective Date	July 1, 2022
Employer Coverage	<p>"Employer" means an individual, partnership, association, corporation, business trust, legal representative or any organized group of persons employing one or more employees at any one time, acting in the interest of an employer in relation to an employee, but shall not include the United States, the state or any political subdivision of the state.</p>
Employee Eligibility	<p>"Employee" means an individual employed by an employer for remuneration, including an individual employed on a part-time, seasonal or temporary basis.</p>
	<ul style="list-style-type: none"> - Does not include employees covered under Title II of the federal Railway Labor Act - Does not include independent contractors and subcontractors

Topics	New Mexico Paid Sick Leave Law
Start of Accrual	Effective date of law (July 1, 2022) or commencement of employment (whichever is later).
Accrual Rate	One hour of PSL for every 30 hours worked.
Accrual Cap	No express cap set.
Carryover	64 hours of PSL carry over to the following year.
Usage Cap	64 hours of PSL per year.

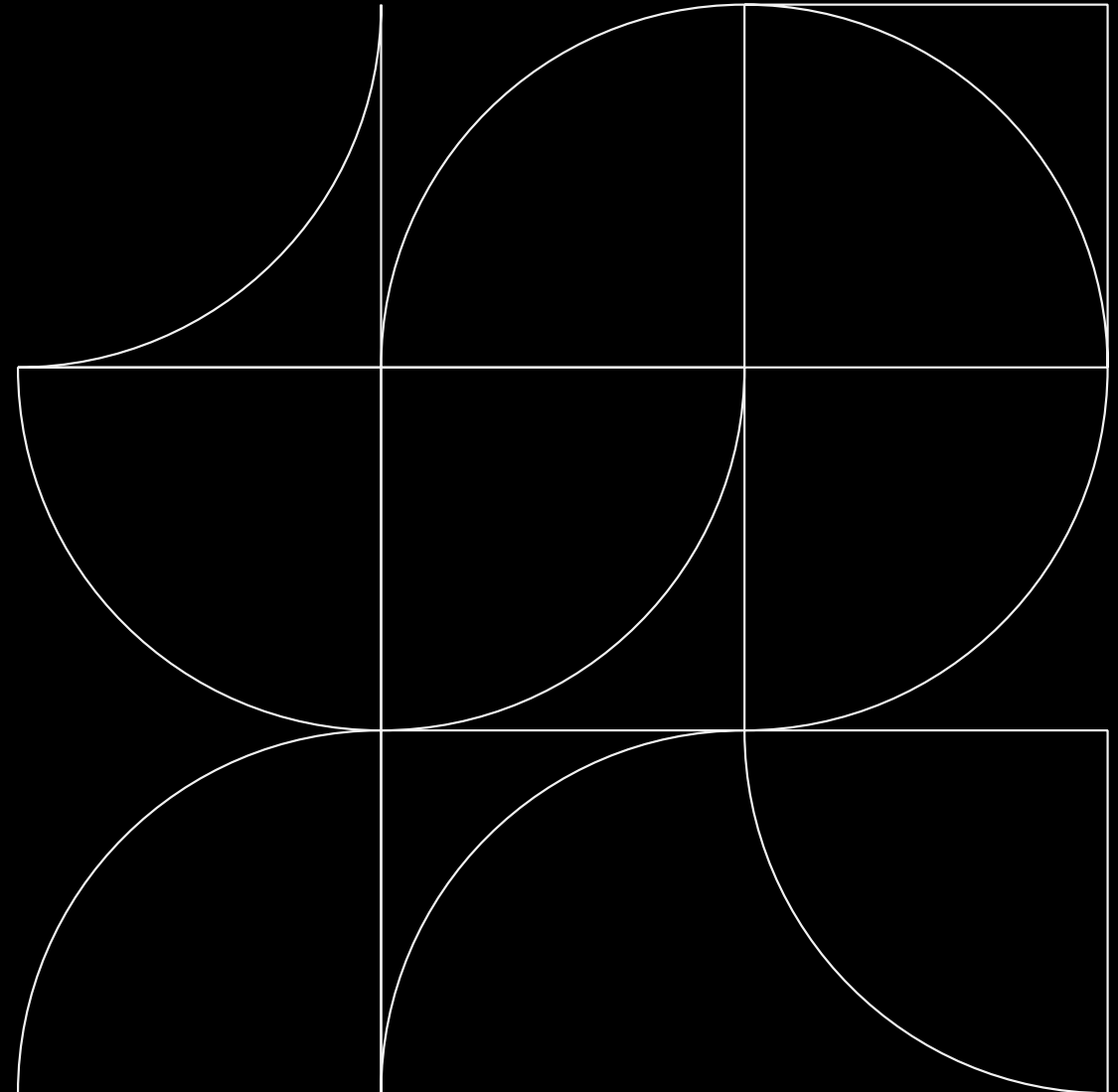
Topics	New Mexico Paid Sick Leave Law
Frontloading PSL	<p>Instead of accruing, an employer may elect to grant employees the full 64 hours of earned sick leave for the upcoming year on January 1 of each year or, for employees whose employment begins after January 1 of a given year, a pro rata portion of the 64 hours for use in the remainder of that year.</p>
	<p>Does not get rid of carry over OR accrual obligations.</p>
CBAs	<p>CBAs cannot provide employees with fewer rights than provided under the law.</p>
Payment of PSL	<p>PSL is compensated at the same hourly rate and with the same benefits, including health care benefits, as an employee normally earns during hours worked. Cannot be less than applicable minimum wage.</p>
Time Increment Limitation	<p>Earned sick leave may be used in the smaller of hourly increments or the smallest increment that the employer's payroll system uses to account for absences or use of other time.</p>

Topics	New Mexico Paid Sick Leave Law
Usage Waiting Period	None.
Reasons for Use	<p>An employee may use earned sick leave:</p> <p>(1) For the employee'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) For care of family members of the employee for: (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>(3) For meetings at the employee's child's school or place of care related to the child's health or disability; or</p> <p>(4) For certain absences necessary due to domestic abuse, sexual assault or stalking suffered by the employee or a family member of the employee.</p>

Topics	New Mexico Paid Sick Leave Law
<p>Employee Notice to Employer</p>	<p>General Standard: Leave must be provided upon the oral or written request of an employee or an individual acting on the employee's behalf.</p> <p>Foreseeable Leave: Reasonable effort to provide oral or written notice of the need for such sick leave to the employer in advance of the use of the earned sick leave and to schedule the use of earned sick leave in a manner that does not unduly disrupt the operations of the employer.</p> <p>Unforeseeable Leave: Notify the employer orally or in writing as soon as practicable.</p>
<p>Documentation Requirements</p>	<p>Employer may require reasonable documentation that sick leave has been used for a covered purpose if the employee uses two or more consecutive work days of sick leave.</p>

Topics	New Mexico Paid Sick Leave Law
Notice/Posting	The law has <u>both</u> notice and posting obligations.
Available Balance Notification	Quarterly notice requirement and possible partial paystub notice requirement.
Recordkeeping	Employers must retain records documenting hours worked by employees, sick leave accrued or earned by employees and earned sick leave taken by employees for the immediately preceding 48-month period.
Written Policy Requirements	<u>May 2022 FAQs</u> : The Labor Relations Division recommends employers provide notice of the Act and any employer policy changes to all employees affected by the changes.

West Hollywood, CA Compensated Time Off Mandate



California Paid Sick Leave and National PTO Overview



- **California** statewide paid sick leave
- Non-COVID 19 paid sick leave mandates
 - **Berkeley**
 - **Emeryville**
 - **Los Angeles**
 - **Oakland**
 - **San Diego**
 - **San Francisco**
 - **Santa Monica**
- Industry-specific paid sick leave ordinances
 - **Long Beach**
 - **Los Angeles**
- Other Paid Time Off / Paid Personal Time Laws in US
 - **Maine**
 - **Bernalillo County**
 - **Nevada**

West Hollywood Compensated Time Off Law – An Anomaly

- Compensated time off law instead of PSL law
- West Hollywood's law includes **two accrual caps** – (a) **annual** accrual cap AND (b) **point-in-time** accrual cap
- Large point-in-time accrual cap – 192 hours as compared to 80 for next-highest (San Diego)

West Hollywood Compensated Time Off Law – Overview

- **Effective Dates**
 - Hotel Employers: January 1, 2022
 - All Other Employers: July 1, 2022
- **Eligibility and Coverage**
 - Independent Contractors are **not** covered
 - Ordinance contains definitions of “Employee,” “Hotel employer,” “Employer,” and “Hotel worker.”

Accrual of Compensated and Uncompensated Time Off

- **Accrual begins** on first day of employment or on July 1, 2022 for existing employees
- **Compensated Time Off**
 - **Accrual Rate:** 96/52 hours of compensated time off each week in a calendar year.
 - Pro-rated for part-time employees
 - **Annual accrual cap:** 96 hours
 - **Point-In-Time accrual cap:** 192 hour max balance
- **Uncompensated Time Off**
 - **Accrual Rate:** 80/52 hours per each week in a calendar year.
 - **Annual accrual cap:** 80 hours (for sick leave after exhaustion of compensated time off)

Frontloading, Carryover, Annual Usage Cap, No Cash- Out

- West Hollywood **permits frontloading**
- **Year-End Carryover**
 - Equivalent to point-in-time accrual cap (192 hours of **compensated** leave; 80 hours of **uncompensated** leave)
 - Frontloading does **not** eliminate requirement for year-end carryover.
- **Annual Usage:** No apparent cap on annual usage under the law
- **No Monthly Cash Out:** The original law required monthly cash-out if employee balance exceeded 192 hours, but the law was amended last month to eliminate this cash-out requirement

Buckets of Compensated Leave

- Compliance
 - Employers can comply with West Hollywood’s law if they provide combined leave of **no less than 96 hours for full-time workers**
 - This provision is pro-rated for part-time employees.
- Employers can choose to comply via a **single bucket or multiple buckets** of compensated time off:
 - Option 1: Bucket of paid time off only, or
 - Option 2: Bucket of at least 50% to vacation or personal necessity, **and** bucket of 50% to paid sick leave as defined by California law.
 - West Hollywood’s cites to California Labor Code.
 - California Paid Sick Time and Vacation Time Law must be accounted for

Reasons for Use

- **Compensated** time off is defined as:
 - Paid sick leave
 - Vacation
 - Personal necessity
- **Bucketing**
 - Personal or vacation time is treated as vacation time under California law (and must be paid out upon termination).
- **Uncompensated Leave** shall only be used for sick leave for the illness of the employee or a member of their immediate family as defined by the California Family Rights Act (CFRA).

Use Requirements



- Usage **waiting period** for new hires
- **Increments of use:** no provision, but follow state law standard.
- **Employee notice to company:** Rules require employees to provide “reasonable notice.”
- **Documentation:** no provision.

Notice and Posting

- Links
 - July 1-December 31, 2022 Minimum Wage Notice
 - **Hotels:**
<https://www.weho.org/home/showpublisheddocument/53023/637872784272800000>
 - **All businesses:**
<https://www.weho.org/home/showpublisheddocument/53021/637872784267800000>
 - **Standard:** 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 City.
 - Must be in English, Spanish, and any other language spoken by at least five percent (5%) of the Employees.

Recordkeeping

- **Length of Time:** No less than three years
- **Topics:**
 - Several substantive topics must be included in company records, notably including the formula by which the employees wages, vacation, and leaves are calculated.

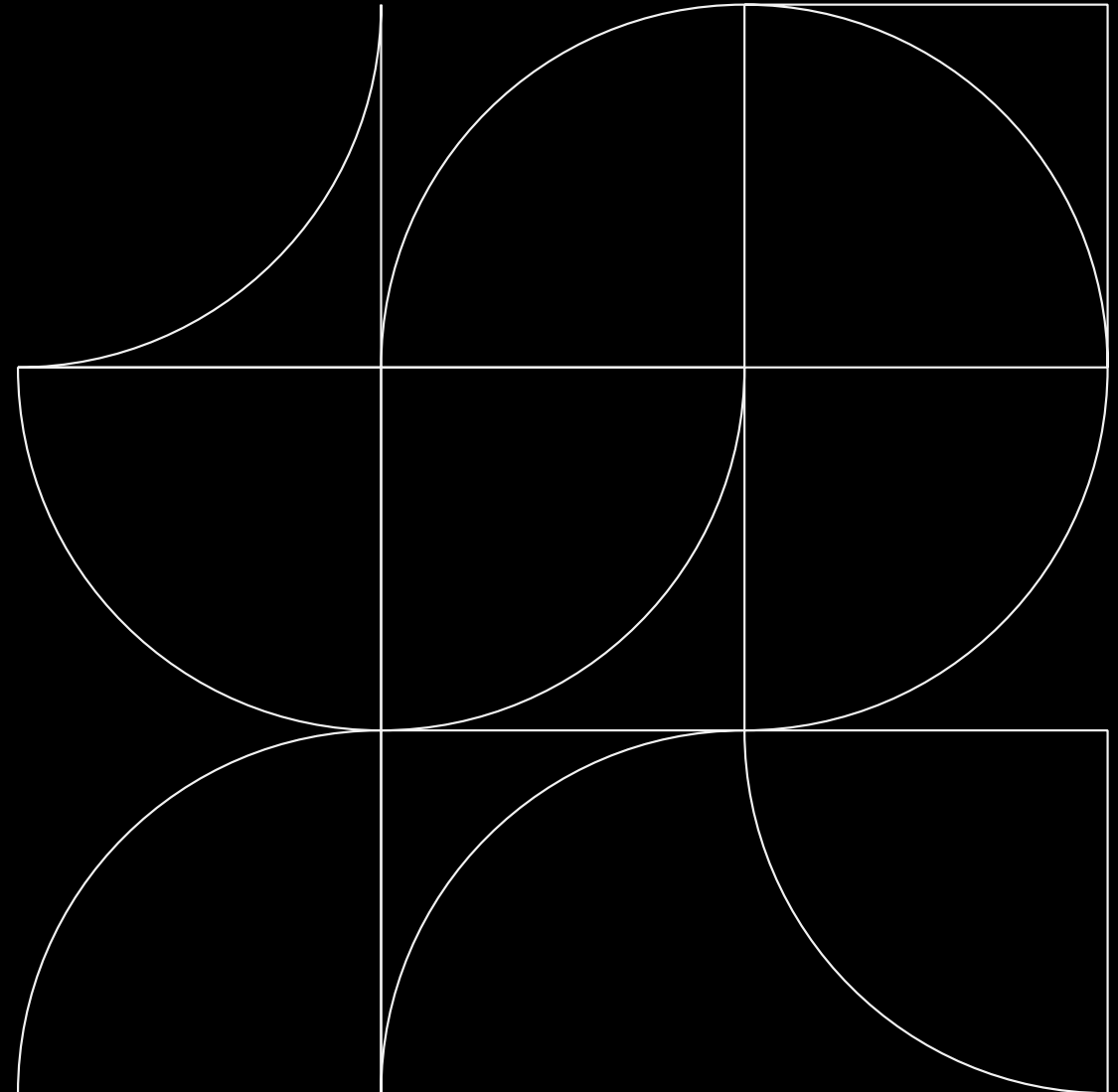
Separation of Employment

- **Payout Upon Separation:** Depends on single vs. multiple buckets for compliance.
 - Accrued, unused compensated leave classified as **vacation or personal necessity leave** must be paid out at the employee's regular wage rate upon termination.
 - Any portion of Compensated Leave classified as **sick leave** is not required to be paid to the employee upon termination.
- **Reinstatement:**
 - No payout for unused uncompensated leave, but reinstatement required upon rehire within one (1) year of leaving.

Written Policy Requirements and A Note on Waiver

- **Policies:** Not a mandatory written policy requirement, but recommended.
- **Waiver:** City Manager may grant waiver upon employer demonstration of hardship.
 - If employers seek a waiver, they must provide notice to employees.

Bloomington, MN Earned Sick & Safe Leave Law



Bloomington, MN Earned Sick and Safe Leave

- **Newest Minnesota Paid Sick Leave Law**

- Enacted June 6, 2022
- 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)

Bloomington, MN Earned Sick & Safe Leave Law



Legal Requirements	Bloomington, MN
Employer Coverage	One or more Employees
Employee Eligibility	80 hours in a year in the City
Accrual Rate	1 hour of ESSSL for every 30 hours worked
Accrual Cap	48 hours per year / 80 hours point-in-time
Usage Cap	No provision.
Carry Over	80 hours
Waiting Period	90 days
Frontloading	48 hours at 90 days of employment 80 hours/year thereafter (unclear whether this eliminates carryover)

Bloomington, MN Earned Sick & Safe Leave Law



Legal Requirements	Bloomington, MN	
<p>Reasons for Use</p>	<ul style="list-style-type: none"> • Employee illness / injury / health condition / diagnosis / preventive care • Family member illness / injury / health condition / diagnosis / preventative care • Safe time absences • Business closure • School/place of care closure 	
<p>Covered Family Members</p>	<ul style="list-style-type: none"> • Child • Spouse • Sibling • Parent • Grandchild 	<ul style="list-style-type: none"> • Grandparent • Guardian • Ward • Members of the employee's household

Bloomington, MN Earned Sick & Safe Leave Law



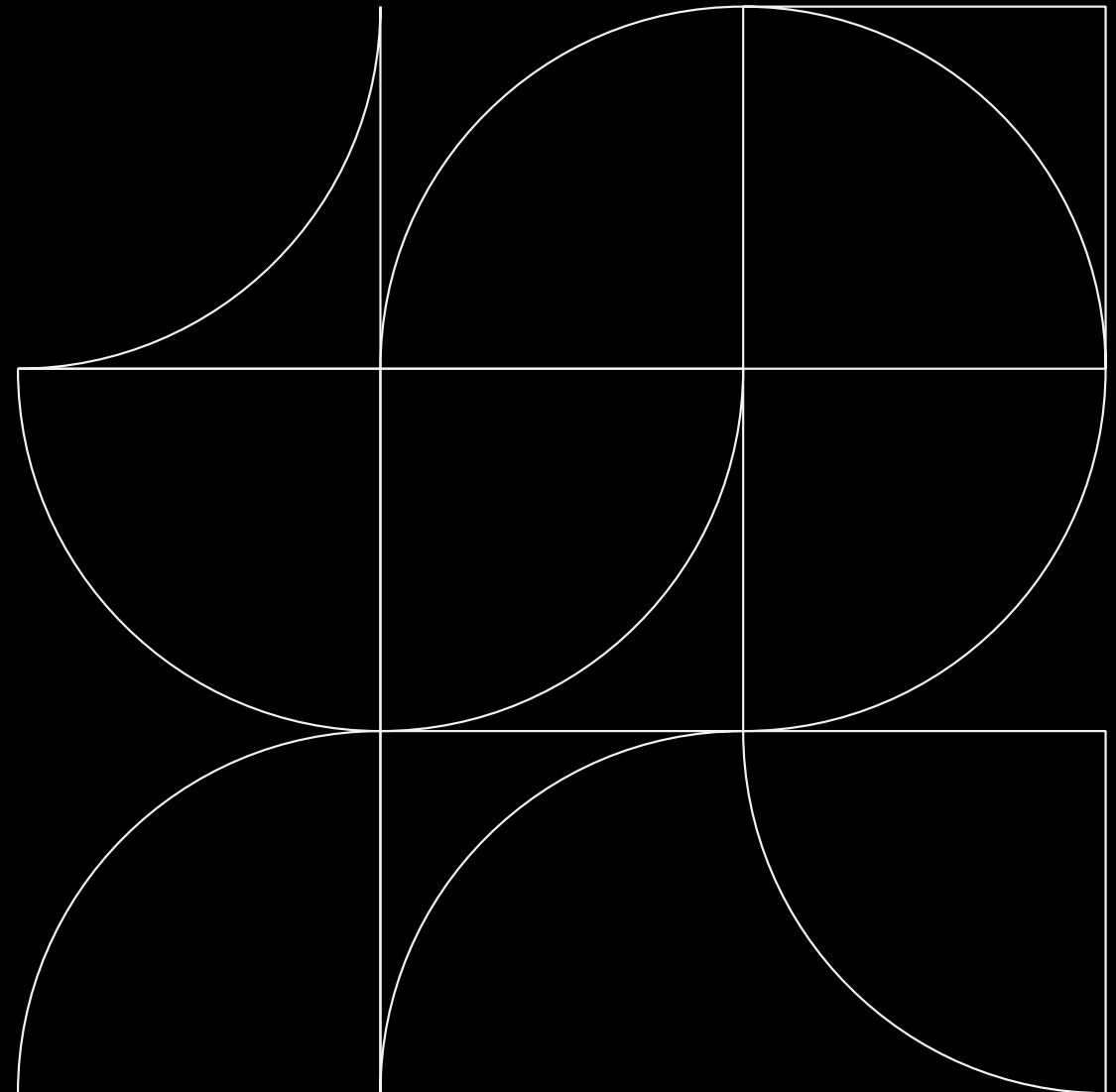
Legal Requirements	Bloomington, MN
Increments of Use	Consistent with payroll practices, not to exceed <u>4 hours</u> .
Notice to Employer	<ul style="list-style-type: none">• Foreseeable absences - 7 days• Unforeseeable absences – as soon as practicable
Documentation	Allowed for absences of <u>more than 3 consecutive days</u> , but only if employer provides health insurance benefits.

Bloomington, MN Earned Sick & Safe Leave Law



Legal Requirements	Bloomington, MN
Available Balance Notice	<p>Upon request by the employee.</p>
Notice and Posting	<ul style="list-style-type: none"> • Must post notice published by City Attorney's Office in a conspicuous place at all workplaces / job sites. • Must include notice of rights and remedies in any employee handbook.
Written Policy Mandate	<p>No provision (but see handbook notice requirement).</p>

Paid Sick Leave and PTO Law Outlook





Paid Sick Leave and PTO Outlook – 2022 and On

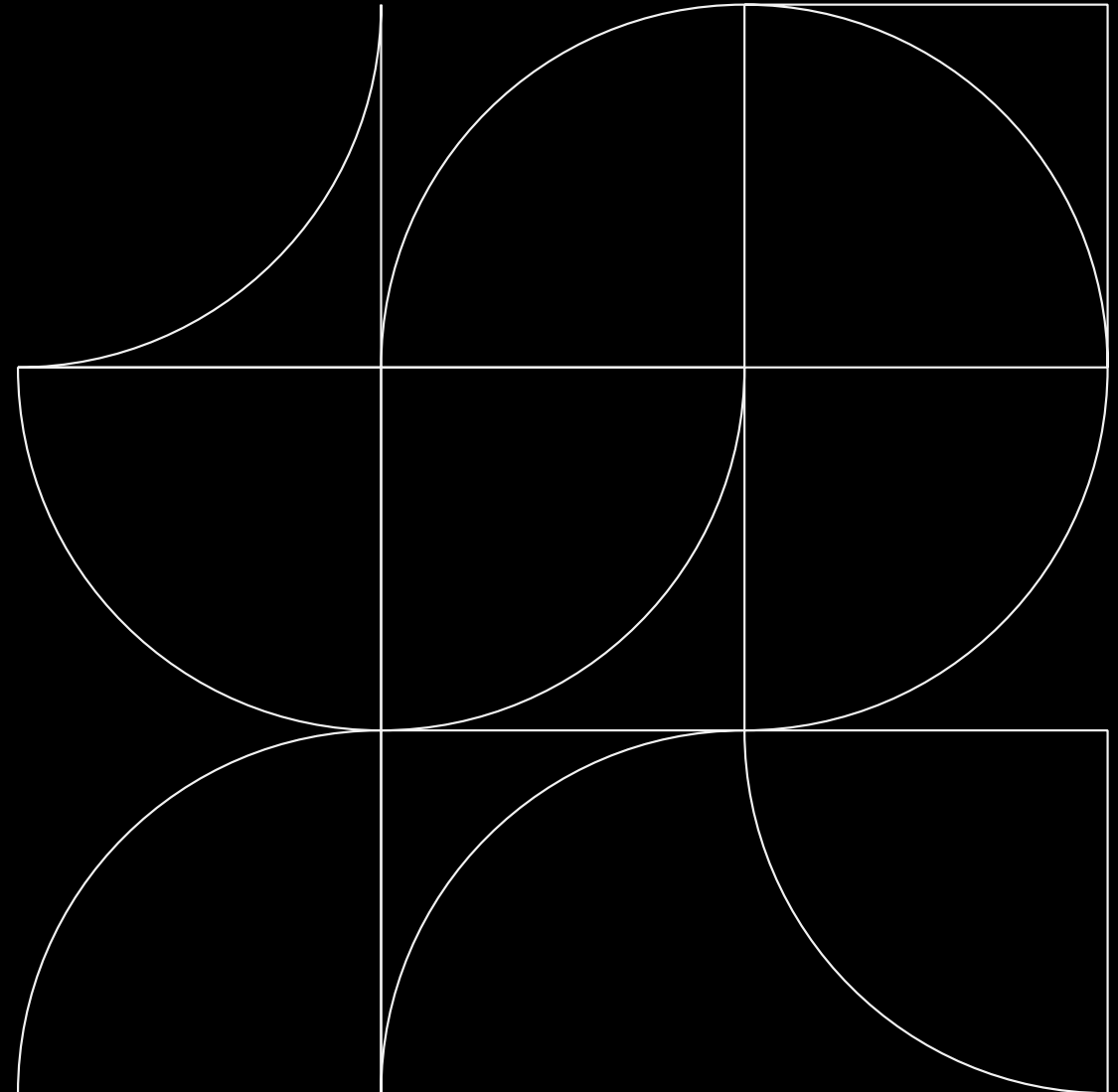
Laws scheduled to go into effect:

- New Mexico (General PSL – 7/1/2022)
- West Hollywood, CA (PTO law – 1/1/2022 or 7/1/2022)
- Bloomington, MN (General PSL – 7/1/2023)
- 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) Minnesota; (3) Delaware; (4) Virginia (for all private ERs); (5) New Jersey (Amendments + State of Emergency PSL); (6) 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

(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!

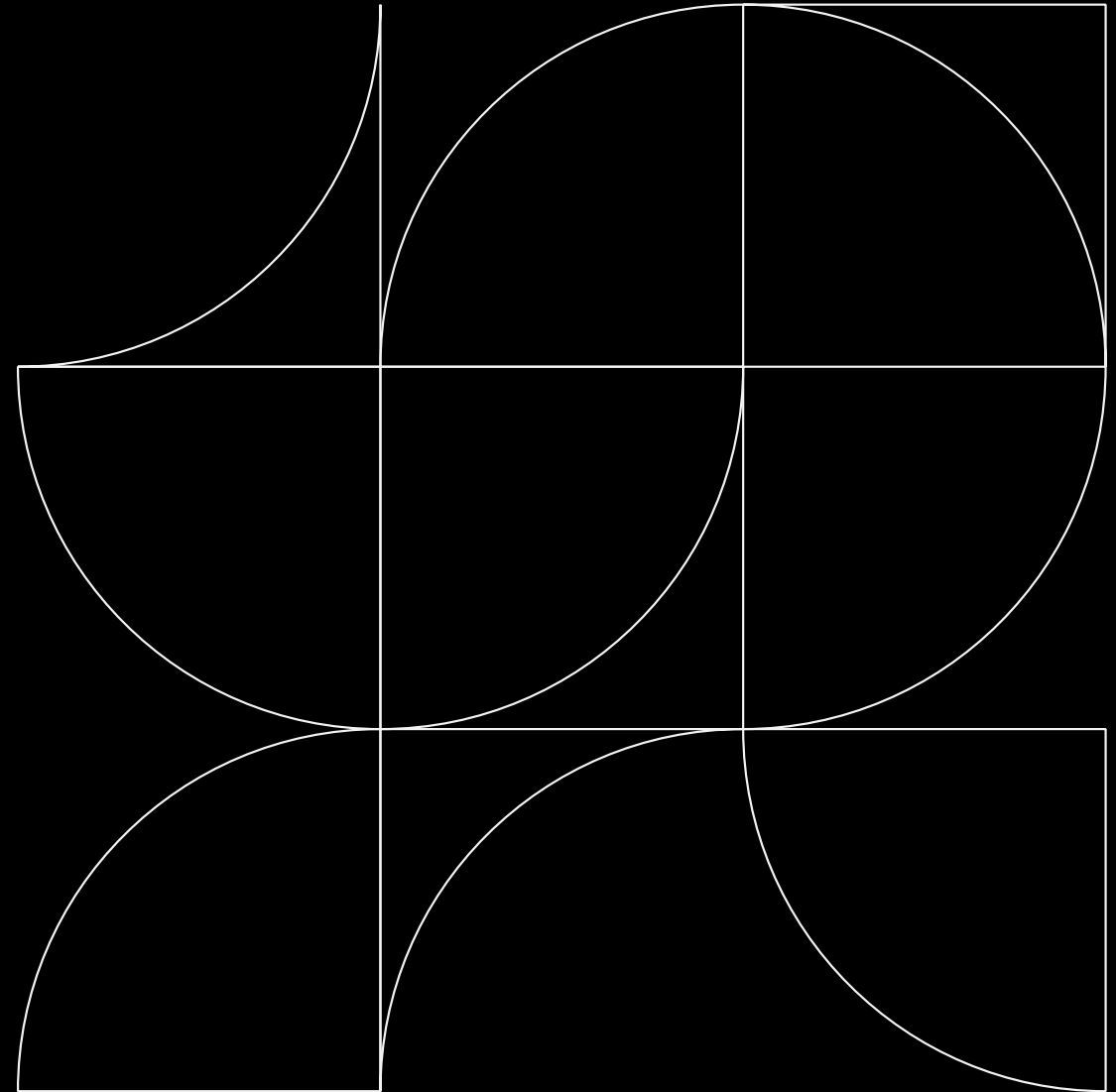
- Part 1 – NY State and Local PSL at the end of 2020
- Part 2 – CO, ME and NY PSL updates
- Part 3 – COVID-19 Supplemental PSL mandates
- Part 4 – Prospects for Federal Paid Leave
- Part 5 – Practical tips on navigating the PSL “patchwork”
- Part 6 – NY COVID and General PSL in 2022
- Part 7 – Navigating Two Years of COVID-19 Paid Leave Mandates, Plus Recent Developments
- Part 8 – 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>

QUESTIONS?



THANK YOU!

