

Management Alert



If Pain (or Anything Else), Yes Gain—Part 65: Maine Becomes First State to Enact Paid Time Off Law

By Joshua D. Seidman, William P. Perkins, and Tracy M. Billows

Seyfarth Synopsis: Earlier this week, Maine became the first state to enact a mandatory paid time off law. The law, known as the Earned Employee Leave Act, requires employers to allow employees to use earned paid leave for any reason and could have a ripple effect on how Maine and multi-state employers structure their employee paid leave benefits. The law goes into effect on January 1, 2021.

On May 28, 2019, Governor Janet Mills of Maine signed the Earned Employee Leave Act (“EELA”)—the nation’s first paid leave mandate requiring employers to allow employees to use earned paid leave for any reason. The trailblazer law began as a mandatory paid sick leave proposal similar to the sick leave laws that exist in 11 states and more than two dozen municipalities around the country.¹ However, when the legislative dust settled several months later, the EELA emerged as the country’s first mandatory paid time off law affecting eligible employees of private employers.

Employers have until January 1, 2021 to develop an EELA compliance plan. In the meantime, here are some of the EELA’s highlights:

- **Covered Employers:** The EELA uses the definition of “employer” from the Maine Unemployment Compensation law;² however, the statute makes clear that any employer with more than 10 employees will be covered.
- **Eligible Employees:** The EELA broadly defines “employee” to mean “a person engaged in employment.”³ The term “employment” also follows the Maine Unemployment Compensation law’s definition, with an exception for individuals employed in a seasonal industry.⁴
- **CBAs:** The EELA provides an exception for certain CBAs. Specifically, the law states that it does not apply to employees covered by a CBA between January 1, 2021 (i.e., the law’s effective date) and the expiration of the CBA.

1 The existing statewide paid sick leave laws include: (1) [Connecticut](#); (2) [California](#); (3) [Massachusetts](#); (4) [Oregon](#); (5) [Vermont](#); (6) [Arizona](#); (7) [Washington](#); (8) [Maryland](#); (9) [Rhode Island](#); (10) [New Jersey](#); and (11) [Michigan](#). The existing local paid sick leave ordinances include: (1) San Francisco, CA; (2) Washington, D.C.; (3) Seattle, WA; (4) Long Beach, CA; (5) SeaTac, WA; (6) New York City, NY; (7) Los Angeles, CA (2 laws); (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) Westchester County, NY; and (25) Dallas, TX. Some of the above local sick leave ordinances are not yet in effect, either because their effective date is scheduled for the coming months or has been delayed as part of an ongoing legal challenge.

2 At a high level, the Unemployment Compensation law defines “employer” to include any individual or type of organization that has one or more individuals performing services for it within the state of Maine and either (a) paid wages of \$1,500 or more during any calendar quarter in either the current or preceding calendar year, or (b) for some portion of a day in each of 20 different weeks within the current or the preceding calendar year has or had in employment at least one individual.

3 The Maine Department of Labor provides [guidance](#) on the employment standard employers should use when assessing “employee” versus “independent contractor” status.

4 “Seasonal Industry” is defined as “an industry in which, because of the seasonal nature thereof, it is customary to operate only during a regularly recurring period or periods of less than 26 weeks in a calendar year.”

- **Earned Paid Leave:** In addition to satisfying the Maine Unemployment Compensation law’s “employer” standard, the EELA states that only employers that employ more than 10 employees in the usual and regular course of business for more than 120 days per calendar year will be required to allow employees to earn paid leave.
- **Accrual:** Employees must be allowed to earn one hour of paid leave for every 40 hours worked, up to a maximum of 40 hours per year. While accrual begins at the start of employment, employers can impose a 120-day waiting period on when new hires can begin using their accrued paid leave.
- **Rate of Pay:** Employers must pay an employee for used paid leave at a rate that is at least the same base rate of pay that the employee received immediately before using the earned leave.
- **Employee Notice to Employer:** Employees must provide their supervisor with reasonable notice of their intent to use paid leave. An exception to this notice standard exists for emergencies, illnesses or other sudden needs. In addition, employers can require that employees schedule their paid leave in such a way that prevents undue hardship on the employer as reasonably determined by the employer.
- **Preemption:** The EELA expressly preempts municipalities from enacting an ordinance or rule that regulates earned paid leave.
- **Penalties:** Violations of the EELA could result in a \$1,000 penalty per violation.
- **Absent Substantive Topics:** The EELA is silent on a number of topics commonly found in paid sick leave laws, including, but not limited to, year-end carryover, notice and posting, increments of use, recordkeeping, documentation, payout on termination, and frontloading. The EELA calls for the state Department of Labor to adopt paid leave rules. We expect that these rules will address some or all of the above absent topics.

Employers should begin taking steps to comply with the EELA before its January 1, 2021 effective date. Here are some steps to consider:

- Review existing paid time off policies and either implement new policies or revise existing policies to satisfy the EELA;
- Monitor the Maine Department of Labor’s website for information on the EELA, including draft and final rules; and
- Train supervisory and managerial employees, as well as HR, on the new requirements.

We will continue to monitor and provide updates on Maine paid leave developments as the EELA effective date approaches and on any subsequent changes.

As the paid leave landscape continues to expand, companies should reach out to their Seyfarth contact for solutions and recommendations on addressing compliance with this Law and sick leave requirements generally. To stay up-to-date on paid leave developments, [click here](#) to sign up for Seyfarth’s Paid Sick Leave mailing list.

If you would like further information, please contact [Joshua D. Seidman](mailto:jseidman@seyfarth.com) at jseidman@seyfarth.com, [William P. Perkins](mailto:wperkins@seyfarth.com) at wperkins@seyfarth.com, or [Tracy M. Billows](mailto:tbillows@seyfarth.com) at tbillows@seyfarth.com.

www.seyfarth.com

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