



Paid Sick and Family Leave Landscape and Overview

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Roadmap

- **Paid Sick Leave Law Overview and Compliance Options**
- **Select Paid Sick Leave Laws**
 - **Washington State Paid Sick Leave**
 - **Maryland State Paid Sick Leave**
- **Paid Family Leave Law Overview**
- **Select Paid Family Leave Laws**
 - **New York State Paid Family Leave**
- **Workflex in the 21st Century Act**
- **Questions**



Paid Sick Leave Law Overview and Compliance Options



Mandatory Paid Sick Leave Laws

- **Existing PSL Laws: 45 TOTAL LAWS**

- **Federal:** Executive Order 13706 – PSL for many employees of certain federal contractors

- **9 States:** CA, MA, CT, OR, VT, AZ, WA, RI, MD

- **34 Municipalities**

- (1) San Francisco, CA; (2) Washington, D.C.; (3) Seattle, WA; (4) Long Beach, CA; (5) SeaTac, WA; (6) New York City, NY; (7) Jersey City, NJ; (8) Newark, NJ; (9) Passaic, NJ; (10) East Orange, NJ; (11) Paterson, NJ; (12) Irvington, NJ; (13) Los Angeles, CA (2 laws); (14) Oakland, CA; (15) Montclair, NJ; (16) Trenton, NJ; (17) Bloomfield, NJ; (18) Philadelphia, PA; (19) Tacoma, WA; (20) Emeryville, CA; (21) Montgomery County, MD; (22) Pittsburgh, PA; (23) Elizabeth, NJ; (24) New Brunswick, NJ; (25) Santa Monica, CA; (26) Plainfield, NJ; (27) Minneapolis, MN; (28) San Diego, CA; (29) Chicago, IL; (30) Berkeley, CA; (31) Saint Paul, MN; (32) Morristown, NJ; (33) Cook County, IL; (34) Austin, TX.

Paid Sick Leave Lookback – 2017

- **Laws that went into effect:**

- **Federal:** Executive Order 13706 – January 1, 2017

- **State:** (1) Vermont – January 1, 2017; (2) Arizona – July 1, 2017

- **Ordinances that went into effect:**

- **January 2017:** (1) Spokane, WA; (2) Santa Monica, CA; (3) Morristown, NJ

- **July 2017:** (4) Chicago, IL; (5) Cook County, IL; (6) Minneapolis, MN; (7) Saint Paul, MN

- **October 2017:** (8) Berkeley, CA

Paid Sick Leave Outlook – 2018

- **Laws that went into effect:**

- **(1)** Washington (state) (1/1/18); **(2)** Oregon (state) (amended) (1/1/18); **(3)** Tacoma, WA (amended) (1/1/18); **(4)** Seattle, WA (amended) (1/14/18); **(5)** Maryland (state) (2/11/18)

- **Laws Scheduled to go Into Effect:**

- **(1)** New York City, NY (amended) (5/4/18); **(2)** Rhode Island (7/1/18); **(3)** Austin, TX (10/1/18).

- **Next Locations Likely to Adopt:**

- **State:** **(1)** New Jersey; **(2)** Illinois; **(3)** Michigan; **(4)** Nevada.
- **Municipal:** **(1)** Albuquerque, NM; **(2)** Duluth, MN; **(3)** Portland, ME; **(4)** Westchester County, NY.

Paid Sick Leave Compliance Options and Nationwide Considerations

- Paid sick leave patchwork – **Complications and potential solutions**
- Is a **one-size-fits-all** paid sick leave policy possible? What would it look like?
- Are there any **alternative paid sick leave compliance options** for nationwide employers?
- Can employers use **PTO, vacation, and other leave policies** for paid sick leave compliance?

Select Paid Sick Leave Laws



Maryland Paid Sick Leave

Legal Requirements	Maryland Paid Sick Leave
Effective Date	2/11/2018
Employee Eligibility Requirements	Broad coverage – Although law does contain certain exclusions
Accrual Rate	1 hour of sick leave for every 30 hours worked
Start of Accrual	Start of employment or February 11, 2018, whichever is later
Accrual Cap	<p><u>Annual Accrual Cap</u>: 40 hours of PSL per year.</p> <p><u>"Point-in-Time" Accrual Cap</u>: ER need not allow an EE to accrue a total of more than 64 hours at any time.</p>
Year-End Carryover	Employees must be allowed to carryover up to 40 hours of earned, unused PSL at year-end

Maryland Paid Sick Leave (con't)

Legal Requirements	Maryland Paid Sick Leave
Reasons for Use	<p>(1) EEs or family member's injury, illness, or health condition or need for preventive medical care;</p> <p>(2) Maternity or paternity leave (very rare for PSL laws);</p> <p>(3) certain absences related to domestic violence, sexual violence, or stalking of the employee or the employee's family member.</p>
Annual Usage Limits	64 hours per year
Usage Waiting Period	After the first 106 calendar days of employment
Employee Notice to Employer	<p>Foreseeable: May require an employee to provide reasonable advance notice of not more than 7 days before the date the PSL would begin.</p> <p>Unforeseeable: Employees must provide notice as soon as practicable.</p> <p>Can Deny a Request to Use PSL if: (1) EE fails to provide the required notice, <u>and</u> (2) EE's absence will cause a disruption to the ER.</p>
Documentation Requirements	For earned paid sick time of <u>more than 2 consecutively scheduled shifts</u> , an ER may require reasonable documentation that the earned PSL has been used for a covered purpose.

Maryland Paid Sick Leave (con't)

Legal Requirements	Maryland Paid Sick Leave
<p>Employer Notice and Posting Requirements</p>	<p>Overall: ER shall notify EEs that they are entitled to PSL under the law. Unclear if this requirement involves individual notice to EEs, posting in workplace, or both.</p> <p>Model Poster: State has released a model PSL poster. Displaying the poster in Maryland locations <u>and</u> including the poster as part of onboarding materials for new hires in Maryland likely makes sense.</p>
<p>Record Retention</p>	<p>ERs shall maintain for <u>3 years</u>, the following: (a) earned sick and safe leave accrued by each employee; and (b) earned sick and safe leave used by each employee.</p>
<p>Available Balance Notice Requirements</p>	<p>Requirement: Each time wages are paid to an EE, must provide in writing by any reasonable method a statement regarding the amount of earned PSL that is available for use by the EE.</p> <p>Methods to Comply: Can use an online system through which an EE may ascertain her balance available PSL.</p>

Washington Paid Sick Leave

Legal Requirements	Washington Paid Sick Leave
Effective Date	1/1/2018
Employee Eligibility Requirements	"Employee" includes any individual employed by an employer; however, there are a number of exceptions.
Accrual Rate	1 hour of paid sick leave for every 40 hours worked
Start of Accrual	January 1, 2018 or upon commencement of employment, whichever is later
Accrual Cap	No cap on accrual
Year-End Carryover	Unused paid sick leave carries over to the following year, except that an employer is not required to allow an employee to carry over paid sick leave in excess of 40 hours

Washington Paid Sick Leave (con't)

Legal Requirements	Washington Paid Sick Leave
<p>Reasons for Use</p>	<p>(1) Absence due to EE's or family member's mental or physical illness, injury, or health condition or need for preventive medical care; (2) When EE's place of business has been closed by order of a public official for any health-related reason, or when an EE's child's school or place of care has been closed for such a reason; (3) Reasons related to domestic violence, sexual assault, or stalking of the EE or EE's family member</p>
<p>Annual Usage Limits</p>	<p>No cap on annual usage</p>
<p>Usage Waiting Period</p>	<p>EEs can use accrued PSL on the 90th calendar day after the start of employment</p>
<p>Employee Notice to Employer</p>	<p>General: ER may require EEs to give reasonable notice of an absence from work Foreseeable: EE must provide 10 days' notice, or notice as soon as practicable Unforeseeable: Notice as soon as practicable; Designee can provide notice Written Policy: ER must have a written policy outlining any such notice requirements</p>
<p>Documentation Requirements</p>	<p>General: For absences <u>exceeding three days</u>, an ER may require verification that an EE's use of paid sick leave is for an authorized purpose. Written Policy: If ER requires verification, ER must have a written policy outlining any such requirements</p>

Washington Paid Sick Leave (con't)

Legal Requirements	Washington Paid Sick Leave
<p>Employer Notice and Posting Requirements</p>	<p>Notice: ERs must notify each EE of certain rights under the PSL law; Makes sense to do so upon hire as part of onboarding. Posting: Display WA state "Your Rights as a Worker" poster, which contains PSL information.</p>
<p>Record Retention</p>	<p>No express length of recordkeeping obligation</p> <p><u>Types of records include, but are not limited to, the following:</u> (a) Hours worked each workday and total hours worked each work week; (b) Paid sick leave accruals each month; (c) any unused paid sick leave available for use by an employee; (d) Paid sick leave reductions each month</p>
<p>Available Balance Notice Requirements</p>	<p>The employer is responsible for providing <u>regular</u> notification to employees about (a) the amount of PSL accrued, (b) the paid sick leave reductions since the last notification, and (c) any unused paid sick leave available for use by the employee. <u>Notice must be provided:</u> (i) at least monthly; (ii) upon rehire</p>

Paid Family Leave Law Overview



Paid Family Leave Laws

- **Existing PFL Laws: 7 TOTAL LAWS**
 - **5 States:**
 - CA, NJ, RI, NY, WA
 - **2 Municipalities:**
 - San Francisco, CA
 - Washington, D.C.

New York Paid Family Leave



New York State Paid Family Leave Law – Basic Overview

- Effective date of NY PFL Law is **January 1, 2018**.
- Part of the NY Workers' Compensation Law and follows an insurance scheme.
- Disability carriers are required to offer policies to employers by the effective date.
- Employees contribute weekly toward the cost of insurance.
 - Optional for employers to begin collecting contributions on July 1, 2017. Deductions should be in place by January 1, 2018.
- Operates like paid FMLA scheme that covers FMLA qualifying absences, other than absences for one's own serious health condition.

New York State Paid Family Leave Law – Key Obligations

- Employers with one or more eligible employees on each of the last 30 days in a calendar year must, among other things:
 - Obtain PFL insurance. (Disability carriers must offer policies.)
 - Provide a written policy and conspicuously post notices.
 - Set up payroll deductions to collect employee contributions.
 - Provide required notices upon request for leave.
 - Maintain health insurance during PFL periods.
 - Reinstate employees to same or comparable position following leave.

New York State Paid Family Leave Law – Reasons for Use

- PFL will be [phased in beginning January 1, 2018 through 2021](#), and provides that eligible employees may take time off of work, up to a certain maximum number of weeks in a year, to:
 - Provide care or participate in providing care, including physical or psychological care, for a covered family member when the family member (as defined by PFL) has a serious health condition;
 - Bond with his or her child the first year after birth, adoption, or foster placement; or
 - For any “qualified exigency” under the FMLA, where the covered family member (as defined by FMLA, but including domestic partners) is on active duty or has been notified of an order to resume active duty in the military.

New York State Paid Family Leave Law – Amount of Leave

Effective Date	Length of Leave	Amount of Pay During Leave
January 1, 2018	8 weeks	50% of employee's average weekly wage, but not more than 50% of the state average weekly wage
January 1, 2019	10 weeks	55% of employee's average weekly wage, but not more than 55% of the state average weekly wage
January 1, 2020	10 weeks	60% of employee's average weekly wage, but not more than 60% of the state average weekly wage
January 1, 2021	12 weeks	67% of employee's average weekly wage, but not more than 67% of the state average weekly wage

New York State Paid Family Leave Law – Job Restoration

- **Job Protection:**

- Reinstatement to same or comparable position;
- No loss of benefits accrued before taking leave;
- Need not accrue benefits or seniority while on leave;
- Must maintain health benefits while on leave.

New York State Paid Family Leave Law – Employer Notice Requirements

- **Notice:** If employee is absent for more than 7 consecutive days due to PFL purpose, the employer shall provide the employee with a written statement of employee's rights under PFL.
- **Posting:** Employers must conspicuously post a printed notice concerning PFL in a form prescribed by the NY Workers' Compensation Board.
- **PFL Claim Form:** Complete employer portions of **PFL-1 Form**, so employee may submit it to carrier. Must complete within 3 business days of receipt.

New York State Paid Family Leave Law – Claim Process

FORM PFL-1 - CONTINUED FROM PRIOR PAGE

TO BE COMPLETED BY THE EMPLOYEE

Employee's name (first name, middle initial, last name) _____ Employee's date of birth (MM/DD/YYYY) _____

PART B - EMPLOYER INFORMATION (to be completed by the employer)

1. **Business's full legal name and mailing address**

Business name _____

Mailing address _____

City, State _____ Zip code _____ Country (if not U.S.A.) _____

2. **Employer's FEIN** _____ - _____

3. **Employer's Standard Industrial Classification (SIC) Code** _____

4. **Employer's contact name for questions related to PFL** _____

5. **Employer's contact telephone number** (_____) _____ - _____

6. **Employer's contact email address** _____

7. **Employee's date of hire** (MM/DD/YYYY) _____ / _____ / _____

8. **Employee's occupation** Codes are available at: www.bls.gov/soc/2018/maior_groups.htm _____ - _____

9. **Enter the last 8 weeks of gross wages for the employee and calculate the average gross weekly wage**

Week no.	Week ending date (MM/DD/YYYY)	Number of days worked	Gross amount paid
1			
2			
3			
4			
5			
6			
7			
8			
Calculated average gross weekly wage:			

10. **If employee received or will receive full wages while on PFL, will employer be requesting reimbursement?** Yes No

Form PFL-1 continued on next page

FORM PFL-1 - CONTINUED FROM PRIOR PAGE

TO BE COMPLETED BY THE EMPLOYEE

Employee's name (first name, middle initial, last name) _____ Employee's date of birth (MM/DD/YYYY) _____

PART B - EMPLOYER INFORMATION (to be completed by the employer) - continued from prior page

Form PFL-1 continued from prior page

11a. **In the preceding 52 weeks has the employee taken leave for:** NYS Disability PFL Both Disability and PFL None

11b. **Enter the total number of weeks and days taken for both Disability and PFL in the last 52 weeks:**

Disability: Weeks _____ Days _____ Please provide specific dates for Disability: _____

PFL: Weeks _____ Days _____ Please provide specific dates for PFL: _____

12. **Is the employee taking Family Medical Leave Act (FMLA) concurrently with PFL?** Yes No

13. **PFL insurance carrier's name and mailing address**

PFL insurance carrier's name _____

Mailing address _____

City, State _____ Zip code _____ Country (if not U.S.A.) _____

14. **PFL insurance carrier's telephone number** (_____) _____ - _____

15. **PFL policy number** _____

Declaration and signature

I affirm the employee regularly works 20 or more hours per week and has been in employment for at least 26 consecutive weeks OR the employee regularly works less than 20 hours per week and has worked at least 175 days.

Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or concedes for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation.

I am the person authorized to sign as the employer of the employee requesting PFL. My signature affirms that to the best of my knowledge and belief, the information I have provided is true and accurate.

Employer's authorized signature _____ Date signed (MM/DD/YYYY) _____

Title _____

New York State Paid Family Leave Law – Waiver of Benefits

- Obligation on employers to provide waiver if employees will not reach eligibility.
- An employee may waive benefits only if his or her regular work schedule is less than 26 weeks (if he/she works more than 20 hours/week) or 175 days (if he/she works less than 20 hours/week) in a 52-consecutive week period.
- An employee whose regular work schedule exceeds this threshold may not waive benefits under the law.
- Waiver is considered null within 8 weeks of schedule change to exceed threshold.

New York State Paid Family Leave Law – Non-Retaliation Provisions

- Employer may not retaliate or discriminate against an employee who uses PFL.
- Employee who is not reinstated following leave may file a complaint under §120 of the Workers' Compensation Law.
- If employee is not reinstated, employee may file a formal written request with the employer and Workers' Compensation Board seeking reinstatement.

Workflex in the 21st Century Act



Workflex in the 21st Century Act: Overview

- Purpose of the Act is to “include a voluntary option for qualified flexible workplace arrangements.”
- Employers would be exempt from state and local paid leave law requirements for employees who are eligible for employer-provided benefits.
- Employers must still comply with state and local leave laws for employees ineligible for the company’s benefits.

Workflex in the 21st Century Act: Compensable Leave

Number of Employees	Employees with 5 or more years of service	Employees with fewer than 5 years of service with the employer
1,000 or more	20 days	16 days
250 to 999	18 days	14 days
50 to 249	15 days	13 days
Less than 50	14 days	12 days

Workflex in the 21st Century Act: Flexible Schedule Options

- Bill also provides that employer must offer each eligible employee in the plan at least one of the following “workflex” options:
 - Bi-weekly work schedule
 - Compressed schedule work program
 - Job sharing program
 - Flexible scheduling
 - Predictable scheduling
 - Telework program
- **Eligibility for “Workflex” Options:** Employee must be employed for at least 12 months and for at least 1,000 hours of service during the 12-month period.
- Bill provides a ***right to reinstatement*** following use of workflex option.

Presenter



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QUESTIONS?



Thank You