



**Making Sense of the National Paid Sick Leave Patchwork**

August 14, 2023  
Majesco and Seyfarth Shaw LLP



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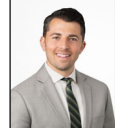
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### Joining You Today



**Angie Brown**  
AVP, Sales & Absence  
Practice Leader  
Majesco



**Joshua Seidman, Esq.**  
Partner – Labor & Employment  
Co-Lead Leaves of Absence Management  
and Accommodations Team  
Seyfarth Shaw



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### Program Overview

<b>01</b>	State and Local Paid Sick Leave (PSL) Law Overview
<b>02</b>	Mobile, Remote and Hybrid Employees
<b>03</b>	National PSL Compliance Options – “One-Size-Fits-All” and “One-Size-Fits-Most”
<b>04</b>	Using PTO for PSL Law Compliance
<b>05</b>	Payment of Sick Time Considerations
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### Terminology and PSL Law Overview






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### Survey Question #1

What of the following is false about paid sick leave versus paid family leave laws?

1. There are more state / local paid sick leave laws than paid family leave laws
2. Paid sick leave absences are often a shorter duration than paid family leave
3. Paid sick leave covers more routine absences than does paid family leave
4. Paid sick leave does not involve collecting and remitting premiums
5. Each state that has a paid family or medical leave law also has a paid sick leave law
6. None of the above, they're all true!

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### Terminology

- **Statutory Paid Sick Leave Law (PSL):** Employees earn a certain amount of paid leave based on hours worked that can be used for various reasons, including sickness or preventive care for themselves or family members. Employees receive their full pay (with potential nuances) for PSL and they are paid by their employer for the time.
  - Note: There are also paid sick and safe time (PSST) and paid time off (PTO) laws in this group.
- **COVID Paid Leave / Public Health Emergency Leave (SPSL, EPSL, PHEL):** In certain jurisdictions, employees receive a lump sum of paid time off for COVID-19 specific reasons or broader public health emergency leave reasons.
- **Company-Provided/Voluntary Leave (STD, LTD, PPL, etc.):** Companies may choose to provide voluntary leave benefits to employees such as short-term disability or paid parental leave in order to attract or retain employees.

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### Terminology continued

- Statutory Unpaid Family and Medical Leave (FML):** Provides up to a specified number of weeks of unpaid job-protected leave for eligible employees who take leave for covered reasons, including their own illness, bonding with new child or to care for family member with a serious health condition.
- Statutory Disability Insurance (SDI, TDI):** Provides partial wage replacement to employees who are temporarily disabled and unable to work because of non-occupational illness or accident.
- Statutory Paid Family Leave (PFL):** Provides up to certain number of weeks of paid leave for eligible employees who take leave for family care related covered reasons, including bonding with a new child or to care for family member with a serious health condition. This time may also be job-protected in some jurisdictions.
- Statutory Paid Family and Medical Leave (PFML):** Provides up to certain number of weeks of paid leave for eligible employees who take leave for covered reasons, including their own illness, bonding with a new child or to care for family member with a serious health condition. This time may also be job-protected in some jurisdictions.




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### Mandatory Paid Sick Leave (PSL) and PTO Laws

Total Mandates	Federal	19 States + DC	25 Municipalities
<p><b>As of July 1, 2023:</b> 59 TOTAL PSL &amp; PTO Mandates in the U.S.</p> <p><b>Why?</b> Several jurisdictions have enacted <u>multiple</u> mandates.</p> <p>Ex: General PSL Law + COVID-19 Temporary PSL Law</p> <p><b>But the number is constantly changing due to COVID PSL laws.</b></p> <p><b>As of Dec. 2020:</b> Approx. 69 TOTAL Mandates in U.S.</p> 	<p><b>Executive Order</b> 13706: PSL for many EEs of certain federal contractors</p> <p><b>Families First Coronavirus Response Act:</b> Emergency PSL for EEs of certain sized ERs (<b>sunset</b> as of 12/31/2020; reimbursement for voluntary leave option for select ERs <b>ended</b> 9/30/2021)</p>	<p><b>PSL:</b></p> <ul style="list-style-type: none"> <li>Arizona</li> <li>California</li> <li>Colorado</li> <li>Connecticut</li> <li>DC</li> <li>Maryland</li> <li>Massachusetts</li> <li>Michigan</li> <li>Minnesota</li> <li>New Jersey</li> <li>New Mexico</li> <li>New York</li> <li>Oregon</li> <li>Rhode Island</li> <li>Vermont</li> <li>Virginia</li> <li>Washington</li> </ul> <p><b>PTO:</b></p> <ul style="list-style-type: none"> <li>Illinois</li> <li>Maine</li> <li>Nevada</li> </ul>	<p>(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) Oakland, CA; (8) Philadelphia, PA; (9) Tacoma, WA; (10) Emeryville, CA; (11) Montgomery County, MD; (12) Pittsburgh, PA; (13) Santa Monica, CA; (14) Minneapolis, MN; (15) San Diego, CA; (16) Chicago, IL; (17) Berkeley, CA; (18) Saint Paul, MN; (19) Cook County, IL; (20) Duluth, MN; (21) Westchester County, NY; (22) Bernalillo County, NM (PTO law); (23) Allegheny County, PA; (24) West Hollywood, CA (PTO law); (25) Bloomington, MN</p>

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### Paid Sick Leave / PTO Laws and COVID-19 Developments

**Four Main Groups (historically):**

- Group 1 –** Entirely new laws / executive or other emergency orders dealing with non-vaccine COVID-19 absences (i.e., SPSSL or EPSL)
- 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

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### COVID-19 State and Local Leave Overview

PSL / PTO Laws and COVID Developments –  
As of 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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### COVID-19 State and Local Leave Overview

PSL / PTO Laws and COVID Developments –  
As of 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;



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### COVID-19 State and Local Leave Overview

COVID-19 Paid Leave Mandates – As of July 1, 2023:

- CA – Oakland: COVID SPSL
- CA – San Francisco: PHEL (permanent)
- CO – State: PHEL (permanent)
- IL – Chicago: COVID Vaccine IF ER mandates vaccine
- IL – Cook County: Same as Chicago
- MD – State: PHEL (permanent) (needs funding)
- NV – State: COVID Vaccine
- NY – State: COVID SPSL and COVID Vaccine
- PA – Philadelphia: COVID SPSL



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**Mobile, Remote and Hybrid Employees**






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**Survey Question #2**

How do mobile, remote and hybrid employees impact PSL law compliance?

1. Employer coverage considerations
2. Employee eligibility must be reassessed
3. Amount of PSL entitlement can vary
4. Covered use of PSL may be different
5. All of Nos. 1 through 4
6. No impact, the employer can set PSL applicability based on employees' assigned work location

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**Mobile, Remote and Hybrid Employees**

PSL law considerations when dealing with mobile, remote and hybrid workers:

- Employer Coverage
- Employee Eligibility
- Determining Employer Size
- Commuting vs. Work-Related Travel
- "Where the Work is Being Performed"
- Which Law is Most Generous?



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### National PSL Law Compliance Options






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### Survey Question #3

What kind of policy does your Company or Organization currently use for paid sick leave law compliance?

1. Individual PSL Policies For Each Location
2. One-Size-Fits-All or One-Size-Fits-Most Policy
3. PTO Policy Granting or Accruing Specific Amount of Leave
4. "Unlimited" PTO Policy
5. Combination of Above – Depends on Employee Population
6. Nothing, we don't have a PSL or PTO policy

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### National PSL Law Compliance Options

Factors to Consider When Designing Multi-State or National PSL Compliance Setup:

- Accrual vs. Frontload
- One-Size-Fits-All vs. One-Size-Fits-Most
- Amount of PSL
- Written Policy Requirements
- Non-Policy Requirements
- Unique Employee Setups

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### Using PTO for PSL Law Compliance








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### Survey Question #4

**True or False:** If an employer provides an amount of PTO (or vacation, personal time, etc.) to employees that satisfies the PSL law's accrual and usage cap requirements, it will be in compliance with the PSL law?



1. TRUE
2. FALSE




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### PTO Policy Considerations and PSL Compliance

**Overall:** Most, if not all, non-COVID-19 PSL mandates permit employers to use non-sick paid time off policies (e.g., PTO, vacation, etc.) for PSL law compliance; however, there are many legal challenges and considerations.

**Nonexclusive examples include:**

- "Same Conditions" as Statutory PSL
  - "Same Conditions" include, but are not limited to: (a) increments of use; (b) waiting periods for new hires; (c) documentation; (d) employee notice standards; (e) no unlawful retaliation; (f) proper rate and timing of pay
- Potential Need to Track Why PTO is Used
- State Vacation Time Laws
- Additional Protected Time Off
- Select Other PSL Law Considerations

**Unlimited PTO:** Attractive in theory but challenging to use for PSL law compliance




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**Payment of Sick Time Considerations**






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**Survey Question #5**

True or False: PSL laws allow employers to compensate hourly employees at their normal base hourly rate when using available PSL?



1. TRUE
2. FALSE
3. MAYBE, it depends on the law



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**Payment of Sick Time Considerations**

- Hourly Employees
  - "Regular Rate" vs. "Rate in Effect" vs. "Normal Base Hourly Rate"
- Commissioned Employees
- Salaried Non-Exempt
- Timing of Pay
- Balance Notification

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**Questions???**






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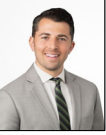
### Contact Information




**Angie Brown**  
AVP, Sales & Absence Practice Leader  
Majesco  
[Angie.Brown@Majesco.com](mailto:Angie.Brown@Majesco.com) | [www.majesco.com](http://www.majesco.com)

**Resources:** Click below for up-to-date information.

[Seyfarth's "Take It or Leave It" Podcast](#)



**Joshua Seidman, Esq.**  
Partner – Labor & Employment  
Co-Lead Leaves of Absence Management and Accommodations Team  
Seyfarth Shaw  
212-218-4647  
[jseidman@seyfarth.com](mailto:jseidman@seyfarth.com) | [www.seyfarth.com](http://www.seyfarth.com)



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