



Time for a PTO Overhaul!
 Why the Legal Landscape
 Compels Us to Consider a
 Multi-Bank Paid Time Off
 Structure

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Agenda

- Housekeeping: Paid Sick and Safe Time and Mandatory Paid Leave (collectively abbreviated as PSST)
- PSST Law Landscape
- Pros & Cons of Single PTO Bucket
- Jurisdictional Speed Bumps
- Managing a Single PTO Bucket
- How to Unbuckle the Banks
- Case Study
- Q&A
- Appendix




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PTO: The Best (or Worst) of Both Worlds?

A Venn diagram with three overlapping circles. A yellow circle on the left is labeled 'Vacation'. A blue circle on the right is labeled 'PSST'. A green circle in the center, overlapping both the yellow and blue circles, is labeled 'PTO'. The DMEC logo is in the bottom left corner.

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Using a PTO Policy for PSST

A traffic light icon with three lights: red, yellow, and green. The green light is lit. The DMEC logo is in the bottom left corner.

Works Best For:

- Professional/non-production environment
- Mainly exempt population
- Single-state employers

Pros

- Administrative ease
- Employee optics
- Potential lower cost with overall bank of time (in wages and business disruption)
- Adaptable for growing list of mandatory PTO jurisdictions (e.g., Maine, Nevada, Illinois effective 1/1/2024)

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Using a PTO Policy for PSST

A traffic light icon with three lights: red, yellow, and green. The yellow light is lit. The DMEC logo is in the bottom left corner.

Cons

- Higher cash-out liability upon termination
- Limits employer ability to curb leave abuse
- PTO must exceed amount of most generous PSST
- Limited ability to track and report
- Broader employee coverage
- Multi-state structural challenges

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Using a PTO Policy for PSST



Beware Of:

- Cannot force use under many jurisdictions, even for qualifying absences
- Attendance policies (points-based attendance may not work)
- Jurisdiction-specific requirements



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How to Manage a Single PTO Bank

Option 1: Express Lane

- Treat entire bank as protected
- No tracking of PSST hours
- All rules apply universally



Option 2: Scenic Route

- Portion of bank protected
- Must track and protect PSST hours
- Must manage jurisdiction specific rules



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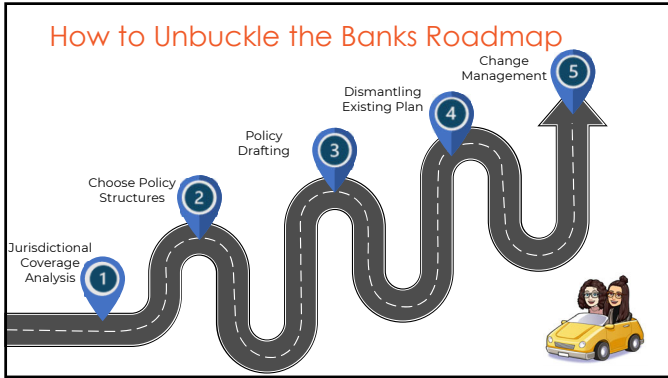
Jurisdictional Speed Bumps



- PTO cannot be used for PSST compliance in Santa Monica, CA
- No PSST sub-bank in New Jersey, possibly Tacoma, WA, and possibly Minnesota (effective 1/1/2024)
- Confusing intersection with kin care laws (e.g., California)
- Rate of pay definition may vary (e.g., Colorado, California)
- No carryover or accrual caps...! (e.g., New York, Washington, New Mexico)




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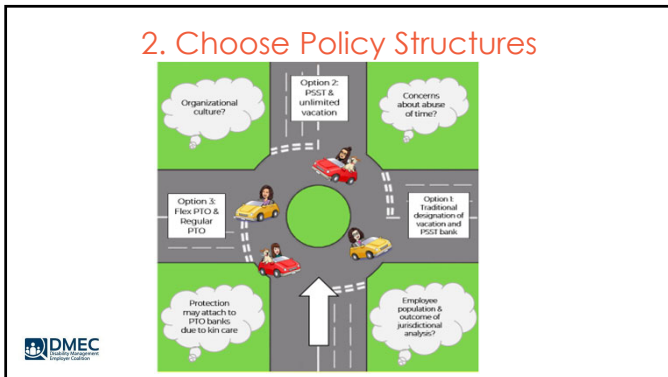
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1. Jurisdictional Coverage Analysis

- Employee Headcount
 - Nationwide/globally
 - In the jurisdiction
 - "Covered" employees
- Brick and Mortar Presence (?)
- Employee Eligibility Requirements
 - Hours worked
 - Primary place of work
- Eligible Employee Exclusions
 - FLSA exemption status
 - Certain part-time employees
 - Seasonal or temporary employees
 - Occasional basis
 - Unique geographic considerations (e.g., Cook County "opt out" municipalities, Los Angeles neighborhoods, Seattle zip codes)



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3. Policy Drafting: High-Level Decisions



- Accrual v. Frontload
- Annual Carryover v. Maximum Bank
- For other provisions, a one size fits all v. "base" policy with exceptions
 - Covered reasons
 - Covered family members
 - Waiting periods for new hires
 - Increments of use
 - Advance Notice for Absences
 - Documentation/Verification
- Identify where the exceptions will be documented



Consult with experienced legal counsel to confirm that your policy satisfies all requirements based on the structure of your PSST plan and your covered jurisdictions.

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3. Policy Drafting: Jurisdiction-Specific Policy Requirements

Some examples include (this list is not comprehensive):

- Colorado: PTO Disclaimer Language
- Illinois: Notice of Rights Attachment
- Bloomington/Minneapolis/St. Paul, MN: Notice of Rights Attachment
- Philadelphia, PA:
 - Notice of Rights Attachment
- New York City:
 - Confidentiality
 - PTO Disclaimer Language
- Washington, Seattle & Tacoma:
 - Definition of a benefit year (if other than calendar year)
 - Verification procedures
- Seattle, WA:
 - Tier size of the employer
 - Rate of pay



This list is not necessarily comprehensive. Consult with experienced legal counsel to confirm that you have addressed all required and/or recommended policy provisions based on the structure of your PSST plan and your covered jurisdictions.

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4. Dismantling Existing Plan Options

- **Plan elimination – No or limited payout**
 - Employee morale issues
 - Jurisdictional limitations (not permitted in some areas)
 - Significant advance notice prudent
- **Create legacy banks***
 - Freeze current balance
 - Limited utilization (i.e. medical LOA only)
 - Liability may diminish over time as balance is utilized
- **Cash out existing time**
 - Financial impact
- **Grandfather plans**
 - Continued accruals for limited population
 - New plan for EEs hired after X date
- **Balance dispersion into new program**
 - Synthesis of vacation and paid sick requirements

*If employees can continue to access legacy banks during employment, consult with experienced tax counsel about Section 409A deferred compensation issues



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Case Study – Current State

Issue:

- Re-design PTO policy to comply with PSST laws in multiple jurisdictions.


Complication:

- Maintaining a PTO bank that meets the needs of multiple jurisdictions while maintaining flexibility in how employees choose to use their PTO
- Initial executive team recommendation: Separate Vacation and Sick banks. Deduct 40 hours from PTO to put into a sick bank, which (by law) can only be used for sick time
 - Yikes! Healthy employees will not be happy with this option!! What's option B?

Current state

One PTO bank for sick and vacation
 40 hours of unused PTO could roll-over into a separate PTO "roll-over" bank;
 maximum bank accrual = 120 hours
 Believed to be compliant with WA and OR PSST


Minimum accruals
 Roll-over requirements
 BUT, had not been treating as protected
 Identified not compliant with CA and AZ PSST, nor State laws prohibiting PTO "use it or lose it"



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Case Study - Options


- Option 1: Front Load PSST and maintain current PTO accruals
 - Do not subtract perceived "vacation" time from employees
- Option 2: Flex PTO + PTO
 - Front load Flex PTO bank with 40 hours protected PTO
 - Maintain current PTO accruals in regular PTO bank
- Option 3: Unbuckling PTO into Sick bank and Vacation bank
- Option 4: Unlimited PTO
- Option 5: Do nothing
- Option 6: Maintain current PTO and add "sick leave" code



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Case Study – PSL Considerations

- Core value of Have Fun and Live Well, FRESH program: How do the options reinforce healthy living, work-life-balance, and reward that lifestyle?
- Impact of the options to TPG's employment value proposition (+/-) for new and existing employees. Particularly in light of the tight labor market.
- Identify the option that allows employees to maintain choice in how they access all accrued hours



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Slide 22

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Case Study – Recommendation & Decision

- One PTO bank:
 - Add Sick-PTO code to HRIS system
 - OR/AZ
 - Only hours coded as Sick-PTO are protected, up to 40 hours
- WA non-Exempt & CA
 - Only hours coded as Sick-PTO are protected, but no 40-hour cap
 - Rational: Risk is low for abuse of protected bank. Employees using excessive sick time likely due to 1) ADA accommodation, 2) intermittent leave, 3) other protected leave, or 4) performance issues



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Lessons Learned

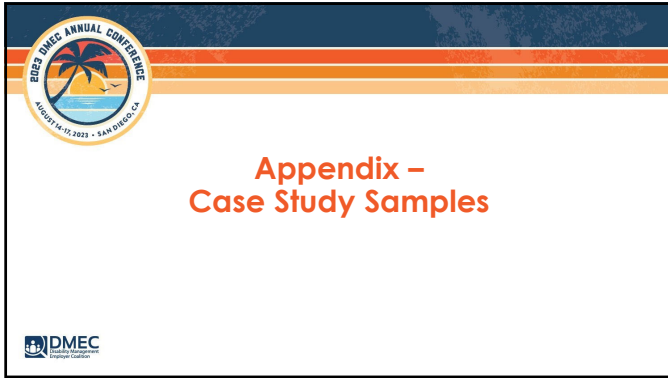
- If I could do it all again....
 - Contact Stephanie earlier in the process!
 - Start with asking: How can we maintain our current PTO model and comply with PSST (this could save you time)
 - Evaluate fewer options
- Document PSST requirements by location
- Consider core values, culture, and sick & leave time statistics
- Role out changes to leadership team first, followed by employees
- Ensure leaders understand how PFML and PSST are different from one another
- Made the same recommendation



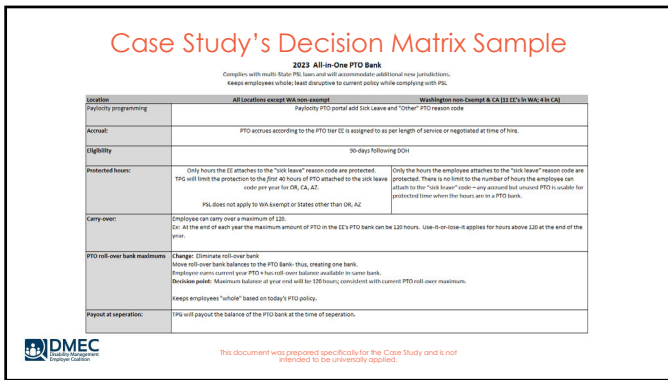
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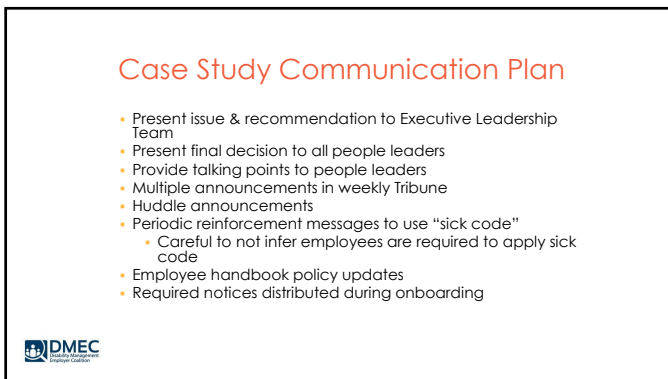
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