

2019 DMEC ANNUAL CONFERENCE  
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## THE DEVIL IS IN THE DETAILS: DESIGNING A COMPLIANT PAID SICK LEAVE POLICY

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## History of Paid Sick Leave

- Prior to 2007, no law in the country required Paid Sick Leave
- The U.S. is the only industrialized nation without a national paid sick leave requirement
- 1993: FMLA unpaid leave passed
- There is a new federalism and it is spreading



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## Current Paid Sick Leave Laws

State Laws	Local Laws
<ul style="list-style-type: none"><li>• Arizona</li><li>• California</li><li>• Connecticut</li><li>• Maine (effective 1/1/2021)</li><li>• Maryland</li><li>• Massachusetts</li><li>• Michigan</li><li>• Nevada (effective 1/1/2020)</li><li>• New Jersey</li><li>• Oregon</li><li>• Puerto Rico</li><li>• Rhode Island</li><li>• Vermont</li><li>• Washington</li></ul>	<ul style="list-style-type: none"><li>• Berkeley, Emeryville, Los Angeles, Long Beach, San Diego, San Francisco, Santa Monica, Oakland (CA)</li><li>• Chicago, Cook County (IL)</li><li>• Montgomery County (MD)</li><li>• Minneapolis, St. Paul (MN)</li><li>• Duluth (MN) (January 2020)</li><li>• New York City (NY)</li><li>• Westchester County (NY)</li><li>• Philadelphia (PA)</li><li>• Austin (pending legal challenges), San Antonio, Dallas (TX) (August 1, 2019)</li><li>• SeaTac, Seattle, Tacoma (WA)</li><li>• Washington D.C.</li></ul>



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### Who Has Paid Sick Leave?

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- 74% of all workers have access to paid sick leave
  - 94% of managers
  - 89% of professionals
  - 82% of office/administrative support
  - 76% of installation, maintenance, and repair
- PSL laws seek to fill in gaps
  - 54% of construction, extraction, farming, fishing, forestry
  - 56% of service workers

 U.S. Bureau of Labor Statistics, March 2018

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### Paid Sick Leave: Cost Savings?

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- Promote savings for employers
  - Greater workforce stability/lower turnover rates
  - Disease and illness prevention
  - Increased productivity/reduced “presenteeism”
  - Lower health care costs

 March 2019, National Partnership for Women & Families, Fact Sheet

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### The Challenge

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- Common provisions
- Unique requirements
- Multi-state compliance
- Recordkeeping & HRIS systems



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### General Structure of PSL Laws

- Eligible employees
- Accrual formula: 1 hour PSL for every X hours worked
- When accrual begins, when accrued time can be used
- Reasons for leave
- Notice requirements



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### General Structure of PSL Laws

- Employer right to supporting medical documentation
- Carry over requirement
- PTO policies may comply if they meet statutory requirements
- Payment at termination
- No retaliation
- Enforcement mechanism



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### Common Permissible PSL Uses

- Employee's illness, injury, or health condition, including medical diagnosis and treatment
- Employee's need for preventive medical care
- Care of a family member with an illness, injury or health condition, including medical diagnosis and treatment
- Family member who needs preventive medical care



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### Reasons for Leave Beyond the "Usual"

- ANY REASON: Maine
- Domestic violence, sexual assault, stalking: D.C., Seattle, Connecticut, Oregon, RI
- Public health emergency: Seattle, NYC, Oregon
- Care for a guide dog, signal dog, or service dog of the employee, employee's family member: Emeryville, CA
- Care for a person designated by the employee: Emeryville, California
- Death of family member: Oregon, Tacoma, WA
- Care for grandparent/grandchild: Vermont



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### Layered Multi-State Challenges

- State PSL
- Local PSL
- Paid Family Leave
- Pregnancy Accommodation & Leave



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### Integration with Other Laws and Policies is a Challenge

- ADA and state anti-discrimination laws
  - Leave as a disability accommodation
- FMLA and state family leave laws
- FLSA/state salary deduction for exempt employees
- Pregnancy disability leave
- Workers' compensation
- Victims of domestic violence, stalking and sexual assault Leave
- Paid benefits – LTD/STD plans
- ERISA plans
- Collective bargaining agreements



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## Paid Family and/or Medical Leave

Existing Laws

- California
- District of Columbia
  - \*Benefits are payable start July 1, 2020
  - Premium deductions started July 1, 2019
- Massachusetts
  - \*Benefits start Jan. 1, 2021
  - Deductions to fund program began Oct. 1, 2019
- New Jersey
- New York
- Rhode Island
- Washington
  - \*Benefits start Jan. 1, 2020
  - Premium assessments began Jan. 1, 2019



 Leave & Accommodation Suite on Jackson Lewis P.C. *workthru!*<sup>®</sup>

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## Compliance Strategies



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## Strategies for Compliance

- Evaluate operations
  - Determine where you have employees (both states and cities)
- Determine eligibility requirements
  - Are you a covered “employer”
  - Do you have covered “employees”



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### Strategies for Compliance

- Evaluate current paid leave policies/CBAs
  - Identify compliance gaps
    - Gap analysis
    - Cover part-timers?
    - Accrual based on hours worked or scheduled?
    - Permit carry-over?
  - Threshold issue: modify current policies to comply or create standalone policy



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### Strategies for Compliance

- Evaluate impact on related policies
  - ADA, FMLA and state equivalents
  - Workers' comp.
  - Attendance policies
    - Point-based systems
    - Method of "calling out sick"
  - Maternity/paternity or parental leave
  - Other leaves



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### Strategies for Compliance

- Draft Compliant Policy(ies)
  - If multi-jurisdiction, consider one policy vs. core policy with addenda or separate policies
  - Consider a "fail safe" provision: *Employees who are in need of paid leave for one of the purposes listed in the policy, and are denied that leave, should contact the HR Department for an individual review*



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## Strategies for Compliance

- Will employees accrue time or will company front-load sick leave time
- Understand notice requirements – posting requirements
- Identify any PSL laws that require individual employees to receive individual sick leave accrual and usage information



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## Paid Sick & Safe Leave Compare/ Contrast Benefits

Feature	Law # 1	Law #2	Law #3	PTO Policy
Eligibility				
How much				
Accrual rate				
Accrual cap				
Carryover				
Front load				
Usage cap				
Reasons				
Employee notice obligation				
Documentation				
Payroll notice				
Job protection				
Pay upon term				



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## Strategies for Compliance

- What are the company's resources to determine how you learn about new legal developments that could impact your program
- Who are your internal and external partners
  - Legal Counsel, TPAs, IT, Benefit Administrators, Compensation Department, Payroll



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## Evaluate Impact on Operations

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- Wage statement and other notice requirements
- Calculating rate of pay
  - Determine “commission” v. “bonus”
- Accrual methods
- Change payroll systems
- Tracking generally
- Recordkeeping



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## Modifying Leave Policies

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- Perhaps the most significant challenge: modifying leave policies to comply with these laws. For example:
  - Most employers do not provide leave to part-timers, seasonal, or temporary employees; some paid sick leave laws require this
  - Some employer policies provide for leave accrual based on scheduled hours; most paid sick leave laws require leave based on hours actually worked
  - Many employers do not permit carryover; most paid sick leave laws require carryover



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## Modifying Leave Policies

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- There are various approaches to ensuring that existing leave policies comply with these new laws. These include:
  - Modify existing PTO or sick policies to fully comply with new laws, including part-timers and carryover
  - Lower the number of PTO, sick or vacation days provided and move those days into a new sick pay policy that minimally complies with these laws, while maintaining separate PTO or vacation policy
  - Continue to allow company-provided sick, vacation or PTO, implement a new sick pay policy



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## Just Say No! The “Kibosh” States

- In response to growing number of municipalities throughout the country, various states have enacted or proposed legislation colloquially referred to as “kibosh” laws
- These laws state that cities or municipalities in a particular state cannot enact local paid sick leave laws
- Stated intent is to avoid a patchwork of different rules with respect to paid sick leave time thus stifling economic growth and job creation



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## Just Say No! The “Kibosh” States

• Louisiana	• Alabama	• South Carolina
• Mississippi	• Arkansas	• Maine*
• North Carolina	• Arizona*	• Maryland*
• Oklahoma	• Florida	• Michigan*
• Tennessee	• Georgia	• Missouri
• Wisconsin	• Indiana	• Ohio
• Iowa	• Kansas	• Oregon*
	• Kentucky	• Rhode Island*

\*Jurisdictions with a state paid sick leave law



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## Employee Messaging

- What will happen to previously accrued hours?
- What are the reasons for which time can be used from the various banks?
- How can employees request leave?
- Who is eligible to participate under individual programs?



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# Questions



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