



# Emerging Trends in Paid Sick Leave (PSL)

Jim Jantz, JD

Director of Compliance, Absence, Disability, & Life  
Marsh McLennan Agency

# Introduction & objectives

- Over 45 locations across the United States now require employers to provide some form of Paid Sick Leave (PSL)
- Key trend: expansion ...
  - New locations requiring PSL
  - Existing laws are being modified to include broader requirements that are more employee-friendly
- New and updated laws create more complexity and challenges for employers, especially multi-state employers
- Explore those nuances, and identify tools and methods to help employers keep up and stay compliant



# Paid Sick Leave — It's Not Actually "Leave"

- PSL is an earned benefit, accrued based on hours worked (or can be frontloaded)
- Typically managed by HRIS and payroll, not administered by the leave of absence (LOA) team or TPA/insurer
- Accrual tracking tied to payroll data and hours worked
- Distinct from traditional LOA programs that require medical certification or case management
- Important to identify an "owner" of the process for consistency and compliance



# PSL Basics: Covered Employer

PSL requirements typically cover any employers that have at least 1 employee in the applicable location

- Some locations only require an employer to provide PSL if they meet other thresholds, such as 10+ employees in the location
- Rare, but some locations have varying requirements based on the number of employees, such as different accrual rates for small and large employers



# PSL Basics: Accrual and Frontloading

**Accrual: Employees earn PSL hours based on hours worked (e.g., 1 hour per 30 hours)**

- Note: Some locations have different accrual rate requirements
- Frontloading: an alternative to accrual, a simplified process to grant the full yearly amount of hours at the start of the year

## **Benefits of frontloading:**

- No need for the employer to track and manage accruals based on hours worked
- Employees have access to all hours immediately.
- Employers typically do not have to allow carryover of unused hours if frontloading is used

## **Challenges:**

- Some locations have limits on frontloading and/or still require tracking hours worked and granting more hours if the employee works more than expected



# PSL Basics: Carryover and More

- Carryover: Unused PSL hours must often carry over to the next year (varies by jurisdiction)
  - Use-it-or-lose-it rules are generally prohibited for PSL hours (except where frontloading is used)
- Maximum balance
- Maximum annual usage



# Other Key Components of PSL

- Eligibility
- Minimum increments
- Documentation requirements
- Pay rate
- Job protection
- Rehire requirements
- Notice (poster, paystub, etc.)
- Recordkeeping



# Why PSL Compliance Matters

Over 40 U.S. locations now require PSL, increasing employer obligations

**Non-compliance can lead to ...**

- Fines, lawsuits, and charges
- Financial risk (e.g., potential back pay to impacted employees)
- Loss of trust or decreased morale by not providing benefits that employees are entitled to

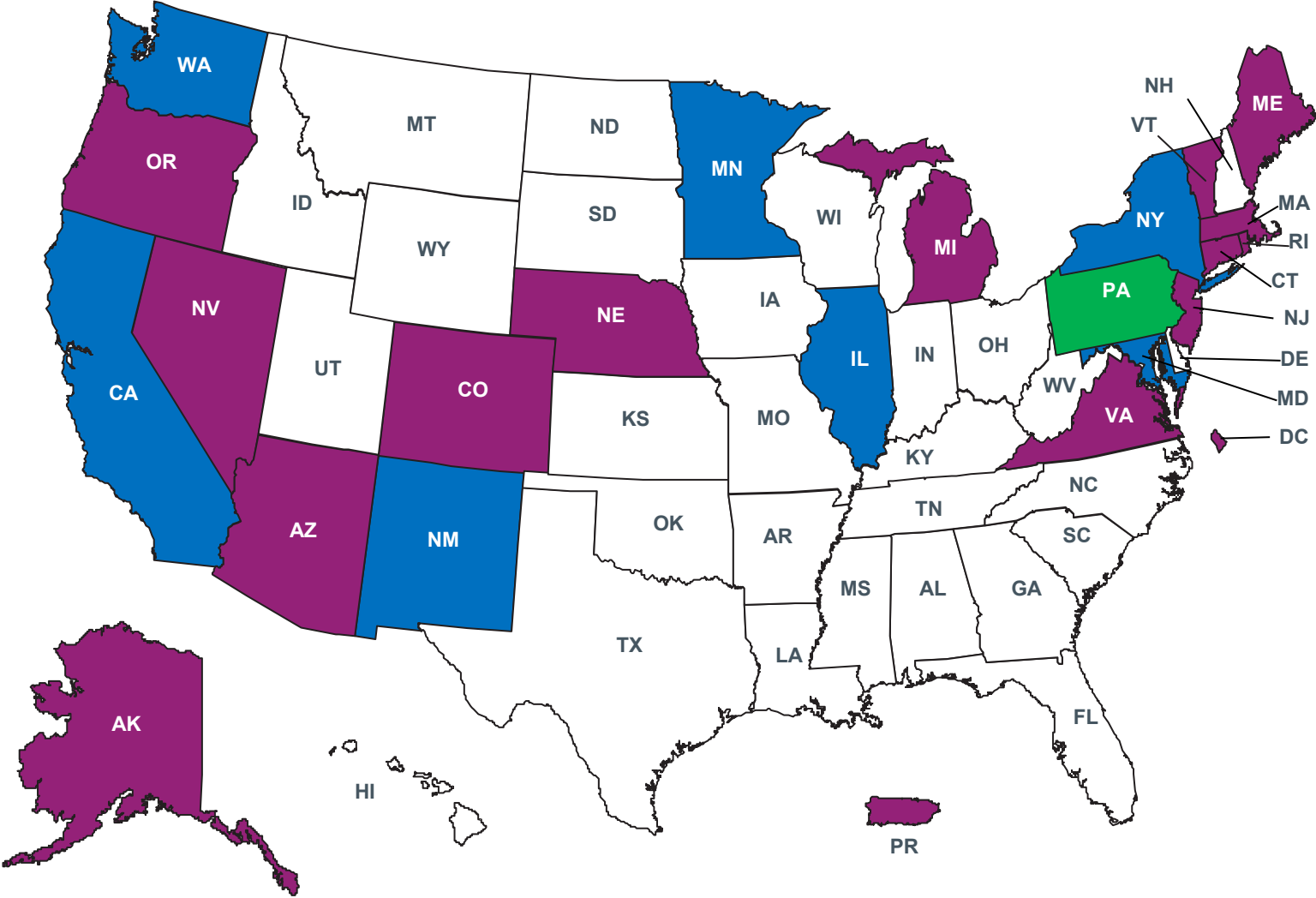
**Proactive compliance is critical**

- Coordinated action plan for new or updated laws



# Map of U.S. Locations with PSL Requirements

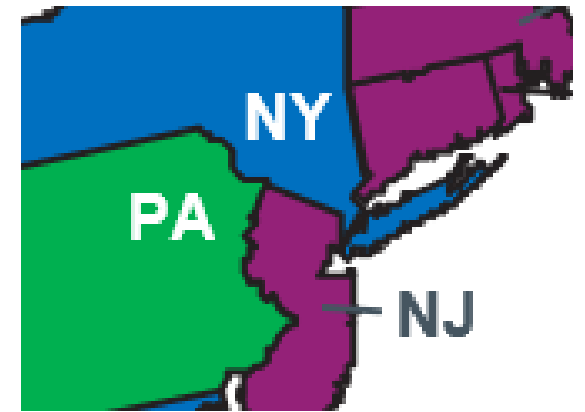
Key	
No Policy	
State Policy	Maroon
Local Policy	Green
State and Local	Blue



# Remote Work and PSL Compliance

Determine which PSL laws are applicable based on employee work locations

- Hybrid models and/or regular work travel to the same location can complicate things
  - Example: Employee lives in New Jersey, but regularly works in New York and Philadelphia
- Multiple laws may apply, and the employee is entitled to PSL under each applicable law



# Remote Work and PSL Compliance

**Employers must develop rules around remote work and/or strategies for tracking remote employee locations**

- HRIS systems or other technology to track when and where employees are physically working
- Training managers and HR on remote work PSL requirements



# PSL Trend: Expansion of Covered Leave Reasons



- PSL is intended to cover absences for an employee's own illness or health condition
- It also typically covers absences for the employee to care for a family member (or covered relation) who has an illness or health condition
  - Note: this is referred to as "kin care" in some locations

**Recent trend: expanded covered leave reasons beyond the above**



# Commonly Covered Leave Reasons

**Illness or health condition (employee's own or employee caring for a family member), typically includes:**

- Mental or physical illness, injury, or health condition
- Diagnosis/care/treatment, preventive care, mental health, and wellness visits

**Many state/local PSL laws also cover:**

- Safe leave: absences when the employee (or their family member) is the victim of domestic violence, sexual assault, and stalking
- This includes absences related to medical or psychological attention, services from a victim's aid organization, relocation or securing safety, and/or legal services



# Less Commonly Covered Leave Reasons

Less common, but some PSL laws also cover:

- Closure of employee's workplace or child's school/daycare
- Quarantine / Self-Isolate
- Public Health Emergency (more on that later!)
- Organ or bone marrow donation
- Parental/Bonding (Maryland)
- Bereavement (Minnesota)
- Care for a service/guide dog (Emeryville, CA)



# PSL Trend: Expansion of the Definition of Family Member / Covered Relation



Family member under FMLA: spouse, parent, child

PSL is typically broader, adding to the list:  
domestic partner, grandparent, grandchild, sibling

Some PSLs are even more expansive, including: aunt, uncle, niece, nephew, household member, individual related by blood, close relationship equivalent to family, individual for whom the employee is responsible for health- or safety-related care, or designated person



# New Concepts in PSL Laws

One location (Chicago) requires an employer to provide two separate banks, one for absences that are typically covered under PSL laws, and another that can be used for any reason.

Other locations skip the two banks and just require a PSL that looks like PTO/vacation, because it can be used for ANY reason!

- The employee does not need to be sick, does not need to be caring for a sick family member – they do not even need to provide a reason (IL, ME)

Some locations, including New York City, require additional unpaid time, beyond the PSL required hours.



# New Concepts in PSL Laws

Finally, there are other locations that have introduced additional requirements for specific leave reasons:

- Additional PSL hours granted for a Public Health Emergency (PHE) (CO)
- Separate, additional time specifically for prenatal leave (New York)
- Unpaid leave for employees with a child in the NICU (IL)



# PSL for Everyone, or As Required

## Employer considerations when providing PSL...

- Provide PSL only as required by state/local law
- Provide the “best available” benefits to all employees
- Provide a baseline to all employees, and create exceptions for those in locations with PSL requirements that exceed



# Using PTO to Satisfy PSL Requirements

All of these PSL laws generally allow an employer to provide greater benefits, which include the ability to comply with PSL requirements via a Paid Time Off (PTO) policy

The policy must provide the same (or greater) benefits for all PSL requirements: accrual rate, carryover, usage/notice requirements, etc.

**Advantages:** simplicity, employee flexibility, streamlined administration

**Potential pitfalls:** differences in accrual, notice and carryover rules

**Other challenges:** location-specific nuances related to job-protection and tracking/paystub requirements



# Using PTO to Satisfy PSL Requirements

PSL carryover requirements combined with PTO payout requirements can create a significant financial deterrent

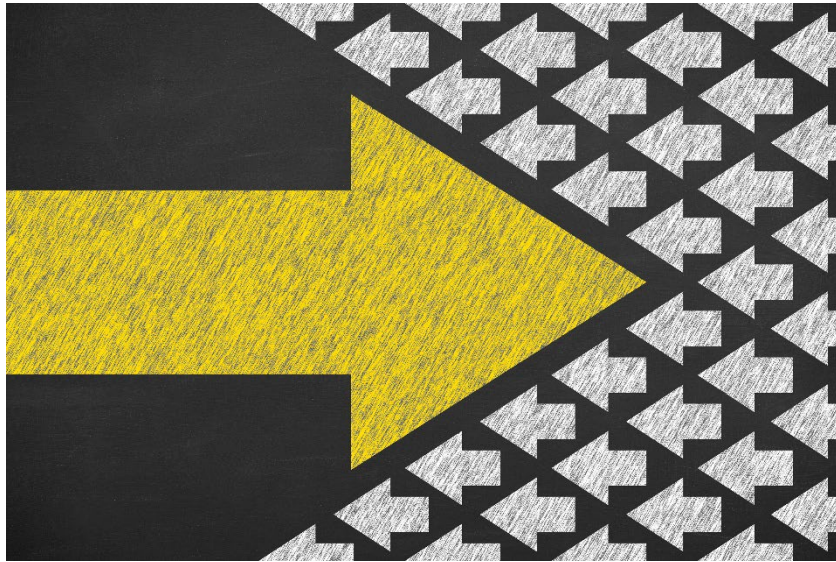
Many employers maintain a single PTO policy, but track “sick leave” absences separately within that PTO balance

- And treat the non-PSL PTO hours differently, only treating the “sick leave” absences as protected, or having different notice requirements for sick vs. non-sick absences

But we now have one location (MN) that does not allow different treatment. Will others follow?



# Not-Quite-A-Trend (Yet) Toward Separate Vacation and Sick Policies



Due to the growing complexities of PSL and the resulting challenges in using PTO to comply with PSL ...

Some employers are reversing course, reverting back to the idea of creating two separate balances: vacation (for pre-planned absences) and sick leave (for unscheduled absences covered under PSL)



# Employer Guidance: Takeaways

## Ensure you are tracking and monitoring

- New and existing PSL laws
- Your employees' work locations

## Develop a compliant PSL policy ...

- Providing PSL to all employees in locations with PSL requirements
  - and all other employees? If so, how much?
  - Utilize “or as required by applicable state/local law(s)” language

**... and an equally compliant process that follows that policy!**



# Employer Guidance: Takeaways

**Your PSL process must be compliant, but this is not just another LOA**

- Ensure you have a single owner of the PSL process
- Engage your key internal stakeholders: Payroll/HRIS, HR, Legal, Managers/HR

**Additional requirements beyond accruals and balances**

- Job protection
- Notice/posters
- Details on paystubs
- Record-keeping
- And more!



# Questions?

