



# Parsing Paid Leave – Understanding Sick vs. Family Leave Laws

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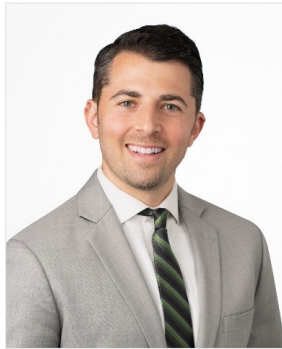


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# Program Overview

- 01** Terminology & Historical Review
- 02** Paid Sick Leave / Paid Family Leave Comparisons
- 03** Final Thoughts
- 04** Questions



# Terminology and Historical Review



## Terminology

- **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.



## Terminology (continued)

- **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.
- **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 leave benefits to employees such as short-term disability or paid parental leave in order to attract or retain employees.



# Mandatory Paid Sick Leave (PSL) and PTO Laws

## Total Mandates

### As of June 2024:

**57 TOTAL PSL & PTO Mandates in the U.S.**

- **Why?** Several jurisdictions have enacted multiple mandates.
- **Ex:** General PSL Law + COVID-19 Temporary PSL Law

**But number constantly changing due to COVID PSL laws + Sunset of Standard Laws.**

**As of Dec. 2020: Approx. 69 TOTAL Mandates in U.S.**

## Federal

### Executive Order 13706

PSL for many EEs of certain federal contractors

### Families First Coronavirus Response Act

Emergency PSL for EEs of certain sized ERs (**sunset** as of 12/31/2020; reimbursement for voluntary leave option for select ERs **ended** 9/30/2021)

## 19 States + DC

### PSL:

Arizona  
California  
Colorado  
Connecticut  
DC  
Maryland  
Massachusetts  
Michigan  
Minnesota  
New Jersey

New Mexico  
New York  
Oregon  
Rhode Island  
Vermont  
Virginia  
Washington

### PTO:

- Illinois
- Maine
- Nevada

## 25 Municipalities

**(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 (PTO/PSL); **(17)** Berkeley, CA; **(18)** Saint Paul, MN; **(19)** Cook County, IL (PTO); **(20)** Westchester County, NY; **(21)** Bernalillo County, NM (PTO); **(22)** Allegheny County, PA; **(23)** West Hollywood, CA (PTO); **(24)** Bloomington, MN; **(25)** Orland Park, IL (PTO).







# Paid Family and Medical Leave

- **Existing Mandatory SDI Laws – 5 States:**
  - CA, HI, NJ, NY & RI
- **Existing Mandatory PFML Laws – 13 States + DC**
  - Paid Family Leave - **CA, NJ, NY & RI**
  - Paid Family and Medical Leave – **CO** (benefits became effective 1/1/2024), **CT, DC, DE** (benefits effective 2026), **MA, ME** (benefits effective 2026), **MD** (benefits effective 2026), **MN** (benefits effective 2026), **OR** (benefits became effective 9/3/2023) & **WA**



# Paid Family and Medical Leave

## A few new twists!

- **NH, VT** have instituted **Voluntary** PFML programs
  - **NH** (effective 1/1/2023)
  - **VT** (effective for state employees 7/1/2023; for other non-state government public employers 7/1/2024; for individual/private employer purchasers 7/1/2025)
- **AL, AR, FL, KY** (enacted 4/5/2024), **SC** (enacted 5/21/2024), **TN, TX, VA** added **Family Leave Insurance** as a class of insurance

**Are these signs of the direction that PFML benefits will take in the coming years?**



## Length of Time: Enactment to Effective Date

**The time lapse between enactment to effective date is much shorter for PSL laws than for PFL laws.**

- PSL – typically within about 6 months to a year
- PFL – often 2-3 years due to funding & administration issues
  - Establish Administrative/Enforcement Agency
  - Rulemaking Process
  - Payroll Deductions/Funding
  - Benefits Available



# PSL/PFL Comparisons



## Survey Question

**Which set of leave / time off laws do you find to be the most complicated?**

1. Paid Sick Leave
2. Paid Time Off
3. Paid Family Leave / Paid Family Medical Leave
4. COVID-19 Paid Leave
5. None of the above – Compliance with these laws is a piece of cake!
6. All of the above – Compliance with these laws is a tough nut to crack!





# Overview of Comparisons

**There are many PSL/PFL law substantive topics. We will be taking a closer look at the following:**

- Employer Coverage
- Employee Eligibility
- Length of Time
- Covered Reasons for Use
- Covered Family Members
- Administration
- Funding
- Amount of Pay
- Impact of Mobile/Remote Employees
- Coordination of Benefits
- Notice/Posting/Balance Notification





# Employer Coverage

- **PSL**

- Most common standard is 1 or more employees in the jurisdiction.
- Some PSL laws apply only to employers with a certain number of employees.
  - Determining employee headcount – all employees vs. only those in the relevant jurisdiction.
- Some PSL laws apply only to certain industries (e.g., hotels/transportation/healthcare)

- **PFL**

- Most existing PFL laws apply to employers that have 1 or more employees in the relevant jurisdiction.



## Employee Eligibility

- **PSL** – typically broad coverage standards, but some laws consider factors such as:
  - minimum hours worked
  - primary place of employment
  - nature/type of work
  - exempt/non-exempt status
  - CBA coverage
  - waiting period for use
- **PFL** – typically based on amount of wages earned during “base period,” but some laws consider factors such as:
  - length of employment
  - hours/percentage of time worked
  - contribution to PFL program
  - submission of claim for PFL benefits
  - if required, use certain amount of PTO
  - lost wages because of absence for qualifying event/unable to perform work
  - meet law’s administrative requirements





## Length of Time

- **PSL**

- Generally intended for shorter-term absences (illness/injury of employee or family member, preventive health care, etc.)
- Annual use is capped at 40-80 hours in most jurisdictions
  - Outliers exist where there is no cap on use (i.e., WA, Seattle, San Francisco, MN; Federal Contractor PSL)

- **PFL**

- Generally intended for longer-term absences (serious health condition of employee or family member, bonding with new child, etc.)
- Maximum length of benefits varies by jurisdiction & reason for use, but typically:
  - Family Leave: 6-12 weeks
  - Medical Leave: 6-20 weeks (or longer via state SDI programs)
  - Combined Total: 12-26 weeks (or longer via state SDI programs)



# Covered Reasons for Use

For illustration purposes—NOT an all-inclusive list

PSL	PFL
Employee's own illness, injury, or health condition, or preventive care	Employee's own serious health condition
	Pre-natal care
Care of family member with illness, injury, or health condition, or need for preventive care	Care of family member with serious health condition
	Military caregiver leave
Safe time absences	Safe time absences
Bonding after birth/adoption/foster placement	Bonding after birth/adoption/foster placement
Bereavement leave	Bereavement leave
Bone marrow/organ donation	Bone marrow/organ donation
Public health emergency-related & similar absences	State of emergency/public health emergency-related absences
	Qualifying military exigency
Any reason (PTO laws)	

## Key:

- Green font = covered under all or most laws
- Purple font = covered under many laws
- Red font = covered under few laws





# Covered Family Members

For illustration purposes—not an all-inclusive list

PSL	PFL
Child	Child
Parent/parent-in-law	Parent/parent-in-law
Spouse/domestic partner	Spouse/domestic partner
Sibling	Sibling
Grandparent	Grandparent
Grandchild	Grandchild
Sibling/grandparent/grandchild of employee's spouse or domestic partner	Sibling/grandparent/grandchild of employee's spouse or domestic partner
Child's spouse or domestic partner	Child's spouse or domestic partner
Individual related to employee by blood/affinity and/or whose close association with employee is equivalent of family relationship	Individual related to employee by blood/affinity and/or whose close association with employee is equivalent of family relationship
Individual whose relationship with employee creates expectation of care	Individual whose relationship with employee creates expectation of care
Civil union/life partner/dating relationships	
Household member	
Designated person	

- Key:**
- Green font = covered under all or most laws
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## Who Administers the Program?

Law Type	Program Administration
<b>Paid Family Leave Laws</b>	State Only (i.e., No Private Plan): DC, RI
	State or Private Plan: CA, CT, CO, DE, ME, MD, MA, MN, NJ, NY, OR, WA
<b>Paid Sick Leave Laws</b>	All administered by the employer



## Funding PFL vs. PSL

Law Type	Funding Mechanism
<b>Paid Family Leave Laws</b>	Employee-Funded: CA (PFL), CT, NJ (PFL), NY (PFL), RI (PFL) Funding Split Between Employer and Employee: CO, DE, ME, MD, MA, MN, OR, WA Employer-Funded: DC
<b>Paid Sick Leave Laws</b>	All Employer-Funded





## Amount of Pay PFL vs. PSL (Overview)

Law Type	Amount of Pay
<b>Paid Family Leave Laws</b>	<p>Varies greatly jurisdiction by jurisdiction</p> <p>60-70% of the employee's average weekly wage, depending on the employee's income, to as high as 100% of the employee's average weekly wage (up to a certain amount)</p> <p>Maximum weekly payments also vary greatly—as low as \$900 to as high as \$1620 in CA</p>
<b>Paid Sick Leave Laws</b>	<p>Generally, 100% pay</p> <p>BUT rate of pay standards vary by jurisdiction – complicated especially for non-exempt employees</p>



# Amount of Pay-PFL

State	Amount of Benefit Payments
CA (PFL)	<p><b>Percent of Wages:</b> 60 and 70% of EE's average weekly wage (AWW) depending on income</p> <p><b>Current Weekly Max:</b> \$1,620.00</p>
CT	<p><b>Percent of Wages:</b> 95% of EE's AWW up to 40x state min. wage, plus 60% of the AWW that is greater than 40x state min. wage up to the weekly maximum benefit</p> <p><b>2024 Weekly Max :</b> \$941.40</p>
CO (Benefits began 2024)	<p><b>Percent of Wages:</b> 90% of EE's AWW up to 50% of the state AWW plus 50% of the AWW that is greater than 50% of the state AWW up to the weekly maximum benefit</p> <p><b>2024 Weekly Max:</b> \$1,100.00</p>
DC	<p><b>Percent of Wages:</b> 90% of EE's AWW up to 40x 150% of DC minimum wage and 50% of the AWW above 40x 150% of DC minimum wage</p> <p><b>Current Weekly Max:</b> \$1,118.00 (as of October 1, 2023)</p>
DE (Benefits begin 2026)	<p><b>Percent of Wages:</b> 80% of a worker's AWW during the preceding 12 months</p> <p><b>2026 Weekly Max:</b> \$900.00</p>





## Amount of Pay-PFL (cont'd)

State	Amount of Benefit Payments
NY (PFL)	<p><b>Percent of Wages:</b> 67% of employee's average weekly wage up to the maximum weekly benefit</p> <p><b>2024 Weekly Max:</b> \$1,151.16</p>
OR (Benefits began Sept. 2023)	<p><b>Percent of Wages:</b> 100% of the employee's average weekly wage up to 65% of the state average weekly wage plus 50% of the average weekly wage over 65% of the state average weekly wage</p> <p><b>2024 Weekly Max:</b> \$1,523.63</p>
RI (PFL)	<p><b>Percent of Wages:</b> 4.62% of employee's wages in the highest quarter of the base period</p> <p><b>Weekly Max as of 7/1/2023:</b> \$1,043.00</p>
WA	<p><b>Percent of Wages:</b> 90% of the employee's average weekly wage up to 50% of the state average weekly wage plus 50% of the average weekly wage above 50% of the state average weekly wage up to the weekly maximum</p> <p><b>2024 Weekly Max:</b> \$1,456.00</p>







## Amount of Pay-PFL (cont'd)

State	Amount of Benefit Payments
<b>ME (Benefits begin 2026)</b>	<p><b>Percent of Wages:</b> 90% of EE's AWW up to 50% of the state AWW and 66% of the AWW above 50% of the state AWW</p> <p><b>2026 Weekly Max:</b> Maximum weekly benefit will be set at the state average weekly wage, which changes annually.</p>
<b>MD (Benefits begin 2026)</b>	<p><b>Percent of Wages:</b> 90% of EE's AWW up to 65% of the state AWW and 50% of the AWW above 65% of the state AWW</p> <p><b>2026 Weekly Max:</b> \$1,000.00</p>
<b>MA</b>	<p><b>Percent of Wages:</b> 80% of EE's AWW up to 50% of the state AWW and 50% of the AWW greater than 50% of the state AWW</p> <p><b>2024 Weekly Max:</b> \$1,149.90</p>
<b>MN (Benefits begin 2026)</b>	<p><b>Percent of Wages:</b> 90% of EE's wages up to 50% of the state AWW plus 66% of wages that is greater than 50% of the state AWW but less than 100% of state AWW plus 55% of wages above 100% of state AWW</p> <p><b>2026 Weekly Max:</b> State AWW as calculated by State on or before 6/30 of each year</p>
<b>NJ (PFL)</b>	<p><b>Percent of Wages:</b> 85% of a worker's AWW up to maximum weekly benefit amount</p> <p><b>2025 Weekly Max:</b> \$1,055.00</p>





## Amount of Pay-PSL

Rate of Pay (non-exempt EEs)	Jurisdiction (Examples Only)
The employee's regular rate of pay / weighted average	CA, CO, ME
The "rate in effect"	AZ, NV, WA
The normal base hourly rate	IL, MI



# Telecommuting Employees PFL vs. PSL

Law Type	Standard
<b>Paid Family Leave Laws</b>	<p>Varies based on relevant jurisdictions</p> <p>Certain jurisdictions follow unemployment insurance laws (e.g., CT, NY). Looks at the following factors in that order:</p> <ul style="list-style-type: none"><li>– where services are localized</li><li>– where is base of operations</li><li>– where does the employee perform some of the services and receive direction and control</li><li>– where the employee resides</li></ul>



## Telecommuting Employees PFL vs. PSL (cont'd)

Law Type	Standard
<b>Paid Sick Leave Laws</b>	<p>Varies by jurisdiction.</p> <p>Generally covered if they work in the jurisdiction (subject to eligibility factors).</p> <ul style="list-style-type: none"><li>- Typically excludes traveling through the jurisdictions.</li><li>- Typically only accrue PSL for the time worked in the jurisdiction.</li></ul>



# Coordination of Benefits: Coordination with Employer Policies

- **PFL:**

- Some laws are ambiguous or silent.
- Coordination with “time off” benefits (i.e., PTO, paid sick leave, vacation, etc.) versus “leave” benefits (i.e., parental leave, STD, etc.).
- Coordination involves multiple layers, including **(a)** determining whether the statutory leave and company-provided benefit can be run concurrently, and **(b)** assessing how the leave will be compensated (i.e., will the time off be fully paid at 100% normal wages; what amount of pay will come from the statute versus company policy; is there a reimbursement component, etc.)
- Restrictions on employers’ ability to run company-provided leave concurrently with statutory PFML, depending on the law.

- **PSL:**

- Varies by law
- Key Metric (generally) = “Same Conditions”



# Coordination of Benefits: Understanding Overlapping Leave Laws

- **Overall:** State PFL and PFML laws and PSL laws can touch upon several other existing statutory benefits, such as **(a)** federal FMLA, **(b)** state unpaid FML laws, **(c)** federal, state and local disability laws, **(d)** domestic violence victim leave laws, **(e)** military leave laws, **(f)** family military leave laws, **(g)** bereavement leave laws; **(h)** bone marrow / organ donation leave laws.
- **Several areas must be assessed to determine overlap and interplay. Nonexclusive examples include:**
  - Amount of leave?
  - Reasons for leave?
  - Whether employer-provided benefits run concurrently?
  - Paid versus unpaid?
  - Amount of pay?
  - Job protection?



# Notice/Posting/Balance PFL vs. PSL

Law Type	Requirements
<p><b>Paid Family Leave Laws</b></p>	<p><b>Notice/Posting Requirement:</b> 15 laws</p> <p><b>Handbook/Written Policy Requirement:</b> 2 laws</p> <p><b>Available Balance Requirement:</b> No laws. But reporting and remitting requirements.</p>
<p><b>Paid Sick Leave Laws</b></p>	<p><b>Notice/Posting Requirement:</b> 40+ jurisdictions require one or both</p> <p><b>Handbook/Written Policy Requirement:</b> 25+ jurisdictions (scope of requirement varies by law)</p> <p><b>Available Balance Requirement:</b> 30+ laws require ERs to provide available balance notice with some frequency. Method and frequency varies by jurisdiction.</p>





# Final Thoughts





# Federal Activity & Prospects

- **PSL:**
  - Potential for nationwide PSL mandate. Key 2023 legislation – The Healthy Families Act (S.1664)
- **PFL:**
  - **2023:** House + Senate Bipartisan Working Groups
  - **Jan 2024:** Bicameral RFI + House Policy Framework
  - **2024 Outlook:** I-PLAN



## Recent PFML Activity and Potential Future Changes



- **Oregon PFML:** Program went “live” on 9/3/2023; Amendments 7/1/2024
- **Colorado PFML:** Program went “live” 1/1/2024
- **Other Enacted Laws with Expected 2024 Activity:** Delaware, Maine, Maryland, Minnesota (all “go live” in 2026; other activity in 2024-25)
- **Where Next (mandatory PFML)?** Michigan; Illinois; Vermont; New Mexico; Hawaii; Virginia



# Paid Sick Leave and PTO Outlook – 2024 and On

## Laws scheduled to go into effect or that recently became effective:

- Connecticut (PSL Amendments – 1/1/2025)
- New York (Paid Prenatal Leave – 1/1/2025)
- Chicago, IL (PTO / PSL Law – 12/31/2023, but really 7/1/2024)
- Minnesota (General PSL Amendments – 5/25/2024)

## Next locations likely to adopt:

- **State:** (1) Delaware; (2) Nebraska; (3) Missouri; (4) Virginia (for all private ERs); (5) Hawaii; (6) Pennsylvania;
- **Municipal:** (1) New York City, NY (PTO law?); (2) CA localities with prior COVID-19 PSL laws that may seek to adopt general non-COVID PSL laws



## Seyfarth Paid Leave Resources

If you're struggling with or have questions about the country's **Paid Leave "Patchwork"** here are some ways Seyfarth can help:

**(A) PSL & PFL Surveys:** Seyfarth maintains **comprehensive PSL & PFL surveys** breaking down the specific requirements of **each** existing state and local PSL & PFL law.

**For more information contact:** [paidleave@seyfarth.com](mailto:paidleave@seyfarth.com)

**(B) Paid Leave Mailing List:** Seyfarth regularly publishes Legal Updates and Blog Posts on PSL/PFL and other paid leave law developments.

**You can sign up here:**

<https://communication.seyfarth.com/9/7/landing-pages/subscription.asp>





## Seyfarth Paid Leave Resources (cont'd)

**(C) Webinar Series – Guidance on PSL & PFL:** Seyfarth hosts two separate webinar series—one on PSL and another on PFL.

**(D) “Take It or Leave It” Podcast:** In late 2021, Seyfarth launched a podcast focused exclusively on workplace leaves, absence management, and accommodations. More than +30 episodes streaming on Spotify, SoundCloud, and Apple Podcasts, and available on Seyfarth's website.

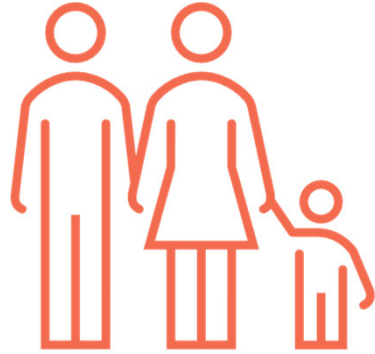
**More info at:**

<https://www.seyfarth.com/trends/take-it-or-leave-it-podcast.html>





# Questions?





thank  
you

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