

STATE & LOCAL UPDATES

Many Employers Must Offer Paid Sick Leave Beyond the Pandemic

By Lisa Nagele-Piazza, J.D., SHRM-SCP | April 13, 2021

After the federal Families First Coronavirus Response Act (FFCRA) expired along with its mandate for employers to provide paid sick leave, state and local lawmakers stepped in to fill the gap. Their efforts have created a hodgepodge of temporary mandates requiring employers to pay workers who

MORE FROM THIS SERIES

PART 1

Complying with COVID-19 Paid-Sick-Leave Laws in California (www.shrm.org/ResourcesAndTools/legal-and-compliance/state-and-local-updates/Pages/Many-Employers-Must-Offer-Paid-Sick-Leave-Beyond...)

Feedback

are sick, need to isolate or quarantine, or are seeking COVID-19 testing or vaccination. This article is the third in a series that explores employers' state paid-sick-leave obligations during the pandemic and beyond.

Although employers may be focused on COVID-19-related leave obligations during the coronavirus crisis, they should note that some states and cities have paid-sick-leave laws that extend beyond the pandemic.

"Mandatory paid sick leave was an area of law that had rapidly and significantly developed in recent years, prior to the COVID-19 pandemic," observed J.T. Holt, an attorney with Reed Smith in Pittsburgh.

Christina Janice, an attorney with Barnes & Thornburg in Chicago, said the trend is expected to continue. Paid-sick-leave laws have steadily gained traction across the country, she noted.

Compliance can be incredibly difficult for employers with workers in multiple locations. Although employees typically accrue one hour of paid sick leave for every 30 to 40 hours worked, some jurisdictions mandate higher accrual rates or have different rules depending on employer size. Some laws apply to businesses with a specific number of employees in the jurisdiction, and others are triggered based on a company's total headcount. Furthermore, some states offer additional paid family and medical leave, which may or may not provide job protections.

Here are some key points employers should note about paid-leave laws.

State Paid-Sick-Leave Laws

Currently, 16 states and Washington, D.C., require (or will soon require) certain employers to offer paid sick leave for workers to recover from an illness, seek medical care or care for a sick relative.

Each state law has different rules about who is covered, the reasons leave can be used, the rate at which employees accrue paid leave and the waiting periods before paid sick leave can be used. Many of these laws also allow workers to use paid-sick-leave accruals for "safe" time if they are targets of domestic violence, sexual assault or stalking.

Notably, Maine became the first state to pass a law requiring certain employers to provide paid time off for any reason, including emergencies, illnesses and vacations. Nevada also has a broad law covering paid leave for any reason.

Local Paid-Sick-Leave Laws

Many local jurisdictions have their own paid-sick-leave laws that offer more-generous benefits than the state law or are in locations without a statewide law.

[compliance/state-and-local-updates/Pages/Complying-with-COVID-19-Paid-Sick-Leave-Laws-in-California.aspx](https://www.shrm.org/ResourcesAndTools/legal-and-compliance/state-and-local-updates/Pages/Complying-with-COVID-19-Paid-Sick-Leave-Laws-in-California.aspx)

PART 2

States and Cities Update COVID-19 Paid-Sick-Leave Laws (www.shrm.org/ResourcesAndTools/legal-and-compliance/state-and-local-updates/Pages/States-and-Cities-Update-COVID-19-Paid-Sick-Leave-Laws.aspx)

PART 3

Many Employers Must Offer Paid Sick Leave Beyond the Pandemic

CHART

State by State: Paid Sick Leave (www.shrm.org/ResourcesAndTools/legal-and-compliance/employment-law/Pages/state-local-paid-sick-leave-chart.aspx)

For example, seven locations in California provide employees with more benefits than the statewide law. The California Healthy Workplaces, Healthy Families Act covers all employees who work in the state for at least 30 days in a 12-month period for the same employer. Full-time, part-time and temporary workers must accrue at least one hour of paid leave for every 30 hours they work, though employers may limit the use of paid sick leave to three days per year.

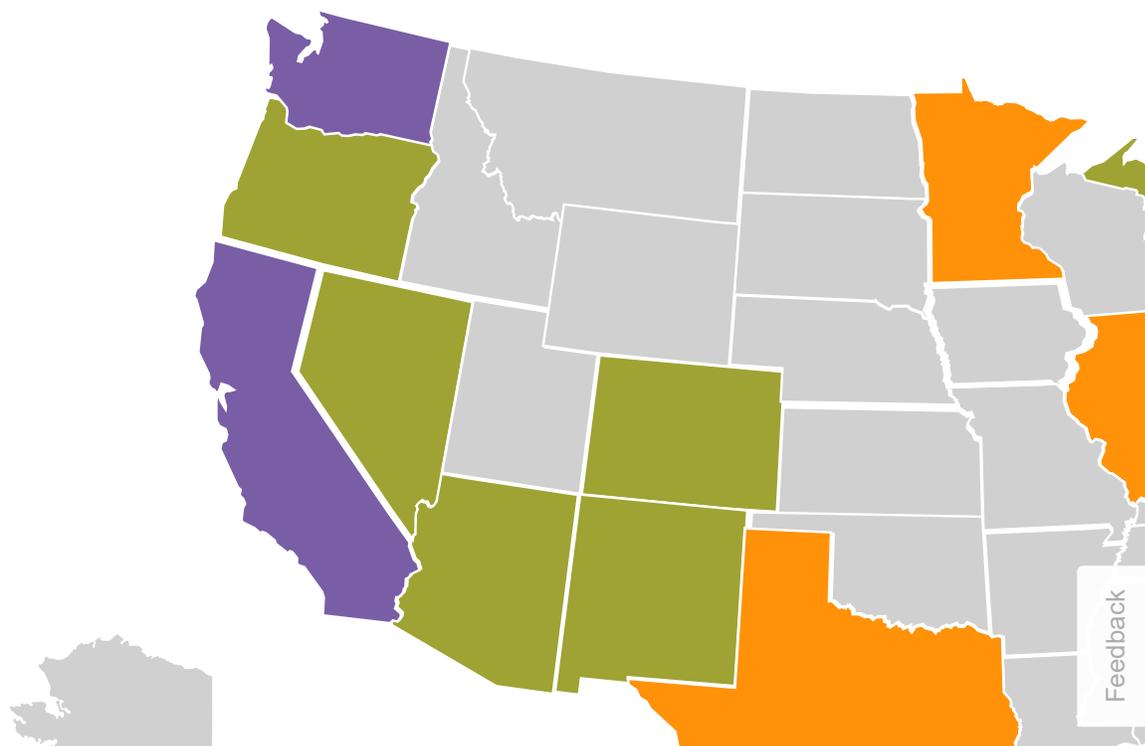
But Berkeley, Emeryville, Los Angeles, Oakland, San Diego, San Francisco and Santa Monica have their own requirements. Additionally, Los Angeles and Long Beach have paid-leave requirements specifically for hotel workers. Local ordinances generally apply to employees who work in the jurisdiction for a certain number of hours, and the benefit accrual rates may differ depending on employer size.

Most employees in Washington state are entitled to earn one hour of paid sick leave for every 40 hours worked. However, Seattle has a tiered system (<https://www.seattle.gov/laborstandards/ordinances/paid-sick-and-safe-time>) based on employer size. Tacoma also has its own rules (<https://www.cityoftacoma.org/cms/one.aspx?pagelid=75860>), and a special law (<http://www.seatacwa.gov/our-city/employment-standards-ordinance>) applies to the transportation and hospitality industries in the city of SeaTac, which surrounds the Seattle-Tacoma International Airport.

"Employers often struggle with determining whether a particular leave law applies to an employee who only works in the jurisdiction a few days a week or month," noted Katharine Weber, an attorney with Jackson Lewis in Cincinnati. Particularly during the pandemic—with so many employees working remotely—employers may miss the fact that their employees are working from a different state or city than they were before the pandemic.

"That means these employees may be covered by different or additional leave laws, depending on the permanence of the remote-work assignment and how the potentially applicable other leave laws are written," she explained.

Charles Thompson, an attorney with Ogletree Deakins in San Francisco, noted that complying with the patchwork of leave laws has become so complicated that businesses should consider designating an employee whose primary responsibility is tracking and complying with leave laws. Smaller businesses may want to work with an outside law firm or HR consultant, he said.





provide job-protected leave, but they run concurrently with job-protected unpaid leave entitlements under the federal Family and Medical Leave Act and similar state laws.

In February, federal lawmakers reintroduced the Family and Medical Insurance Leave (FAMILY) Act (www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/lawmakers-reintroduce-paid-family-and-medical-leave-bill.aspx), which would provide workers with up to 12 weeks of paid leave to care for their own health condition or that of a relative, or to bond with a child following birth or adoption. The bill would also cover leave for certain reasons related to military deployment. The FAMILY Act has been introduced each legislative session since 2013 but has failed to pass.

People may continue to look to their state representatives to implement some sort of paid leave in the absence of federal assistance, noted Jason Geller and Abby Harrington, attorneys with Fisher Phillips in San Francisco.

HR's Role

When managing leave programs, employers must have a properly designed and consistently followed process for identifying what leave laws apply and when, Weber said. "Employers also must have reliable and timely resources to help them keep up with the speed at which new state and local paid-leave laws are enacted or expanded."

Geller and Harrington said employers should create written leave policies, regardless of whether the law requires it. In drafting the policies, employers must carefully identify all applicable laws at the federal, state and local levels to ensure that the policies comply with the intersecting requirements.

Many HR departments will create internal leave charts that succinctly identify common leave requests and the legal requirements for each, they noted. "If an employer uses a third-party leave administrator, it should ensure that the administrator understands the local leave laws and appropriately documents and designates the leaves." The employer will ultimately be responsible if the laws are not followed.

Since leave requests are often made to direct supervisors, Geller and Harrington said, managers should be trained to recognize the requests and involve HR as appropriate.

HR DAILY NEWSLETTER

News, trends and analysis, as well as breaking news alerts, to help HR professionals do their jobs better each business day.

Email Address

Feedback

**CONTACT US (WWW.SHRM.ORG/ABOUT-SHRM/PAGES/CONTACT-US.ASPX) | 800.283.SHRM
(7476)**

© 2021 SHRM. All Rights Reserved

SHRM provides content as a service to its readers and members. It does not offer legal advice, and cannot guarantee the accuracy or suitability of its content for a particular purpose.

[Disclaimer \(www.shrm.org/about-shrm/Pages/Terms-of-Use.aspx#Disclaimer\)](http://www.shrm.org/about-shrm/Pages/Terms-of-Use.aspx#Disclaimer)