

EMERGING LOCAL REGULATIONS AND THE MULTISTATE EMPLOYER

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I. Introduction.

Multistate employers are facing significant compliance challenges as increasingly more states and local jurisdictions implement employment-related laws that often differ significantly from, or cover matters not addressed by, federal law. Long gone are the days when compliance with federal laws was sufficient to also be in compliance with state and local laws. This paper focuses on several recent trends in state and local employment-related legislation and provides guidance on how employers can ensure compliance with new employment laws.

II. Paid Sick Leave.

The proliferation of paid sick leave (“PSL”) laws at state and local levels, with differing and sometimes conflicting provisions, presents significant compliance challenges for multistate employers. Currently, the following states, plus the District of Columbia and the Commonwealth of Puerto Rico, have passed statewide PSL laws:

- Arizona
- California
- Connecticut
- Maryland
- Massachusetts
- Michigan
- New Jersey
- Oregon
- Rhode Island
- Vermont
- Washington¹

¹ Arizona (Ariz. Rev. Stat. Tit. 23, ch. 2, Art. 8.1 (A.R.S. §§ 23-371 to 23-381) and A.R.S. § 23-364 (as amended) (Fair Wages and Healthy Families Act (Proposition 206)), California (Cal. Lab. Code §§ 245-249 and 2810.5 (Healthy Workplaces, Healthy Families Act of 2014), as amended by A.B. 304 (2015) and S.B. 3 (2016)), Connecticut (Conn. Gen. Stat. Ann. §§ 31-57r to 31-57w, as amended by Conn. Publ. Act No. 14-128 (Connecticut Paid Sick Leave Law)), District of Columbia (D.C. Code §§ 32-531.01 to 531.16 (Accrued and Sick Safe Leave Act of 2008), as amended by D.C. Law 20-89 (Act 20-259) (Earned Sick and Safe Leave Amendment Act of 2013)), Maryland (Md. Code Ann., Lab. & Empl. §§ 2-106(b), 3-103(k), 3-1301-1311 (Healthy Working Families Act)), Massachusetts (M.G.L. ch. 149, §§ 148C to 148D (Earned Sick Time Law), and 940 Mass. Code Regs. 33.01 to 33.11 (implementing regulations)), Michigan (MCL 408.961 to 408.974, ballot initiative adopted by lawmakers on Sept. 5, 2018 (Earned Sick Time Act), as amended by Public Act 369 of 2018 adopted Dec. 4, 2018 and filed with Secretary of State on Dec. 14, 2018 (Paid Medical Leave Act)), New Jersey (P.L. 1966, c. 113 (C.34:11-56a) (Bill No. A1827), N.J.S.A. 34:11D-1 to N.J.S.A. 34:11D-11 (New Jersey Paid Sick Leave Act), and proposed Earned Sick Leave Rules (N.J.A.C. 12:69)), Oregon (Or. Rev. Stat. §§ 653.601-653.661, 653.256 and 659A.885, each as amended by S.B. 454, OL 2015, Ch. 537, and Paid Sick Leave Rules, Div. 7, Ch. 839, and as further amended by S.B. 299, OL 2017), Rhode Island (R.I. Gen. Laws §§ 28-57-1 to 28-57-15 (2017) – H.B. 5413 Substitute A (Healthy and Safe Families and Workplaces Act), and implementing regulations (260-RICR-30-05-5)), Vermont (21 V.S.A. Ch. 5, Subchapter 4B, and 21 V.S.A. § 384, as

The number of local jurisdictions with PSL laws is even higher, and includes:

- Berkeley, Emeryville, Long Beach, Los Angeles, Oakland, San Diego, San Francisco, and Santa Monica in California
- Chicago and Cook County in Illinois
- Montgomery County and Prince George County in Maryland
- Duluth, Minneapolis and St. Paul in Minnesota
- New York City in New York
- Philadelphia and Pittsburgh (found invalid by court; appeal is pending) in Pennsylvania
- Austin (currently stayed pending appeal) and San Antonio (effective January 1, 2019, but not enforced until August 1, 2019) in Texas²
- SeaTac, Seattle, Spokane and Tacoma in Washington³

Many of these new laws differ from each other in one or more significant ways, leaving employers with the challenge of deciding whether to have multiple PSL policies that cover each applicable jurisdiction, or to have a “one-size-fits-all” policy that covers all of the variations in the different PSL laws.

PSL laws generally have the following components, which may differ from jurisdiction to jurisdiction:

- *Definition of covered employers.* Many laws require PSL only be provided by employers of a certain size. Some laws have different leave requirements depending on the size of the employer.
- *Definition of covered employees.* Many laws require employees work a certain number of hours within the applicable jurisdiction or be employed for a specific amount of time before becoming eligible for PSL. Some laws specifically exclude nonexempt employees, independent contractors, and work-study participants from being eligible for PSL.
- *Accrual and use of leave.* PSL laws will specify how much leave employees can accrue in a fiscal year, when the employees will begin to accrue leave, when they can begin using the accrued leave, and whether employers can provide the full leave entitlement

amended by H. 187 (Earned Sick Time), and implementing Final Rules)), and Washington (Ballot Measure No. 1433, Part II, amending RCW 49.46.200 (Establishing Fair Labor Standards by Requiring Employers to Provide Paid Sick Leave to Employees (Initiative 1433)), and accompanying regulations WAC §§ 296-128-010 and §§ 296-128-600 to 770).

² Texas state lawmakers are considering Senate Bill 15, which states that a municipality or county “may not adopt or enforce an ordinance, order, rule, regulation, or policy requiring any terms of employment that exceed or conflict with federal or state law employment benefits, scheduling practices, or other terms of employment.” If this bill becomes law, local governments in Texas will lose the ability to implement paid sick leave laws and address other matters relating to workers in their communities.

³ New Jersey also has 13 local jurisdictions with PSL laws, but they are all preempted by the New Jersey state law.

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