

Paid Sick Leave Initiatives Pass by Healthy Margins

Last Tuesday, voters in Massachusetts, California, and New Jersey approved ballot measures requiring employers to provide paid sick leave. Massachusetts became the third state to mandate paid sick leave for workers, joining Connecticut and California. New Jersey voters backed similar municipal measures in Trenton and Montclair, while voters in Oakland, California passed a law that will require employers in that city to provide a greater sick leave benefit than the new state law provides. Employers will need to factor the expanding patchwork of state and local leave laws into their overall compliance strategies as paid sick leave continues to pick up steam.

Background

Increasingly, cities and states across the country are considering — and, in many localities, enacting — paid sick leave laws. (See our [September 5, 2014 For Your Information.](#)) When 2014 began, only one state — Connecticut — and six major cities had paid sick leave laws on the books. (See our [October 9, 2014 For Your Information.](#)) Since then, more cities have adopted similar laws, and paid sick leave ordinances have gone into effect in major metropolitan areas such as New York City, Portland (OR), SeaTac (WA), Newark and Jersey City (NJ). In September, California became the second state to adopt a statewide paid sick leave law, which will take effect in 2015. (See our [September 24, 2014 For Your Information.](#))

While these laws share many common characteristics, local variations can complicate employers' leave and attendance policies and their administration. As the patchwork of varying paid sick leave laws continues to evolve, employers face new administrative headaches and ongoing compliance challenges.

New Employer Mandates

On November 4, voters in four jurisdictions — the Commonwealth of Massachusetts; Oakland, California; and Montclair and Trenton, New Jersey — approved mandatory paid sick leave ballot initiatives by wide margins.



Massachusetts

Approximately 60% of voters approved a [ballot measure](#) requiring Massachusetts employers to provide sick leave effective July 1, 2015. Whether the leave entitlement is paid or unpaid depends on the size of the employer.

Other Statewide Mandates

Unlike the Connecticut law, the Massachusetts mandate is not restricted by the employer's size or industry, and also provides a more generous employee benefit than the new California law (40 versus 24 hours of paid leave per year).

Employers with 11 or more employees will have to provide up to 40 hours of paid sick leave annually, while employers with fewer employees will have to provide up to 40 hours of unpaid leave.

Full-time and part-time employees will earn one hour of sick time for every 30 hours worked, beginning on the later of their hire date or July 1, 2015. Employees will be able to use their accrued time on the 90th day after hire. Although employees will not be able to earn or use more than 40 hours of sick leave in a calendar year, they will be able to carry over up to 40 hours of unused time to the next calendar year. There is, however, no requirement that employers cash out an employee's unused sick time upon separation from employment.

Like the leave laws in a number of other jurisdictions, employees will be permitted to use sick time to: (1) care for their own or a family member's (defined as an employee's child, spouse, parent, or parent-in-law) injury or illness; (2) attend the employee's or family member's routine medical appointments; or (3) "address the effects of domestic violence on the employee or the employee's dependent child." When the need for leave is foreseeable, employees are to make a "good faith effort" to provide advance notice to their employers. While the employer may require certification of the need for more than 24 consecutive hours of sick time, it cannot withhold sick time pay or prevent an employee who fails to provide certification from taking leave. The law, which will be enforceable by the state attorney general or by a private right of action, also protects employees against retaliation for exercising or trying to exercise their sick leave rights.

Oakland, California

More than 80% of voters in Oakland approved a [measure](#) that will require employers to provide paid sick leave beginning March 2, 2015. The city ordinance will use the same accrual rate as the statewide law (one hour of paid leave for every 30 hours worked), but will require Oakland employers of all sizes to provide considerably more leave than the 24 hour maximum leave required under state law. Oakland employers with 10 or more employees will have to provide up to 72 hours of paid sick leave per year, while smaller employers will have to provide up to 40 hours of leave per year.

Existing Paid Time Off (PTO) Policies

Employers that already have a PTO policy will not have to provide additional paid sick time if the policy allows an amount of time that may be used for the same purposes and is sufficient to satisfy the requirements for accrued paid sick leave under these new laws.

Oakland's paid sick leave law, modeled after San Francisco's, would allow employees to take paid leave to care for themselves, or for their children, parents, spouses, domestic partners, siblings, grandparents, or grandchildren. Oakland's ordinance, which provides for enforcement by the city or by an employee's lawsuit, prohibits discharging, reducing compensation, or otherwise discriminating against any person who complains to the city, participates in any city proceedings, or files a lawsuit for violation of the ordinance. The law also allows the city, as permitted by law, to consider an employer's record of noncompliance in awarding contracts or granting land use approvals or other permits.

Montclair and Trenton, New Jersey

In New Jersey, Newark and Jersey City already have paid sick leave laws in effect, and Passaic, East Orange, Paterson, and Irvington passed laws in September that will take effect during a several week period in late December 2014 and early January 2015. In March 2015, two more municipalities will join a growing list of New Jersey cities that require private employers to provide paid sick time.

Trenton. An overwhelming majority (approximately 85%) of voters in the state's capital approved the paid sick leave ballot initiative, making Trenton the seventh city in New Jersey to adopt a paid sick leave law. The Trenton law, slated to take effect on March 4, 2015, is largely modeled after the law already in effect in Newark and will require businesses to provide a minimum amount of paid sick time to employees who work in the city for at least 80 hours in a year. (See our [June 13, 2014 For Your Information.](#))

Paid sick time will accrue at the rate of one hour of paid sick leave for every 30 hours worked, capped by employer size. Generally, employers with 10 or more employees will be required to provide employees up to 40 hours of paid sick leave per year, while smaller employers will have to provide up to 24 hours of paid leave. Special rules allow child care workers, home healthcare workers, and food service workers to accrue up to 40 hours of paid sick time,



regardless of employer size. A limited exception from the new mandate applies with respect to certain employees covered by a valid collective bargaining agreement (CBA) when the ordinance takes effect. Trenton's Department of Health and Human Services is charged with implementation and enforcement of the ordinance.

Montclair. By a roughly three-to-one margin, voters in Montclair adopted the [Sick Leave for Private Employees Ordinance](#), which will require private-sector employers to allow employees who work in Montclair for at least 80 hours in a year to accrue paid sick leave at a rate of one hour of leave for each 30 hours worked. The

ordinance will take effect 120 days after the voting results are certified, or on or about March 4, 2015. Like Trenton, Montclair largely followed Newark's model and will generally allow private sector employees who work in the city to earn between three and five paid sick days per year (depending on the employer's size) to care for themselves or family members in the event of an injury or illness, for preventive medical care, or due to the closure of the workplace or child's school due to a public health emergency. The ordinance contains the same special rules for childcare workers, home healthcare workers and food service workers as Trenton's, as well as a carve-out for certain employees covered by a CBA. Montclair's Department of Health and Human Services is charged with implementation and enforcement of the ordinance.

Statewide Legislation

While the New Jersey senate and assembly are considering a sick leave **bill**, it would not preempt the growing patchwork of local laws if passed in its current form.

In Closing

The trend toward requiring private employers to provide paid sick leave has been growing at the local level, and appears to be gaining momentum. While it has not enjoyed universal support at state or federal levels, that may be changing. As lawmakers continue to debate the issue, employers are left to determine whether the time off they already provide will satisfy the latest requirements and how to cope with expected administrative headaches as new laws spring up. In the absence of controlling federal law, employers will have to continue integrating their leave and attendance policies with other federal, state, and local leave laws to ensure compliance at all levels.

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