



*Eye On Washington*

# Legislative Update



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## Legislative Trends: Paid Sick Leave Policies Require Careful Employer Review

*Eye on Washington's new series focuses on the latest HR regulatory trends taking place at the federal, state, and local level. Topics will include tax and HR compliance, Health Care Reform, payroll, benefits, leaves, and more.*

Paid sick leave laws pose a compliance challenge to employers. While the legislative framework for sick leave laws tends to be similar (they generally define eligible employees, an accrual formula, reasons for leave, carry-over requirements, employee and employer notice and documentation requirements), each law differs with respect to the application of these requirements which, in turn, poses unique challenges for multistate (and multi-city) employers. As an example, employers would need to identify specific business needs and evaluate the laws that apply to their employees to determine if they can maintain one paid time off (PTO) policy to govern all employees across various jurisdictions, or if they will need to maintain a sick leave policy separate from their PTO policy. There are pros and cons for each option that need to be carefully considered before making a decision.

With 50 states and 39,000 municipalities, the number of sick leave mandates will continue to grow rapidly. The following jurisdictions and states have already enacted laws requiring employers to provide sick leave to employees:

- [California](#)
- [Connecticut](#)
- [Massachusetts](#)
- [Oregon](#)
- [Vermont](#)
- [District of Columbia](#)
- More than 25 local jurisdictions in California, Maryland, New Jersey, New York, Oregon, Pennsylvania, and Washington

In response, some states, such as Alabama, Idaho, Michigan, North Carolina, and Wisconsin, have passed laws banning local paid sick leave laws. In

those states, the state laws will preempt any laws made at the local level.

At the federal level, President Barack Obama issued Executive Order 13706 (Order) requiring federal contractors to grant at least seven days of paid sick leave to their employees effective January 1, 2017. Under the Order, executive departments and agencies are required to include a clause in each new contract that makes a condition of payment the requirement that all employees, in the performance of the contract or any subcontract, must earn not less than one hour of paid sick leave for every 30 hours worked. This provision must also be included in subcontract agreements. The Order requires the Secretary of Labor to issue regulations (rules) by September 30, 2016. Rules such as these only affect government contractors or subcontractors, but are often viewed as a model for broader legislation.



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## Impact to Employers

Employers should begin thinking about the policy they are going to implement to comply with any new law. If an employer already has a PTO policy (which may or may not include time off for sick reasons), they should think about whether to maintain one all-inclusive PTO policy, or a separate policy strictly for sick time (and if so, how to coordinate with federal FMLA as well as paid and unpaid state leave laws). Additionally, employers need to be aware of any specific record keeping or paystub requirements, or notice/poster requirements, including employee handbooks.

Employees view time-off policies as part of their total compensation. Therefore, before employers make a change, they need to define who they are trying to attract, how they are trying to motivate them, and what type of work environment they are trying to create.

## Paid Sick Time vs. Paid Time Off (PTO)

PTO policies give workers the flexibility to use their leave to fit their needs. For employers with employees in multiple jurisdictions, with varying paid sick leave requirements, having one PTO policy for all types of leave can be an attractive option. Provided it meets the requirements of the most generous paid sick leave law in effect, one PTO policy can govern all employees across various jurisdictions and simplify administration.

However, one potential disadvantage is that some states (like California) require employers to pay out all accrued, but unused, time under their PTO policy, whereas most paid sick leave laws do not require the payout of accrued, but unused, sick

time. This could mean employers would face additional costs paying for unused sick time, if they bundle their sick leave into their PTO.

When determining whether to maintain one PTO policy for all types of leave or to maintain a sick leave policy separately, identify your specific business needs and evaluate the laws that apply to your employees. We also recommend that you make a business case for change (if appropriate), as well as consult with your legal counsel to determine whether any existing sick leave or PTO policy meets the requirements of the emerging laws, or if you will need to take additional steps to be in compliance.

## Reporting and Notice Requirements

Some states, such as California, require written notice to be provided to the employee – on the designated pay date with the employee's payment of wages – that sets forth the amount of paid sick leave available, or paid time off leave that an employer provides in lieu of sick leave. One method to consider is printing the balance of paid sick leave available on the employee's pay statement when there is paid sick leave available for use.

Oregon requires employers to provide written notice to each employee providing the amount of accrued and unused sick time available on at least a quarterly basis.

Employers also need to be aware of any advance notice requirements. Connecticut, for example, requires employers to give notice to each covered employee at the time of hire that they are entitled to paid sick leave, the amount provided, and the terms under which it can be used; that the employer cannot interfere or retaliate against the employee



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for requesting or using sick leave; and that employees can file a complaint with the state Labor Commissioner for any violation. This requirement may be satisfied by displaying a poster containing the information in a conspicuous place, accessible to employees, at the employer's place of business. Some states may supply the required poster or notice, or provide samples for employers to use.

Compliance with the numerous paid sick leave laws will have its challenges, particularly for those employers who operate in both a city and a state with separate paid sick leave laws containing

varying provisions. As an employer, you will need to review the differences of each law applicable to your workforce and ensure you are providing your employees with the greatest protection called for under the more generous law. Employers may wish to monitor various news sources and associations to identify other similar laws; evaluate the recently enacted laws noting any questions; review current company policies; and consult with legal counsel to develop a plan to help ensure other legal and compliance requirements are met.

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## ADP Compliance Resources

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