

# Policy Options for Dealing with the Crazy Quilt of Paid Sick Leave Requirements

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Last year, [we wrote](#) about the compliance challenges faced by multistate employers who are obligated to comply with proliferating, as well as conflicting, state and local paid sick leave laws. It is not getting any easier.

Currently, the following states have enacted paid sick leave laws: Arizona, California, Connecticut, Maryland, Massachusetts, Michigan, New Jersey, Oregon, Rhode Island, Vermont, and Washington, as well as the District of Columbia. Additionally, a number of localities have enacted their own paid sick leave laws, including Chicago, New York City, Philadelphia, and multiple localities in California.

Some local paid sick leave laws have faced legal challenges, resulting in the law being invalidated – for example, in Pittsburgh, Pennsylvania and Austin, Texas. And some locations leave employers obligated to follow both a paid state sick leave law and a local law (for example, Maryland and Montgomery County, Maryland) with conflicting provisions. To make things even more complicated, certain federal contractors are also obligated to provide employees with up to seven days of paid sick leave annually. What's more, in addition to paid sick leave laws, paid family leave laws are also being enacted at a fairly brisk pace. Currently, California, Massachusetts, New Jersey, New York, Rhode Island, and Washington have enacted paid family leave laws. It's little wonder that we have referred to this patchwork of laws as a crazy quilt of legislation.

With paid sick leave requirements, there are basically two competing tensions - limiting benefits or coverage to what is legally required versus ease of administration. For example, the accrual of paid sick leave under Executive Order 13706 is only required for time spent working on covered federal projects, but under state or local requirements, accrual is generally based on overall time worked. Federal contractors and employers should therefore be cognizant that simply defaulting to a PTO policy may have some unintended consequences.

Here are two options for employers grappling with a variety of paid sick leave laws, with the caveat that one size typically does not fit all.

Option 1: Look to your current PTO policy and make revisions that your company is comfortable applying to all employees.

Many employers are choosing to apply the most generous requirements, and possibly have some variations based on local requirements, but not to have a separate policy for each jurisdiction. For example, the policy may permit paid time off for any reason covered by all jurisdictions. This may include absences related to a school closing or where an employee obtains assistance for a family member related to domestic violence, even for employees in locations where such paid time off is not required. The variable piece may be whether the employer may elect to have absence documentation requirements in jurisdictions where it is permitted.

In general, if your PTO policy meets your paid sick leave obligations, you don't have to provide additional paid sick days, even if the employee uses all of his or her provided time for vacation. The compliance difficulty is making sure that the policy satisfies the applicable accrual rate and carryover and notice requirements.

Of course, it is critical for the policy to be applied consistently to avoid retaliation claims. Accordingly, there needs to be good training for supervisors. Of note, Washington State is a particularly difficult jurisdiction with conflicting local paid sick laws in effect in Seattle, Tacoma, and SeaTac (hospitality and transportation industries), which may warrant its own state supplement for multinational employers.

#### Option 2: Consider front-loading.

Many paid sick leave laws provide the option of front-loading the annual paid sick leave at the beginning of each year. Is front-loading the answer?

For employers with a significant work force that is part time or temporary, the concern exists that an employee will utilize his or her front-loaded time at the beginning of the year only to quit the next day. On the other hand, for employers with a work force without much turnover, front-loading may provide the required administrative ease by not having to track accrued sick time for each employee. Although front-loading appears to be a viable option for many jurisdictions, it poses challenges for employers with employees in Washington State.

To be compliant under Washington's law, the employer must front-load the amount of paid sick leave that the employee would have received at the rate of one hour of leave for every 40 hours worked. If the employer does not know that amount up front, calculating the amount of leave with any certainty is difficult. Moreover, under Washington's law, front-loading does not exempt employers from the carryover requirement as it does in other jurisdictions. New Jersey employers similarly cannot avoid carryover provisions by front-loading. Instead, employees are offered the option of carrying over any unused sick time or a payout of the full amount of unused sick time.

Overall, these policies have the potential to be very frustrating. It is easy for employees to abuse these policies by taking time off at the last minute and claiming it is due to a covered reason.

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