



STATE INNOVATION EXCHANGE

## PAID SICK LEAVE POLICY PLAYBOOK SUPPLEMENT

### INTRODUCTION

About [24% of U.S. civilian workers](#), or 33.6 million people, do not have access to paid sick leave, and this has a disproportionate impact on low and moderate wage workers. This is bad enough when working families are not faced with a pandemic, but given the current COVID-19 crisis, access to paid sick days is even more critical. While stay at home orders have had less impact on people who can work from home, [access to telecommuting](#) is much lower among lower wage, Black, or Hispanic workers, and it is [working mothers](#) who are more likely to stay at home when their child is sick (or when schools are closed) and the majority who miss work to care for a sick child do not get paid. Fortunately, states have been taking steps to increase access to paid sick leave, and legislation to provide paid sick days or more general paid time off (PTO) have been enacted in Arizona, California, Connecticut, Maine, Maryland, Massachusetts, Michigan, Nevada, New Jersey, New York, Oregon, Rhode Island, Vermont, and Washington. The coronavirus pandemic brings into sharp relief the critical importance of progress that state legislators have made to pass paid sick leave for American families.

### MESSAGING & POLLING

#### Topline Message

No matter what you look like, where you live, or how much money you have, when you're sick, being able to take the time to get the care you need without going bankrupt is everyone's first priority. But for too long, we've let a powerful few divide us to pad their own profits by making life and health a product for sale. We need laws to ensure that every worker can earn paid sick time off to ensure everyone can afford to stay at home when they are sick and protect the public health without jeopardizing their economic security.

#### Key Messages

- As the crisis disrupts our daily lives, including our ability to work, pay rent and send our kids to school, we need to ensure working people can make ends meet, not hand tax breaks to the richest 1% and finance bailouts for corporations.
- The choices our government makes now to help us weather the outbreak of this virus can also set a better course for the future of our communities.

- Now is the time for us to unite across our differences and make policy choices that help every-day people in pursuit of a safe and thriving nation.
- We need laws to ensure that every worker can earn paid sick time off to ensure everyone can afford to stay at home when they are sick and protect public health without jeopardizing economic security.
- No matter what you look like, where you live, or how much money you have, when you're sick, being able to take the time to get the care you need without going bankrupt is everyone's first priority.
- For too long, we've let a powerful few divide us to pad their own profits by making life and health a product for sale.
- Our own health depends on the health of the person next to us, and the person next to them.
- Ensuring everyone can afford to take the time off to access care is how we take care of ourselves.

## State Polling

Polling conducted between the 2018-2020 legislative sessions in states showed strong support for policies that provide working families with economic security. In particular, the polling found high levels of support for paid sick leave policies.

SiX polling in North Carolina and Pennsylvania—where paid sick bills have yet to pass—has found voters hungry for stronger and more comprehensive paid sick leave policies. Below is a look at the numbers:

- 87% Support: Require all **North Carolina** employers to provide a minimum amount of earned, paid sick days for workers to address their own health and safety needs, as well as those of their families.
- 78% Support (**Pennsylvania**): We should guarantee all workers the right to earned, paid sick days off, so Pennsylvanians don't have to decide between going to the doctor or caring for a sick child and making the mortgage payment or buying groceries for their family.
- 79% Support (**Pennsylvania**): We should guarantee all workers the right to earned, paid sick days off, to keep our workplaces safe from infectious disease, especially those that might pose a threat to public health like grocery stores, restaurants, and schools.

## STATE PAID SICK LEAVE LAWS

When we released our [Paid Sick Days Policy Playbook](#) in 2016, only 5 states required employers to provide paid sick days to their employees; today, 12 states have passed legislation to provide paid sick leave to workers who would otherwise not have access to it, and 2 states have passed more general paid time off (PTO) laws. While

not all of these laws have been fully implemented, they all provide a window into the policy choices and negotiated results of the legislative process. Because these laws are all a product of their individual legislatures and legislative champions, advocates and the political realities in the state, and how far the policy had advanced in and outside of the state, we strongly recommend working with national and local advocates to craft the most progressive legislation possible for your state.



Arizona

[AZ Statutes §§ 23-371 to 23-381](#)  
(Approved by ballot measure [I-24-2016](#))



Nevada (PTO Law)

[NV Statutes § 608.0197](#) (Enacted by [2019 NV Chapter 592/2019 NV SB 312](#))



California

[CA Labor Code §§ 245 to 249](#)  
(Enacted by [2014 CA Chapter 317/AB 1522](#) and amended by [2016 CA Chapter 4/SB 3](#))



New Jersey

[NJ Statutes § 34:11D](#) (Enacted by [2018 NJ Chapter 10/2018 NJ AB 1827](#))  
New Law: [2020 NJ Chapter 17/SB 2304](#)



Connecticut

[CT Statutes §§ 31-57r to 31-57w](#)  
(Enacted by [2011 CT Public Act 52/SB 913](#))



New York

New Law: [2020 NY Chapter 56/SB 7506B](#) (Part J) and [2020 NY Chapter 25/SB 8091](#)



Maine (PTO Law)

[ME Statutes § 637](#) (Enacted by [2019 ME Chapter 156/2019 ME LD 369](#))



Oregon

[OR Statutes §§ 653.601 to 653.661](#)  
(Enacted by [2015 Chapter 537/SB 454](#) and amended by [2017 Chapter 520/SB 299](#))



Maryland

[MD Statutes Labor and Employment Article §§ 3-1301 to 3-1311](#) (Enacted by [2018 MD Chapter 1/2017 MD HB 1](#))



Rhode Island

[RI Statutes Chapter 28-57](#) (Enacted by [2017 RI HB 5413](#))



**Massachusetts**

[MA General Laws Chapter 149 §§ 148C to 148D](#) (Approved by ballot measure [Question 4 \(2014\)](#))



**Vermont**

[VT Statutes Title 21 §§ 481 to 487](#) (Enacted by [2016 VT Act 69/HB 187](#))



**Michigan**

[MI Statutes §§ 408.961 to 408.974](#) (Amended by [2018 MI Act 369/2018 MI SB 1175](#), but potential legal challenges due to [GOP tactics](#))



**Washington**

[WA Code § 49.46.210](#) (Enacted by [2016 WA Initiative 1433](#) and amended by [2019 WA Chapter 236/SB 5233](#))  
New Law: [2020 WA Chapter 6/HB 2739](#)

**POLICY OPTIONS**

A robust paid sick days policy should require that all employers provide a minimum amount of paid sick days for workers to address their own health and safety needs, as well as those of their families. This policy should set a basic labor standard that applies to all workers (just as all employers must comply with minimum wage and health and safety requirements). There are a number of key decisions that expand or limit the scope of a paid sick days law and that might be necessary for legislators to consider. While not comprehensive, the following key policy options are included below: accrual rate (pg. 4), employer size (pg. 5), accrual limits & carryover (pg. 5), usage limits (pg. 7), front-loading (pg. 8), waiting period (pg. 8), cash out unused days (pg. 9), use of paid sick days (pg. 9), public health emergencies (pg. 10), employee-required steps (pg. 14), shift-swapping (pg. 15), enforcement (pg. 15), anti-discrimination & non-retaliation (pg. 16), and other basic requirements & considerations (pg. 16).

Please note that selected legislative language is either highlighted in green for laws enacted prior to 2020 and in blue for laws from 2020 that reflect a COVID-19 reality. And for ease of reference, within each policy option, we have underlined the states that appear to have some of the strongest provisions.

**Accrual Rate** - A fundamental policy feature of general paid sick day laws is that workers earn their paid sick time based on hours worked, which removes any discriminatory effects for part-time workers (who are less likely to receive paid sick time from their employers). Accrual of paid sick time ensures that everyone earns sick time fairly and proportionately and no worker is left out based on hours worked. The rate of accrual needs to be determined when designing a paid sick day law is the rate at which paid sick days are accrued by eligible employees. This ranges from a

low of 1 hour of sick leave for every 52 hours worked in **Nevada** and **Vermont** to 1 hour of sick leave for every 30 hours worked (the most common approach) in **Arizona**, **California**, **Maryland**, **Oregon**, **New Jersey**, and **New York**.

[New Jersey Statutes § 34:11D-2](#)

*2. a. Each employer shall provide earned sick leave to each employee working for the employer in the State. For every 30 hours worked, the employee shall accrue one hour of earned sick leave . . .*

**Employer Size** – All workers, regardless of business size, have a documented need for paid sick days, so it is best practice to cover businesses regardless of size and ensure that all workers receive some level of paid sick days. **California**, **New Jersey**, **Vermont**, and **Washington** do not distinguish sick leave rights based on business size, which is a best practice. If a concession needs to be made for small business, paid sick days can still be provided to *all* workers but the smallest businesses can be required to provide fewer hours of paid sick time. For example, **Arizona** provides less hours of paid sick time to workers in businesses with fewer than 15 employees. Another option, although less preferred than differentiating the amount of *paid* sick time based on business size, is providing employees in the smallest businesses with unpaid, job-protected sick time, as in **Massachusetts** (fewer than 11 workers), **Maryland** (fewer than 14 workers), **Oregon** (fewer than 10 workers—or 6 workers for businesses located in Portland), **Rhode Island** (fewer than 18 workers), and **New York** (fewer than 5 employees, although the time must be paid if a business with fewer than 5 employees had a net income of greater than one million dollars in the previous tax year). It is recommended to avoid exemptions based on business size, which leaves a large number of workers who do not receive paid sick leave vulnerable; two states only cover businesses with 50 or more employees: **Connecticut** (the country’s first statewide paid sick time law) and **Michigan** (although there remains legal uncertainty on how the Legislature adopted a more comprehensive paid sick time policy slated for a November 2018 ballot and then subsequently weakened it, including the employer size threshold). **Maine’s** paid time off law exempts those in businesses with 10 or fewer employees, while **Nevada** does not cover those in businesses with 49 or fewer employees.

[Washington Code § 49.46.010](#)

*(4) "Employer" includes any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee;*

**Accrual Limits and Carryover** - While many of the state paid sick laws require employers to allow up to 40 hours of accrued and carried over sick time in a year, some states have either an annual cap or a total cap on the amount of accrued sick leave.

- **Annual Accrual Limit** - **Washington** does not specify a fixed cap on the annual accrued hours (e.g. this could equal 1 hour of accrued leave for every 40-hour

work week) and **New York's** new paid sick leave law will provide up to 56 hours of paid sick leave per year (in organizations with 100 or more employees). **New York** also enacted legislation in response to the COVID-19 pandemic to provide up to 14 days of paid sick leave, depending on the type and size of the organization, "until the termination of any mandatory or precautionary order of quarantine or isolation."

[2020 New York Chapter 56/SB 7506B](#)

§ 196-b. Sick leave requirements. 1. Every employer shall be required to provide its employees with sick leave as follows:

[. . .]

b. For employers with between five and ninety-nine employees in any calendar year, each employee shall be provided with up to forty hours of paid sick leave in each calendar year; and

c. For employers with one hundred or more employees in any calendar year, each employee shall be provided with up to fifty-six hours of paid sick leave each calendar year.

[2020 New York Chapter 25/SB 8091](#)

1.(a) . . . An employer with ten or fewer employees as of January 1, 2020, and that has a net income of greater than one million dollars in the previous tax year, shall provide each employee who is subject to a precautionary or mandatory order of quarantine or isolation issued by the state of New York, the department of health, local board of health, or any governmental entity duly authorized to issue such order due to COVID-19, at least five days of paid sick leave and unpaid leave until the termination of any mandatory or precautionary order of quarantine or isolation. After such five days of paid sick leave, an employee shall be eligible for paid family leave benefits and benefits due pursuant to disability pursuant to this act.

(b) For employers with between eleven and ninety-nine employees as of January 1, 2020, each employee . . . shall be provided with at least five days of paid sick leave . . .

(c) For employers with one hundred or more employees as of January 1, 2020, each employee . . . shall be provided with at least fourteen days of paid sick leave . . .

(d) For public employers, each officer or employee . . . shall be provided with at least fourteen days of paid sick leave . . .

- **Total Accrual Limit** - **Maryland** limits accrual to 40 hours in a year but 64 hours at any given time (including carry over of unused sick time) and **Oregon** allows employers to limit annual accrual and carryover to 40 hours but total sick time but up to 80 hours of accrued leave at any given time.

[Oregon Statutes § 653.606](#)

*(3) An employee shall begin to earn and accrue sick time on the first day of employment with an employer. The employee may carry over up to 40 hours of unused sick time from one year to a subsequent year. However, an employer:*

*(a) May adopt a policy that limits an employee to accruing no more than 80 total hours of sick time; . . .*

- **Carryover Limit** – Many states, for example, **Arizona**, **New York**, **Rhode Island**, and **Vermont**, specify that employers shall not limit the amount of carried over sick leave. **California**, for example, requires accrued leave carryover of at least 48 hours (Note: these requirements in California do not apply if leave is front-loaded). **Arizona**, **Rhode Island**, and **Vermont** specify that an employer to can compensate an employee for unused sick leave at the end of the year instead of allowing the leave to carry over into the next year and provide the worker with an amount of paid sick time that meets or exceeds the law’s requirements that is available for the worker’s immediate use at the beginning of the subsequent year..

#### [Vermont Statutes Title 21 § 483](#)

*(d)(1) Except as otherwise provided in subsection 484(a) of this subchapter, earned sick time that remains unused at the end of an annual period shall be carried over to the next annual period and the employee shall continue to accrue earned sick time as provided pursuant to section 482 of this subchapter. . .*

#### [Arizona Statutes § 23-372](#)

*D. All employees shall accrue earned paid sick time as follows:*

*[. . .]*

*4. Earned paid sick time shall be carried over to the following year, subject to the limitations on usage in subsections A and B. Alternatively, in lieu of carryover of unused earned paid sick time from one year to the next, an employer may pay an employee for unused earned paid sick time at the end of a year and provide the employee with an amount of earned paid sick time that meets or exceeds the requirements of this article that is available for the employee's immediate use at the beginning of the subsequent year.*

**Usage Limits** - Most states require the minimum amount of sick leave that a worker can use to correspond to the minimum accrued hours, but this is not always the case. For example, while **California** requires at least 48 hours of total accrued sick leave, workers can be limited to using 24 hours of sick leave in a given year. **Arizona**, **Connecticut**, **Maine**, **Massachusetts**, **Michigan**, **Nevada**, **New Jersey**, **Oregon**, **Rhode Island**, and **Vermont** all allow employers to limit sick leave usage to 40 hours in a given year. **Maryland** allows an employee to use at least 64 hours of earned sick and safe leave in a year; **New York** allows certain employees to use up to 56 hours of paid sick leave; and **Washington** does not cap the amount of sick leave an employee can use in a given year.

[Maryland Statutes Labor and Employment Article § 3-1304](#)

(c) *An employer may not be required to allow an employee to:*

*[. . .]*

(2) *use more than 64 hours of earned sick and safe leave in a year;*

**Front-Loading** - Some states specify that employers may provide total annual sick leave hours at the start of the benefit year instead of having the sick leave accrue over time. For example, states like **California** and **Maryland** waive any carryover requirements if leave is provided in full at the beginning of a benefit year; **Arizona**, **Rhode Island**, and **Vermont** also specify that an employer can, instead of carry over, compensate an employee for unused sick leave at the end of the year and provide the worker with an amount of paid sick time that meets or exceeds the law's requirements that is available for the worker's immediate use at the beginning of the subsequent year; **Oregon** includes similar provisions, but requires the employer and employee to mutually agree.

[Oregon Statutes § 653.606](#)

(4)(a) *An employer is not required to carry over unused sick time if, by mutual consent, the employer and an employee agree that:*

*(A) If the employer has 10 or more employees working anywhere in this state, the employee will be paid for all unused paid sick time at the end of the year in which the sick time is accrued and the employer will credit the employee with an amount of paid sick time that meets the requirements of this section on the first day of the immediately subsequent year; or*

*(B) If the employer has fewer than 10 employees working anywhere in this state, the employer will credit the employee with an amount of sick time that meets the requirements of this section on the first day of the immediately subsequent year.*

**Waiting Period** - **Arizona**, **California**, **Massachusetts**, **Michigan**, **Nevada**, **Oregon**, **Rhode Island**, and **Washington** allow a waiting period of 89 or 90 days before a new employee is entitled to use accrued paid sick days, and **Connecticut** has a waiting period of 680 hours, which translates to 85 eight-hour workdays. Some states allow employers to impose longer waiting periods, even though shorter waiting periods benefit workers with less job stability, who might face illnesses or emergencies even after starting a new job. For example, **Maryland** allows 106 days; **Maine** and **New Jersey** allow 120 days; and **Vermont** appears to be an outlier by allowing employers to force a new employee to wait up to a year before using accrued sick leave.

[Connecticut Statutes § 31-57s](#)

(b) *A service worker shall be entitled to the use of accrued paid sick leave upon the completion of the service worker's six-hundred-eightieth hour of employment from January 1, 2012, if the service worker was hired prior to January 1, 2012, or if hired after January 1, 2012, upon the completion of the service worker's six-hundred-*

*eightieth hour of employment from the date of hire, unless the employer agrees to an earlier date. A service worker shall not be entitled to the use of accrued paid sick leave if such service worker did not work an average of ten or more hours per week for the employer in the most recent complete quarter.*

**Cash Out of Unused Days** – Paid sick time laws (for example, see **Rhode Island's** language below) specify that employers are not required to compensate employees for unused paid sick days upon separation from employment.

[Rhode Island Statutes § 28-57-5](#)

*(f) Nothing in this chapter shall be construed as requiring financial or other reimbursement to an employee from an employer upon the employee's termination, resignation, retirement, or other separation from employment for accrued paid sick and safe leave time that has not been used.*

**Use of Paid Sick Days**

- **Personal Health** – At the most basic level, sick days should be allowed for mental or physical illness, injury, or health conditions, as well as preventative care, as is specified in **Arizona, Connecticut, Maryland, Massachusetts, Michigan, New Jersey, New York, Oregon, Rhode Island,** and **Washington.**

[2020 New York Chapter 56/SB 7506B](#)

4. a. On and after January first, two thousand twenty-one and upon the oral or written request of an employee, an employer shall provide accrued sick leave for the following purposes:

(i) for a mental or physical illness, injury, or health condition of such employee or such employee's family member, regardless of whether such illness, injury, or health condition has been diagnosed or requires medical care at the time that such employee requests such leave:

(ii) for the diagnosis, care, or treatment of a mental or physical illness, injury or health condition of, or need for medical diagnosis of, or preventive care for, such employee or such employee's family member;

- **Family Health** – Similarly, sick leave should be allowed to care for a family member's mental or physical illness and preventative care, which tracks with the personal health language above in states like **Arizona, Connecticut, Maryland, Massachusetts, Michigan, New Jersey, New York, Oregon, Rhode Island,** and **Washington.** **Maryland** includes maternity or paternity leave and **Oregon** makes any activity listed in its family leave laws, which includes to care for an infant or newly adopted child or foster child, and to deal with the death of a family member, as an allowable use of earned sick leave.

Most states define families to include a list of immediate relatives, including parents, children, spouses, grandparents, and grandchildren. Most states cover grandparents and siblings (**Arizona, California, Maryland, Michigan, New Jersey,**

New York, Oregon, Rhode Island, Vermont, and Washington), as well as domestic partners (Arizona, California, New Jersey, New York, Oregon, Rhode Island, and Washington). The best standard is a definition of family that in addition to these relationships, includes those related “by blood or affinity” (for example, see Arizona) or “any other individual related by blood to the employee or whose close association with the employee is the equivalent of a family relationship” (for example, see New Jersey). Connecticut law is an outlier by only applying to just children or spouses.

[Arizona Statutes § 23-371](#)

H. "Family member" means:

[. . .]

5. Any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

[New Jersey Statutes § 34:11D-1](#)

*"Family member" means a child, grandchild, sibling, spouse, domestic partner, civil union partner, parent, or grandparent of an employee, or a spouse, domestic partner, or civil union partner of a parent or grandparent of the employee, or a sibling of a spouse, domestic partner, or civil union partner of the employee, or any other individual related by blood to the employee or whose close association with the employee is the equivalent of a family relationship.*

- **Public Health (and Safety) Emergencies** – Now more than ever, it is clear that paid sick leave should be allowed to help deal with a public health emergency, such as when public health officials close a worker’s place of work or child’s school/place of care due to a public health emergency and/or determine that a family member would be a public health risk to the community because of exposure to a communicable disease, in Arizona, Michigan, New Jersey, Oregon, Rhode Island, Vermont, and Washington (as well as public safety reasons in Vermont). Paid sick time laws that include public health emergencies typically do not require an official state of public health emergency or disaster for workers to draw on these provisions, which is valuable since these provisions might apply for isolated public health emergencies in one’s community. **New York** passed a separate emergency sick leave law that provides paid sick leave “until the termination of any mandatory or precautionary order of quarantine or isolation” unless the employee chose to travel to a country that the CDC had issued a travel health notice.

[Michigan Statutes § 408.964](#)

(1) An employer shall allow an eligible employee to use paid medical leave accrued under section 3 for any of the following:

[. . .]

*(d) For closure of the eligible employee's primary workplace by order of a public official due to a public health emergency; for an eligible employee's need to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency; or if it has been determined by the health authorities having jurisdiction or by a health care provider that the eligible employee's or eligible employee's family member's presence in the community would jeopardize the health of others because of the eligible employee's or family member's exposure to a communicable disease, whether or not the eligible employee or family member has actually contracted the communicable disease.*

#### [2020 New Jersey Chapter 17/SB 2304](#)

1. Section 3 of P.L.2018, c.10 (C.34:11D-3) is amended to read as follows:

3. a. An employer shall permit an employee to use the earned sick leave accrued pursuant to this act for any of the following:

[. . .]

(4) time during which the employee is not able to work because of:

(a) a closure of the employee's workplace, or the school or place of care of a child of the employee by order of a public official or because of a state of emergency declared by the Governor, due to an epidemic or other public health emergency [, or because of];

(b) the declaration of a state of emergency by the Governor, or the issuance by a health care provider or the Commissioner of Health or other public health authority of a determination that the presence in the community of the employee, or a member of the employee's family in need of care by the employee, would jeopardize the health of others; [or]

## Public Health Emergency Paid Sick Time

### Overview of Federal Law

The federal [Families First Coronavirus Response Act](#) (FFCRA) took effect on April 1, 2020 and will sunset on December 31, 2020. Until then, the law provides 80 hours of emergency paid sick time related to COVID-19, including a worker's or family member's quarantine/self-isolation, a worker's need to seek a COVID-19 medical diagnosis, or when a child's school or place of care is closed/unavailable.

The law applies to public agencies of all sizes, but it only covers private entities that employ **fewer than 500 employees**. In addition, employees of a health care provider (very broadly defined by regulations) or emergency responder can be excluded by their employer. Businesses with fewer than 50 employees can also exempt themselves from providing paid sick time for school and childcare closures/unavailability due to coronavirus, when such requirements would jeopardize the business' viability (they have to provide emergency paid sick time for other purposes under the law).

**A Better Balance** has a [summary](#) of the federal law's emergency paid sick time provisions, as well as its extended emergency family leave provisions related to school/childcare closures or the unavailability of childcare.

(c) during a state of emergency declared by the Governor, or upon the recommendation, direction, or order of a healthcare provider or the Commissioner of Health or other authorized public official, the employee undergoes isolation or quarantine, or cares for a family member in quarantine, as a result of suspected exposure to a communicable disease and a finding by the provider or authority that the presence in the community of the employee or family member would jeopardize the health of others:

#### [2020 New York Chapter 25/SB 8091](#)

2. For purposes of this act, "mandatory or precautionary order of quarantine or isolation" shall mean a mandatory or precautionary order of quarantine or isolation issued by the state of New York, the department of health, local board of health, or any government entity duly authorized to issue such order due to COVID-19.

[. . .]

4. An employee shall not receive paid sick leave benefits or any other paid benefits provided by any provisions of this section if the employee is subject to a mandatory or precautionary order of quarantine because the employee has returned to the United States after traveling to a country for which the Centers for Disease Control and Prevention has a level two or three travel health notice and the travel to that country was not taken as part of the employee's employment or at the direction of the employee's employer, and if the employee was provided notice of the travel health notice and the limitations of this subdivision prior to such travel. Such employee shall be eligible to use accrued leave provided by the employer, or to the extent that such employee does not have accrued leave or sufficient accrued leave, unpaid sick leave shall be provided for the duration of the mandatory or precautionary quarantine or isolation.

#### **Overview of State Laws**

In light of the COVID-19 pandemic, many state officials are considering additional and more expansive public health emergency paid sick time provisions—both permanently (e.g. **New Jersey**) or specific to the COVID-19 pandemic (e.g. **New York**). Many officials are also considering emergency measures that fill gaps in FFCRA.

Given that many workers affected by COVID-19 face 14-day quarantines, these measures can require employers to provide **additional time** when a public health state of emergency or disaster has been declared. These emergency measures can provide **all of the time at the beginning** of the emergency (rather than requiring accrual), allow it for **immediate or even retroactive use** to the start of the emergency (rather than a waiting period), **waive documentation requirements** (given public health advice to avoid overburdened medical facilities unless a true emergency), **ease notice requirements**, expand purposes to **include shelter-in-place and stay-at-home orders and business closures** due to the public health emergency, and have **inclusive family definitions** (given that workers sheltering-in-place may be more likely to care for non-related loved ones).

**A Better Balance** has [key policy points](#) to consider for public health emergency related leave laws, as well as different model laws (see **Additional Resources** for more).

[Vermont Statutes Title 21 § 483](#)

*(a) An employee may use earned sick time accrued pursuant to section 482 of this subchapter for any of the following reasons:*

*[. . .]*

*(5) The employee cares for a parent, grandparent, spouse, child, brother, sister, parent-in-law, grandchild, or foster child, because the school or business where that individual is normally located during the employee's workday is closed for public health or safety reasons.*

- **Child-related School Activities** – A less widely allowed use of sick time includes attending a school meeting, whether generally or specifically related to a child's health or disability, as is the case in **New Jersey**.

[New Jersey Statutes § 34:11D-3](#)

*3. a. An employer shall permit an employee to use the earned sick leave accrued pursuant to this act for any of the following:*

*[. . .]*

*(5) time needed by the employee in connection with a child of the employee to attend a school-related conference, meeting, function or other event requested or required by a school administrator, teacher, or other professional staff member responsible for the child's education, or to attend a meeting regarding care provided to the child in connection with the child's health conditions or disability.*

- **Domestic or Sexual Violence** – Sick leave policies may also cover employees who seek shelter/relocation, legal assistance/participate in legal proceeding, counseling, and support services in the event that they or their family members are the victims of domestic, sexual violence, abuse or stalking (see: **Arizona, California, Connecticut, Maryland, Massachusetts, Michigan, New Jersey, New York, Oregon, Rhode Island, and Washington**). **New York** also includes human trafficking. (Note: before putting domestic or sexual violence provisions in legislation, lawmakers should consult with state and local sexual assault and domestic violence advocates.)
- **Coworkers** – **Oregon** allows employees to donate their sick time to a coworker/other employee, if that policy is allowed by the employer. And as a temporary benefit, **Washington** will allow public employees to provide and receive shared leave due to COVID-19.

[Oregon Statutes § 653.616](#)

*An employee may use sick time earned under ORS 653.606:*

*[. . .]*

*(5) To donate accrued sick time to another employee if the other employee uses the donated sick time for a purpose specified in this section and the employer has a*

policy that allows an employee to donate sick time to a coworker for a purpose specified in this section.

[2020 Washington Chapter 6/ HB 2739](#)

Sec. 2. RCW 41.04.665 and 2019 c 64 s 17 are each amended to read as follows:

(1) An agency head may permit an employee to receive leave under this section if:

[. . .]

*(f) ((The employee has diligently pursued and been found to be ineligible for benefits under chapter 51.32 RCW if he or she qualifies under (a)(i) of this subsection)) (i) Until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring a state of emergency in the state of Washington, or any amendment thereto, whichever is later, an agency head may permit an employee to receive shared leave under this section if the employee, or a relative or household member, is isolated or quarantined as recommended, requested, or ordered by a public health official or health care provider as a result of suspected or confirmed infection with or exposure to the 2019 novel coronavirus (COVID-19). An agency head may permit use of shared leave under this subsection (1)(f) without considering the requirements of (a) through (e) of this subsection.*

**Employee-Required Steps** – This includes whether or not an employee needs to provide notice before taking foreseeable sick time and reasonable limits on requirements to show medical documentation for use of sick time.

- **Notice Requirements** – When leave is foreseeable, **Connecticut**, **Maryland**, and **New Jersey** allow an employer to require advance notice of not more than seven days prior to the leave date. **Arizona** and **Rhode Island**, for example, allow an employer to require an employee provide notice and to make a “reasonable effort” to schedule the sick leave “in a manner that does not unduly disrupt the operations of the employer” when the use of paid sick time is foreseeable by the employee.
- **Verification** – Paid sick time laws typically do not require workers to provide documentation until they have been absent for at least three consecutive days, and many laws specify that the documentation does not have to specify the illness or health condition, but rather has to certify that the worker used their sick time for a purpose covered by the law. **Maryland** allows employers to require an employee provide verification when leave was used for more than two consecutive scheduled shifts—more restrictive than most paid sick time laws—and can deny subsequent requests for the same reason if the employee fails to provide this verification (Note: obtaining a verification can be burdensome for patients told to stay home and is particularly difficult when health care providers are overwhelmed, such as during a pandemic). While both **Arizona** and **Rhode Island** include provisions allowing required documentation for paid sick time of three or more consecutive work days, the laws specify what documentation could

be, for example documentation signed by a health care professional and in cases where the employee or the employee's family member is a survivor of domestic violence, sexual violence, abuse, or stalking, the employee can provide their own written statement affirming that that was the reason for the leave. And **Rhode Island's** law specifies that "an employer's requirements for verification may not result in an unreasonable burden or expense on the employee and may not exceed privacy or verification requirements otherwise established by law."

**Shift-Swapping** – Some paid sick days laws permit a worker to choose to work additional hours or shifts within a specified period of time instead of using paid sick days under the law. (Note: advocates like Restaurant Opportunities Centers United, or ROC, have opposed this provision on the grounds that nothing prohibits this practice; putting such language in the bill treats shift workers differently and may lead to employer coercion against use of sick time). For example, laws in **Maryland** and **Massachusetts** specifically allow for either working additional hours or trading shifts in lieu of using earned paid sick leave. If a shift-swapping provision has to be included, it is important that it be mutually agreeable to both the worker and employer and can't be unilaterally required by the employer (to minimize coercion). Regardless of whether or not a shift-swapping provision is included, all paid sick days laws should make it clear that a worker can never be required to search for or find a replacement worker as a condition of taking their paid sick days.

**Enforcement** – There are several different ways to enforce a paid sick days law. The threshold question with regard to enforcement is whether enforcement should be through an administrative agency, through the courts, or through both avenues of relief. An additional question is whether the law enforcement officer of the state should be permitted to file a claim to enforce the law. In most cases, if possible, both administrative and court enforcement should be available, because agency enforcement is easier for workers to access, but court relief should be available if the agency is unwilling or unable to respond quickly or does not resolve a case properly. One major issue to be addressed is whether an aggrieved employee must first exhaust the administrative agency process before he or she can seek relief in court. For example, **Maryland** law provides the Commissioner of Labor and Industry the authority to investigate potential violations and resolve issues through mediation, but if mediation does not resolve the issue, the Commissioner can order restitution, damages, and a civil penalty. And if the employer does not comply with the Commissioner's order, the Commissioner and the aggrieved employee and can initiate litigation.

#### [Maryland Statutes Labor and Employment Article § 3-1308](#)

*(c)(1) Within 30 days after the Commissioner issues an order, an employer shall comply with the order.*

*(2) If an employer does not comply with an order within the time period stated in paragraph (1) of this subsection:*

*(i) the Commissioner may:*

*1. with the written consent of the employee, ask the Attorney General to bring*

an action on behalf of the employee in the county where the employer is located; or

2. bring an action to enforce the order for the civil penalty in the county where the employer is located; and
  - (ii) within 3 years after the date of the order, an employee may bring a civil action to enforce the order in the county where the employer is located.
- (3) If an employee prevails in an action brought under paragraph (2)(ii) of this subsection to enforce an order, the court may award:
  - (i) three times the value of the employee's unpaid earned sick and safe leave;
  - (ii) punitive damages in an amount to be determined by the court;
  - (iii) reasonable counsel fees and other costs;
  - (iv) injunctive relief, if appropriate; and
  - (v) any other relief that the court deems appropriate.

**Anti-discrimination and Non-retaliation** – It is critical that state laws protect employees from losing their jobs or facing workplace discipline when they use paid sick days. Most states have anti-retaliation language, but some are stronger than others. For example, **New Jersey** includes a rebuttable presumption that adverse action taken within 90 days of an employee complaint is an unlawful retaliation, but in **California** this is only 30 days.

#### [New Jersey Statutes § 34:11D-4](#)

4. a. No employer shall take retaliatory personnel action or discriminate against an employee because the employee requests or uses earned sick leave either in accordance with this act or the employer's own earned sick leave policy, as the case may be, or files a complaint with the commissioner alleging the employer's violation of any provision of this act, or informs any other person of their rights under this act. No employer shall count earned sick leave taken under this act as an absence that may result in the employee being subject to discipline, discharge, demotion, suspension, a loss or reduction of pay, or any other adverse action.

b. There shall be a rebuttable presumption of an unlawful retaliatory personnel action under this section whenever an employer takes adverse action against an employee within 90 days of when that employee: files a complaint with the department or a court alleging a violation of any provision of this section; informs any person about an employer's alleged violation of this section; cooperates with the department or other persons in the investigation or prosecution of any alleged violation of this section; opposes any policy, practice, or act that is unlawful under this section; or informs any person of his or her rights under this section.

c. Protections of this section shall apply to any person who mistakenly but in good faith alleges violations of this act.

#### **Other Basic Requirements and Considerations**

- **Public Education and Outreach** – Knowledge about a new law is often the most important factor in how effective it is. It is important that the law contains sufficient funding for outreach and education, including by community groups. For example, **Massachusetts** includes a section just on earned sick time outreach

focused on getting multilingual materials to medical patients, parents and other caretakers, and domestic abuse survivors.

#### [Massachusetts General Laws Chapter 149 § 148D](#)

*The executive office of health and human services, in consultation with the attorney general, shall develop and implement a multilingual outreach program to inform employees, parents, and persons who are under the care of a health care provider about the availability of earned sick time under this section. This program shall include the distribution of notices and other written materials in English and in other languages to all child care and elder care providers, domestic violence shelters, schools, hospitals, community health centers, and other health care providers.*

- **Employee Notification** – Employers must notify employees of their right to paid sick days and the terms under which they may be accrued and used. For example, **California** requires employers to “display a poster in a conspicuous place” describing the state’s sick day law (though no language access provision is included). Also, **New York** will require employers within 3 business days of an employee request to provide a summary of paid sick leave use and accrual to the employee. It is best practice to require that employees receive *written* notice of their rights, either when the law becomes effective or at the commencement of employment; especially in light of the COVID-19 pandemic, it is also advisable to state that in cases where the employer does not maintain a physical workplace, or an employee teleworks or performs work through a web-based or app-based platform, notification shall be sent via electronic communication or a conspicuous posting in the web-based or app-based platform. Most paid sick time laws also specify that posters and notices be provided in multiple languages, often depending on demographics in the jurisdiction or based on a percentage of workers who speak a particular language in the workforce.
- **Preemption** – The state law should not supersede any local law that provides greater rights to paid sick days than rights established by the state. The state should provide a floor, not a ceiling. Even if the state law seems strong, legislators should uphold the principle of local control and avoid shoring up the conservative agenda of those who use preemption to hamstring grassroots movements. For example, **Maine** and **Maryland** preempt local subdivisions from enacting an ordinance or rule regulating earned paid leave (although Maryland’s law grandfathered in Montgomery County’s pre-existing law). Alternatively, **New York’s** new law provides a floor preemption for large cities (i.e. New York City) that would specifically not preempt any municipal law that provides greater sick leave rights (for more information see our [state preemption policy primer](#)).

#### [2020 NY Chapter 56/SB 7506B](#)

12. Nothing in this section shall be construed to prevent a city with a population of one million or more from enacting and enforcing local laws or ordinances which meet or exceed the standard or requirements for minimum hour and use set forth in this section, as determined by the commissioner. Any paid sick leave benefits provided by

*a sick leave program enforced by a municipal corporation in effect as of the effective date of this section shall not be diminished or limited as a result of the enactment of this section.*

- **Collective Bargaining Agreements** – This is a potentially complicated issue that should be discussed early and in detail with labor coalition partners, including construction unions that may have specific needs regarding how they receive benefits. State laws should not prevent a collective bargaining agreement (CBA) from providing more extensive sick time benefits. **Connecticut, Massachusetts, Rhode Island, Vermont, and Washington** cover unionized workers and do not contain waivers or exemptions for workers covered by a valid CBA. The laws in some jurisdictions, however, have specific rules about how the law will affect workers covered by CBAs. An “opt-out” provision is extremely preferable to any exclusions, since exclusions are unusual in state and local paid sick time laws and harm unionized workers who should be covered by basic labor standards and should at the least be able to bargain over coverage through a waiver provision. An opt-out provision allows a union to waive some or all of the requirements of the paid sick days law through explicit, clear language in a CBA to continue pursuing more expansive protections via collective bargaining; **California** further requires that the CBA include certain paid time off and wage and hour conditions in order to opt out.
- **Reinstatement Timeframe** – While **Vermont’s** law specifies that a rehired employee is not entitled to retain any accrued sick time from before the employee was discharged, a number of other states do provide for reinstatement of leave. For example, **Rhode Island** requires reinstatement of unused paid sick leave hours if an employee is rehired within 135 days; **New Jersey** and **Oregon** require reinstatement of paid sick leave within about half of a year (6 months and 180 days respectively); **Maryland** requires reinstatement if an employee is rehired within 37 weeks; and **Washington’s** reinstatement window is a full year.

[Washington Code § 49.46.210](#)

*(k) . . . When there is a separation from employment and the employee is rehired within twelve months of separation by the same employer, whether at the same or a different business location of the employer, previously accrued unused paid sick leave shall be reinstated and the previous period of employment shall be counted for purposes of determining the employee’s eligibility to use paid sick leave under subsection (1)(d) of this section.*

- **Change of Ownership** – Some state laws provide leave protection when a company changes ownership. For example, **Maryland** and **New Jersey** require a new employer to retain all unused paid sick leave of employees who remain with the company.

## ADDITIONAL RESOURCES

### [A Better Balance](#)

- [Comparison chart](#) of all of the paid sick time laws on the books
- A map of all of the [local and state laws in effect](#)
- Know Your Rights: [State and Local Paid Sick Time Laws](#)
- And [a list of the paid sick time laws](#) that explicitly cover time off due to closure of a place of business or school due to a public health emergency
- [Key policy elements](#) to include in an emergency paid sick time bill, and three model bills for emergency paid sick time:
  - [Permanent paid sick time with additional public health emergency leave](#)
  - [Public health emergency leave](#)
  - [Public health emergency leave that fills the private-sector gaps in the federal Families First Coronavirus Response Act \(FFCRA\)](#); more on the FFCRA [here](#).
- COVID-19 resources [here](#), and general paid sick time fact sheets [here](#).

### [National Partnership for Women & Families](#)

- [Comparison chart](#) of paid sick day laws for states, DC, and municipalities
- Fact Sheet: [Paid Sick Days Improve Public Health](#)
- Fact Sheet: [Paid Sick Days Are Good for Business](#)
- Fact Sheet: [Paid Sick Days Lead to Cost Savings for All](#)
- Know Your Rights: [Emergency Paid Sick Days and Paid Leave for Child Care and Coronavirus](#)
- Fact Sheet: [New Emergency Legislation Provides Paid Sick Days and Paid Leave for Child Care for Millions](#)