

2020 W4 and Other Legislative Changes

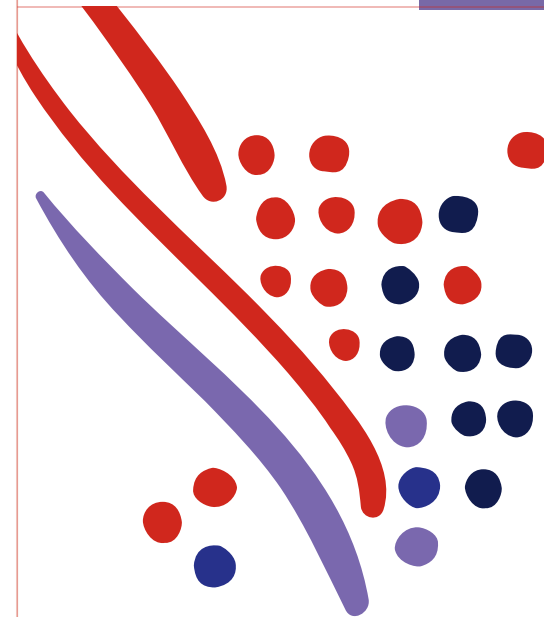
New York Metropolitan Chapter of
the American Payroll Association

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for People™



Disclaimer

This presentation is not:

Legal advice

The final word on today's topics

A political opinion

Before Taking Any Actions

Before taking any actions on the information contained in this presentation, employers should review this material with internal and/or external counsel.

Sushma Tripathi

VP Workforce Strategy and Compliance, ADP, LLC



- Prior to current role, served as Vice President Total Absence Management, ADP; Sr. Vice President of Product Management, SHPS; Director, Product Development & Management, CIGNA
- 20+ years of experience in leadership, operations and product management in workforce management, payroll, compensation and benefits strategy, compliance, and administration in the fast-paced, high-growth, outsourcing and insurance markets
- Recognized authority and a noted speaker at industry conferences and events, spokesperson on critical HR topics to national media, a frequent contributor to ADP blogs and widely published in outlets including SHRM, Employee Benefits News, HR Daily Advisor, HRO Today, Forbes, CFO Magazine, and CPA Practice Advisor.
- MBA in Finance and Organizational Behavior from Drexel University, Philadelphia, PA

Agenda

- ① Key trends
- ② IRS Form W-4
- ③ FLSA Minimum Salary Threshold
- ④ Paid Sick Leave and Paid Family Leave
- ⑤ Future outlook



Regulatory Chaos

- Ambiguity of Federal Employment Regulations

What remains in force?

What will be enforced? By whom?

- Vigorous enforcement of employment regulations within some states
- “Social” oversight of employment practices through Social Media
- Confused Employees



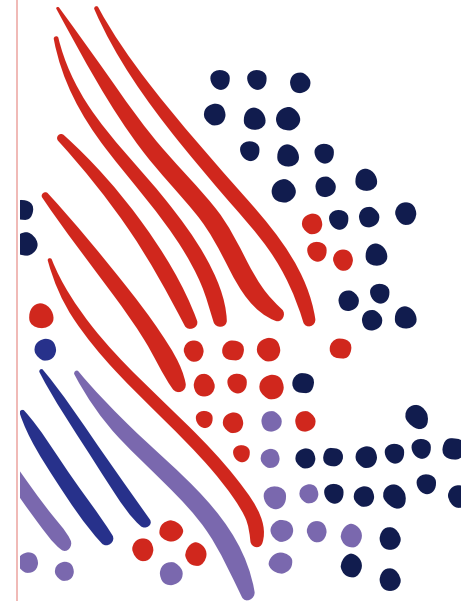
Topics

- FMLA
- Paid Family Leave
- State Leave Laws
- ADA
- ACA
- Paid Sick Leave
- All Purpose Leave
- FLSA
- Minimum Wage
- Tipped and Non-Tipped Employees

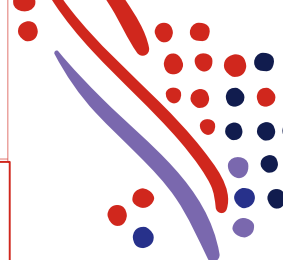
- White Collar Exemption Criteria
- Overtime
- Meal & Rest Breaks
- Regular Rate of Pay
- Permissible Deductions
- Expense Reimbursement
- Rounding
- Special Payment Methods
- Common Forms of Payment

- Pay Frequency
- 26 vs. 27 Pays
- Wage Statement Requirements
- Form W-4
- Scheduling Laws
- Final Paychecks
- Scope of DOL Audits
- Future Outlook
- What Should Employers Do Now?
- Additional Resources

IRS Form W-4



2020 W-4 Requirements – 2019 vs. 2020 Form



Form W-4 Department of the Treasury Internal Revenue Service		Employee's Withholding Allowance Certificate ▶ Whether you're entitled to claim a certain number of allowances or exemption from withholding is subject to review by the IRS. Your employer may be required to send a copy of this form to the IRS.		OMB No. 1545-0074 2019
1 Your first name and middle initial		Last name		2 Your social security number
Home address (number and street or rural route)		3 <input type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Married, but withhold at higher Single rate. Note: If married filing separately, check "Married, but withhold at higher Single rate."		
City or town, state, and ZIP code		4 If your last name differs from that shown on your social security card, check here. You must call 800-772-1213 for a replacement card. <input type="checkbox"/>		
5	Total number of allowances you're claiming (from the applicable worksheet on the following pages)			5
6	Additional amount, if any, you want withheld from each paycheck			6 \$
7	I claim exemption from withholding for 2019, and I certify that I meet both of the following conditions for exemption: • Last year I had a right to a refund of all federal income tax withheld because I had no tax liability, and • This year I expect a refund of all federal income tax withheld because I expect to have no tax liability. If you meet both conditions, write "Exempt" here			7

- 2020 IRS Form W-4, Employee's Withholding Certificate, includes fundamental changes to income tax withholding that significantly affect both employers and employees.
- These changes are largely in response to the 2017 Tax Cuts and Jobs Act.

Form W-4 Department of the Treasury Internal Revenue Service		Employee's Withholding Certificate ▶ Complete Form W-4 so that your employer can withhold the correct federal income tax from your pay. ▶ Give Form W-4 to your employer. ▶ Your withholding is subject to review by the IRS.		OMB No. 1545-0074 2020
Step 1: Enter Personal Information		(a) First name and middle initial Last name Address City or town, state, and ZIP code		(b) Social security number ▶ Does your name match the name on your social security card? If not, to ensure you get credit for your earnings, contact SSA at 800-772-1213 or go to www.ssa.gov.
		(c) <input type="checkbox"/> Single or Married filing separately <input type="checkbox"/> Married filing jointly (or Qualifying widow(er)) <input type="checkbox"/> Head of household (Check only if you're unmarried and pay more than half the costs of keeping up a home for yourself and a qualifying individual)		
Complete Steps 2-4 ONLY if they apply to you; otherwise, skip to Step 5. See page 2 for more information on each step, who can claim exemption from withholding, when to use the online estimator, and privacy.				
Step 2: Multiple Jobs or Spouse Works		Complete this step if you (1) hold more than one job at a time, or (2) are married filing jointly and your spouse also works. The correct amount of withholding depends on income earned from all of these jobs. Do only one of the following. (a) Use the estimator at www.irs.gov/W4App for most accurate withholding for this step (and Steps 3-4); or (b) Use the Multiple Jobs Worksheet on page 3 and enter the result in Step 4(c) below for roughly accurate withholding; or (c) If there are only two jobs total, you may check this box. Do the same on Form W-4 for the other job. This option is accurate for jobs with similar pay; otherwise, more tax than necessary may be withheld <input type="checkbox"/> TIP: To be accurate, submit a 2020 Form W-4 for all other jobs. If you (or your spouse) have self-employment income, including as an independent contractor, use the estimator.		
Complete Steps 3-4(b) on Form W-4 for only ONE of these jobs. Leave these steps blank for the other jobs. (Your withholding will be most accurate if you complete Steps 3-4(b) on the Form W-4 for the highest paying job.)				
Step 3: Claim Dependents		If your income will be \$200,000 or less (\$400,000 or less if married filing jointly): Multiply the number of qualifying children under age 17 by \$2,000 ▶ \$ Multiply the number of other dependents by \$500 ▶ \$ Add the amounts above and enter the total here 3 \$		
Step 4 (optional): Other Adjustments		(a) Other income (not from jobs). If you want tax withheld for other income you expect this year that won't have withholding, enter the amount of other income here. This may include interest, dividends, and retirement income 4(a) \$ (b) Deductions. If you expect to claim deductions other than the standard deduction and want to reduce your withholding, use the Deductions Worksheet on page 3 and enter the result here 4(b) \$ (c) Extra withholding. Enter any additional tax you want withheld each pay period 4(c) \$		
Step 5: Sign Here		Under penalty of perjury, I declare that this certificate, to the best of my knowledge and belief, is true, correct, and complete. Employee signature (This form is not valid unless you sign it.) Date		
Employers Only		Employer's name and address First date of employment Employer identification number (EIN)		
For Privacy Act and Paperwork Reduction Act Notice, see page 3. Cal. No. 102200 Form W-4 (2020)				



Highlights: 2020 Form W-4 & Pub 15-T

- No withholding allowances(!)
- New filing status - Head of Household
- Existing employees do NOT have to complete the 2020 version
- After 2019, **new hires** must use the 2020 Form W-4
- Must use the 2020 version to **adjust** withholding after 2019
- Default for new hires who do not complete a Form W-4 after 2019: **Single, No adjustments.**



Quick comparison: 2019 vs. 2020 W-4



2019 W-4 Inputs	2020 W-4 Inputs
Number of withholding allowances	Checkbox for two-earner families / optional higher withholding
Per-payroll additional amount to withhold	Full-year child and dependent tax credits
	Full-year other (non-wage) income
	Full-year deductions (over the standard deduction amount)
	Per-payroll additional amount to withhold

Implications for new-hire onboarding

Some new employees may need **more time** to complete the W-4

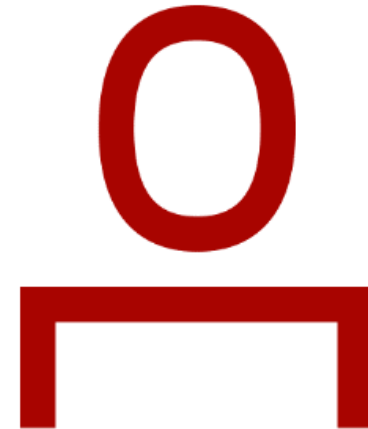
- and a private room to call their accountant, family members...
- Previously: **Allowances** implied counting family members
- Now: "What deductions did we have last year? Tax credits? Other income?"

Do new hires complete Form W-4 in the office as part of on-boarding?

- Could the Form W-4 be something to take home to complete?

Only Steps 1 and 5 are required

- Name, address, Filing status and signature
- If Steps 2 - 4 are blank, withholding is based on the Filing status and rates



Payroll systems will handle allowances-based calculations and new 2020 W-4 inputs

- Only Steps 1 and 5 are required (name, address, filing status and signature).
- Steps 2, 3 and 4 generally permit adjustments to withholding to compensate for two-earner households, other income, tax credits or deductions. These steps are optional, but may result in more accurate withholding.
- Step 2: New checkbox for multiple jobs and two-earner families. This checkbox automatically adjusts withholding for families in which both spouses work. Prior to 2020, the employee completed a detailed worksheet to calculate an additional amount to withhold.

Payroll systems will handle allowances-based calculations and new 2020 W-4 inputs (continued)

- New filing status — Head of Household — along with separate withholding tax tables.
- Other new payroll inputs include:
 - Full-year dollar amount of expected child and dependent tax credits
 - Full-year dollar amount of expected other income
 - Full-year dollar amount of expected deductions
- An additional amount to withhold per-payroll is the only element that did not change, so employees may still authorize an additional dollar amount to withhold from each pay, for any reason.

IRS Withholding Estimator

Pros:

- Easy Q&A format to gather relevant information
- Able to target a specific refund amount (including \$0)
- Provides specific instructions on what to do

Cons(?):

- Time to gather records and go through process

Most helpful for those with:

- Life changes (marriage, new child, new job...)
- Other income (e.g., side job or business)
- Two-earner families
- Great for those who enjoy preparing taxes

Useful for mid-year check/adjustments; but, be sure to re-set Form W-4 in January

HOW TO CHECK YOUR TAXES NOW TO AVOID SURPRISES LATER

STEP 1: GATHER DOCUMENTS

You will need your ...

- most recent pay stubs
- most recent income tax return

STEP 2: VISIT IRS.GOV

Visit www.IRS.gov/withholding to use the Tax Withholding Estimator or learn about other methods to check your withholding.

STEP 3: USE ESTIMATOR

The Tax Withholding Estimator helps you make sure you have the right amount of tax withheld from your paychecks or you're making the right estimated tax payments.

STEP 4: TAKE ACTION

The estimator results tell you if you're overpaying or underpaying your taxes. If you need to address this, you can:

- Complete a new Form W-4 using the estimator's suggestions and submit it to your employer
- Make a payment or increase your upcoming estimated tax payments to the IRS

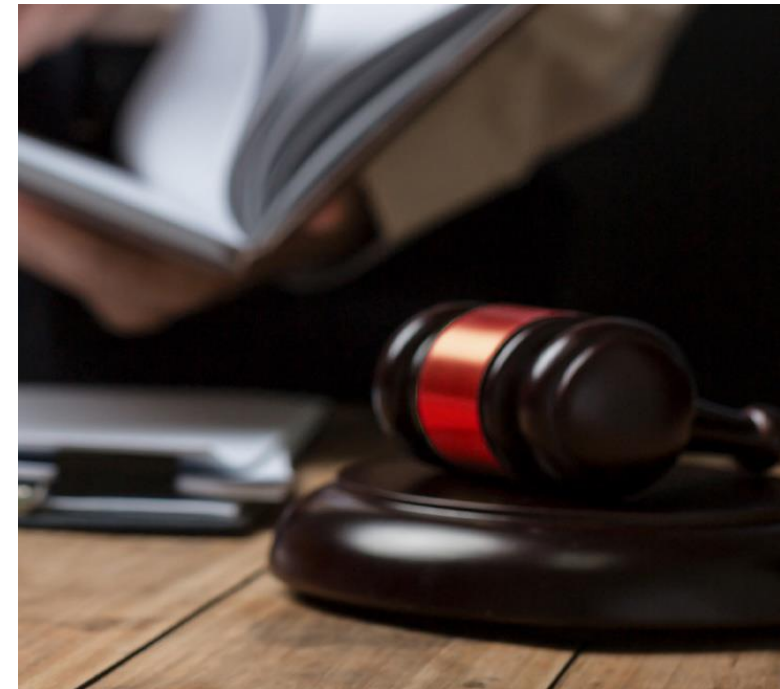
Life Changes

Events such as marriage, divorce, a home purchase, new job, retirement, birth, adoption or tax law changes can affect your taxes. You should return to the Tax Withholding Estimator to check your situation again.

State Forms W-4 (equivalents) and Withholding

(updated Nov 2019)

- Some states still have allowances in their withholding tax tables, AND
- Still rely on the IRS Form W-4
- The 2020 Form W-4 has no space for allowances
 - ...how will that work?
- States may issue a W-4 equivalent, or adopt IRS inputs and change tax calculations



2020 State Tax Withholding Changes May Warrant Attention (updated Nov 2019)

Prior to 2020, Arkansas, California, Georgia, Idaho, Massachusetts, Minnesota, New Jersey, New York, Oregon, Rhode Island, Vermont, West Virginia, and Wisconsin accepted the federal Form W-4 as an alternative to the state withholding certificate.

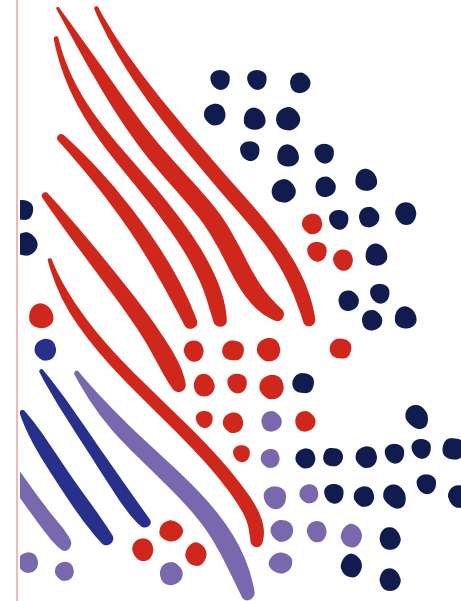
Pennsylvania does not use a withholding certificate. Pennsylvania requires employers to calculate the state tax to be withheld from an employee's wages using a flat percentage rate, currently 3.07 percent



2020 State Tax Withholding Changes May Warrant Attention (updated Nov 2019)

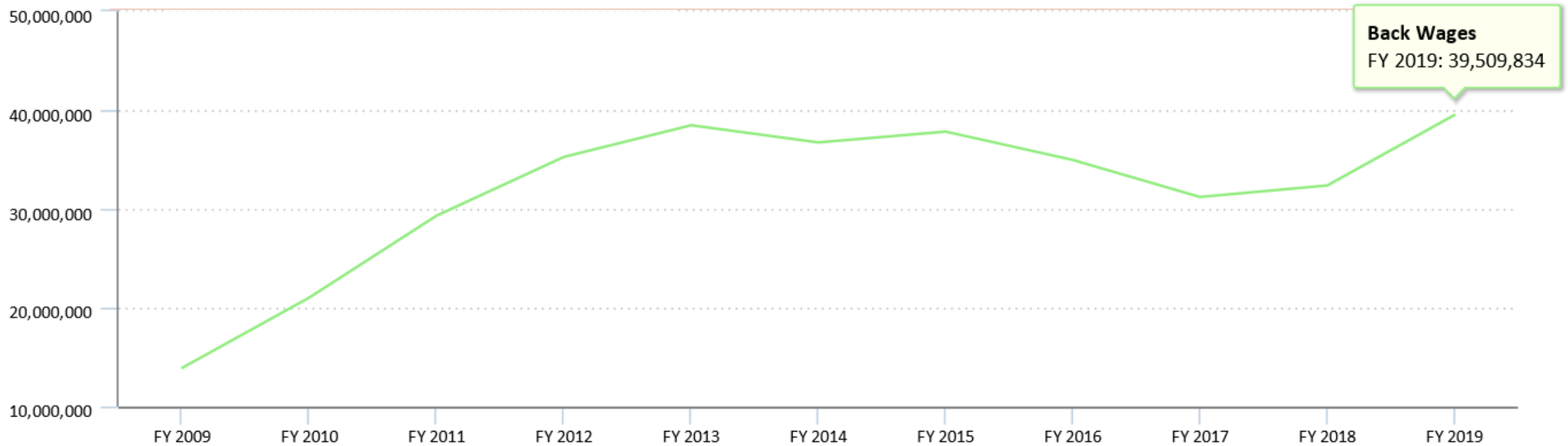
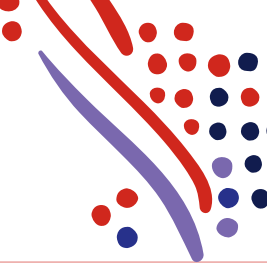
- With all these changes, employers will need to carefully review each of the state requirements. Certain states, such as Wisconsin, revised their state withholding certificate for wages paid after 2019.
- Like the IRS, states will generally not require existing employees to complete new withholding certificates. Rather, the new withholding certificates will apply to newly hired employees and existing employees who wish to adjust their withholding.
- Additionally, states may have specific requirements for employers to follow when an employee does not complete a state withholding certificate. Oregon, for example requires that employers withhold Oregon state income tax at a flat 8 percent if an employee does not complete Form OR-W-4.
- Make sure that you're using the correct state withholding certificate and following the applicable state requirements. You can locate state tax information via the IRS website, at <https://www.irs.gov/tax-professionals/government-sites>

FLSA Minimum Salary Threshold



Fair Labor Standards Act Enforcement Statistics

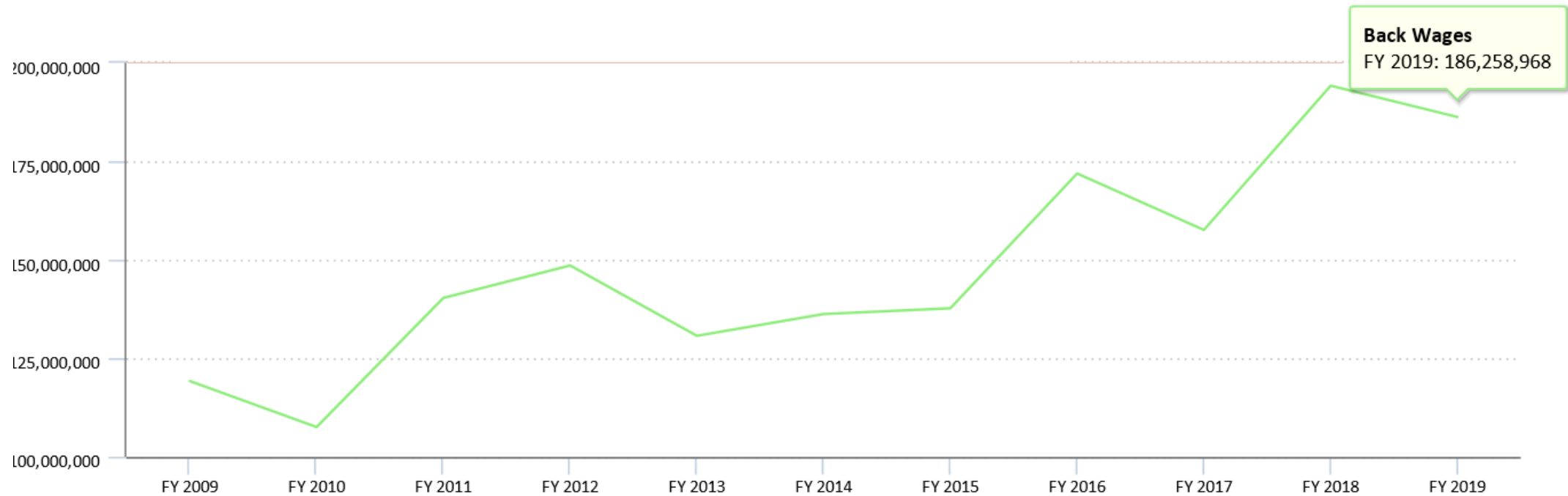
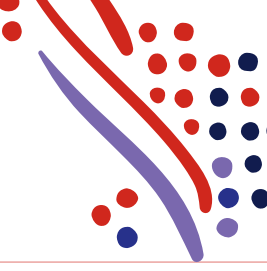
Minimum Wage – Back Wages



Source: U.S. Department of Labor, Wage and Hour Division
<https://www.dol.gov/agencies/whd/data/charts/fair-labor-standards-act>

Fair Labor Standards Act Enforcement Statistics

Overtime- Back Wages



Source: U.S. Department of Labor, Wage and Hour Division
<https://www.dol.gov/whd/data/datatables.htm>

FLSA Update - White Collar Exemption Minimum Salary Threshold

- Previous proposed increase blocked by court
- New DOL proposal would formally rescind the 2016 rule
 - Proposal would update the **minimum salary threshold** for white collar employees to **\$35,308/year** (\$679 per week)
 - Employers may include “certain nondiscretionary bonuses and incentive payments” as up to 10% of the new \$679 per week salary threshold
 - Increases required total compensation threshold for highly compensated employees from \$100,000/year to **\$147,414/year**
 - No changes to duties test
- New white collar threshold lower than amount in 2016 proposal, i.e., lower than the \$47,476 annually (\$913 per week) rate. However, the HCE amount is higher than the \$134,004 proposed in 2016

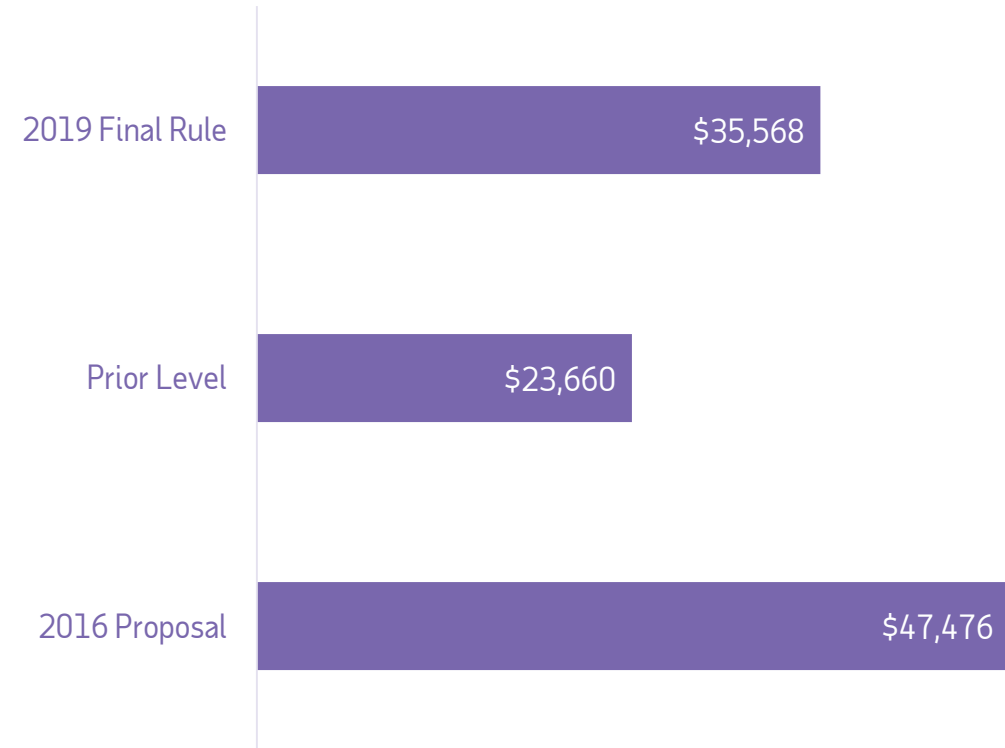


FLSA Minimum Salary Level

Weekly



Annual



Bonuses, incentive payments, commissions – The 10% rule



- Up to **10%** of the minimum salary level may be satisfied with non-discretionary bonuses, commissions and other incentive pay that are paid annually or more frequently
- Discretionary payments not counted

Let's do the math to find the real minimum salary level using the 10% rule:



$\$684 - 10\% = \615.60 weekly salary



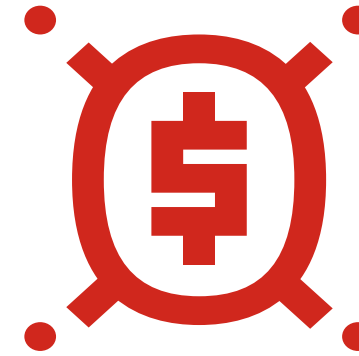
$\$35,568 \times 10\% = \$3,556.80$ bonuses or commissions, annually



**Must receive a minimum
\$32,011.20 annual salary**

Highly compensated test

Total Annual Compensation



\$107,432 annual total

- \$684 weekly guaranteed salary
- \$71,864 may be in bonuses, incentive pay and commissions (\$107,432 - \$35,568)

Future increases

- Updates every four years
- Through notice-and-comment rulemaking
- No automatic increases



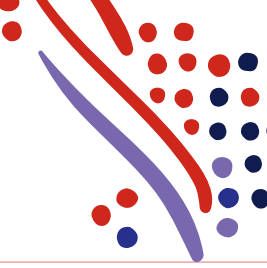
The DOL's updated regulations on regular rate

Excluded from the regular rate of pay:

- Wellness benefits — gym memberships, fitness classes and on-site specialist treatment
- Discounts on retail goods and services
- Payouts of unused vacation and sick leave
- Accident, unemployment and legal services benefits
- Tuition reimbursement and repayment of student loans
- Employee-of-the-month awards and spot bonuses



FLSA Regular Rate of Pay (RROP)



What's included?

- Nondiscretionary bonuses (tied to work production)
- Shift differentials
- Retroactive pay
- On-Call pay
- Longevity pay
- Attendance bonuses
- Educational Safety bonuses
- Certification bonuses

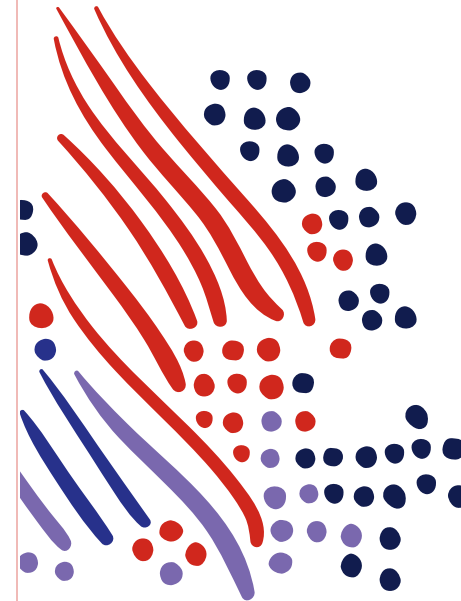


What's not included?

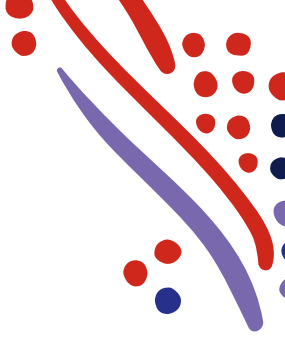
- Gifts (not tied to hours worked, production or efficiency)
- Paid time off (holidays, vacations, etc.)
- Reimbursed business expenses
- Discretionary bonuses (e.g., Holiday bonus)
- Volunteer work counted toward bonus
- Benefit plan contributions
- Overtime premium pay

For each pay code ask...
"Are the earnings part of the regular rate?"

Paid Sick Leave and Paid Family Leave



Key Differences



Paid Sick Leave

Paid Family Leave

Funding Arrangement

- Funded by employer, self-funded

- Funded by employer, employee or both; generally covered by insurance policy

Reasons for Leave

- Covers employees' illness and certain family members and other reasons for leave

- Generally overlaps / includes reasons for sick leave except for employee's own illness

Duration of Leave

- More commonly used for smaller or partial days/absences; generally a maximum of 1-week

- More commonly used for longer or extended absences; available in weeks

Waiting Period

- Waiting period does not apply (except for new hires)

- May require a waiting period before benefits begin

Waiver of Coverage

- Coverage generally cannot be waived

- Coverage can sometimes be waived by employees under limited circumstances

Benefits Payment

- Benefits generally paid at the employee's standard rate; special rules may apply for employees with variable pay (ex: commissioned)

- Benefits generally paid as a percentage of the employee's wages

Laws Vary Significantly -- by Jurisdiction: Common Elements

- How is paid leave accrued?
- Frontloading / lumpsum awards?
- Which workers are covered?
- How can such leave be used?
- How much notice is required?
- Are there notice posting or disclosure requirements?
- Is there a maximum amount?

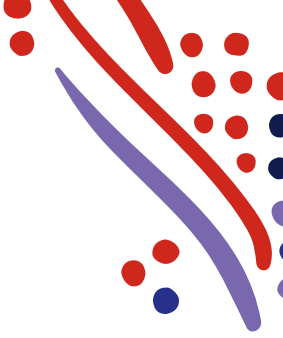
- Does it roll over to subsequent years?
- When can it be used?
- Rate of pay requirement?
- Reinstatement requirement?
- Recordkeeping requirement?
- Pay statement requirement?
- Is it included in PTO?

Common Reasons for Sick Time

- Employee's Illness
- Family Members Illness (including foster children)
- Domestic Violence, Sexual Assault, Stalking
- Relocation due to Domestic Violence or Sexual Assault
- Participate in Civil or Criminal Proceedings
- Psychological Counseling
- Routine Medical Appointments for Self or Family Member



Paid Sick Leave – Federal Contractors



- Minimum of 7 days for Federal Contractor employees
- Earn at least 1 hour for every 30 hours worked
- Must be provided upon oral/written request of employee made 7 days in advance, or soon as practicable
- Employer may only require certification from health care provider for employee absences of 3 or more consecutive workdays
- Paid sick leave must carry over from 1 year to next
- Employer may not set a limit of paid sick time accrual of less than 56 hours
- Order does not require payment of unused time upon termination – but may be reinstated upon rehire

Federal Employee Paid Leave Act

- The **Federal Employee Paid Leave Act** (Act) was signed into law on December 20, 2019
- Effective October 1, 2020, the Act will provide all federal employees with up to 12-weeks of paid parental leave per year
- Limits leaves for birth, adoption or fostering of a child
- Originally proposed that the leave would also be available to care for a chronically ill spouse, child or other close relative, but that provision did not make it into the Act.

Key highlights include:

- Family and Medical Leave Act remains in place
- Employees need not exhaust FMLA before using paid parental leave
- Paid parental leave will not accumulate
- Employees who want to use this leave must agree, in writing, to work for their agency for at least 12 weeks after the conclusion of the leave (unless the employee develops a serious physical or mental health condition after the birth or placement of a new child)
- Like FMLA leave, employees must also generally work for the government for about a year before taking advantage of paid parental leave.



Paid sick leave—Federal and State

(listed by effective date; list current as of 1/27/2020)

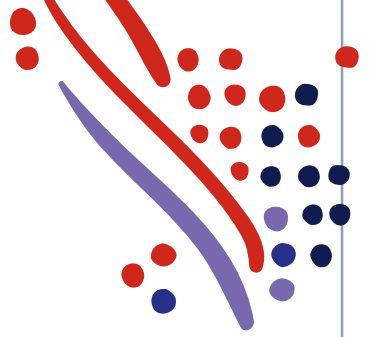


- Federal contractors (effective January 2017)
- Connecticut (effective January 2012)
- District of Columbia (effective 2014)
- California (effective July 2015)
- Massachusetts (effective July 2015)
- Puerto Rico (effective December 2015)
- Oregon (effective January 2016)
- Vermont (effective January 2017)
- Arizona (effective July 2017)
- Washington (effective January 2018)
- Maryland (effective February 2018)
- Rhode Island (effective July 2018)
- New Jersey (effective October 29, 2018)
- Michigan (effective March 29, 2019)

Paid sick leave—Locals and Territories

(listed by effective date; list current as of 1/27/2020)

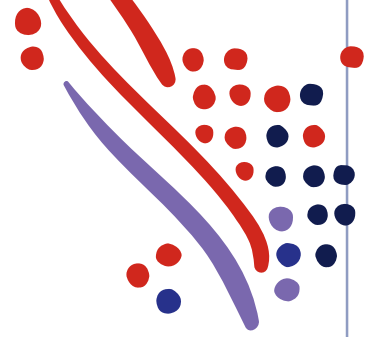
- San Francisco, California (eff. 02/2007, amended eff. 01/2017; eff. 6/7/2018)
- Seattle, Washington (eff. 09/2012, amended eff. 01/2016)
- Long Beach, California hotel workers, hotels with 100 or more rooms (eff. 11/2012)
- New York City (eff. 04/2014)
- Oakland, California (eff. 03/2015)
- Philadelphia Pennsylvania (eff. 05/2015)
- Emeryville, California (eff. 07/2015)
- Eugene, Oregon (eff. 07/2015 – preempted by state law 01/2016)
- City of New Orleans city contractors and grant recipients (eff. 01/2016)
- Tacoma, Washington (eff. 02/2016)
- Santa Monica, California (02/25/2016)
- Los Angeles, California (eff. 7/1/2016 if 26 or more EEs; 7/1/2017 if 25 or fewer EEs)
- San Diego, California (eff. 7/11/2016, amended eff. 09/2016)
- Montgomery County, Maryland (eff. 10/2016)
- Spokane, Washington (eff. 01/2017, sunset 12/31/17 because of WA PSL eff. 1/1/18)
- Minneapolis, Minnesota (eff. 7/1/2017, legal challenge to employers located outside Minneapolis was not accepted by the court)
- St. Paul, Minnesota (eff. 7/2017 for employers with 24 or more employees; 1/1/2018 for employers with 23 or fewer EEs)
- Chicago, Illinois (eff. 7/1/2017)
- Cook County, Illinois (eff. 7/1/2017 – but opt outs)
- Berkeley, California (eff. 10/2017)
- Puerto Rico (effective 2/20/2018)
- Prince George's County, Maryland enacted law to include domestic violence, sexual assault, or stalking (eff. May 24, 2018)
- New York City expands scope of Paid Sick Leave Law to add domestic violence, sexual assault, stalking, and trafficking survivors (eff. May 2018; amended eff. 9/20/2018)
- Westchester County, NY (effective April 11, 2019)
- Pittsburgh, Pennsylvania (effective March 15, 2020)



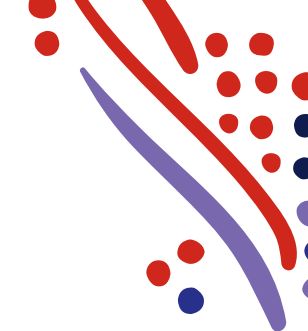
Paid Sick Leave Differences – Examples

	California July 1, 2015	Connecticut January 1, 2012	New Jersey October 29, 2018
Who is covered?	Workers employed in California for 30 or more days a year	Hourly workers in certain “service” occupations, if they work for a business with 50 or more employees	All workers employed, excludes (1) construction workers under CBA; (2) “per diem health care employee[s]”; or (3) public employees receiving paid sick leave pursuant to another New Jersey program
Can sick time be used to care for loved ones?	Yes: children; parents; spouses; grandchildren; grandparents; registered domestic partners; parents of a spouse or domestic partner; and siblings	Yes: children and spouses	Yes: 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.
How is “child” defined?	Biological, adopted, or foster child, stepchild, legal ward, or the child of a worker standing in loco parentis to the child	Biological, foster, or adopted children, stepchildren, legal wards, or the child of a worker standing in loco parentis to the child. The child must be under 18 or 18 years of age and older but incapable of self-care because of a mental/physical disability	Biological, adopted, or foster child, stepchild or legal ward of an employee, child of a domestic partner or civil union partner of the employee

Paid Sick Leave Differences – Examples



	California July 1, 2015	Oregon January 1, 2016	New Jersey October 29, 2018
What are some of the reasons to use paid sick time?	(1) Diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member (2) For an employee who is a victim of domestic violence, sexual assault, or stalking	In addition, 1) to bond with a newborn, newly adopted, or newly placed foster child under age 18; 2) to deal with the death of a family member, and 3) Closure of the employee's place of business, or the school or place of care of the employee's child, by order of a public official due to a public health emergency	In addition, 1) a workplace closure or the closure of school or daycare attended by the employee's child; or 2) attending school conferences or meetings
Can cities in the state pass paid sick time laws that are broader than the state law?	Yes. The California law does not preempt or limit other laws or policies that provide for greater earning or use of paid sick time	No. The Oregon law preempts—or prohibits—cities from passing their own paid sick time laws	No. The NJ law preempts—or prohibits—cities from passing their own paid sick time laws
What Agency or Official Enforces the Bill?	The California Labor Commissioner's Office, also known as the California Division of Labor Standards Enforcement (DLSE)	The Oregon Bureau of Labor and Industries	The NJ Department of Labor and Workforce Development



California vs. Los Angeles – Examples

	California	Los Angeles
Who is covered?	Workers employed in California for 30 or more days a year	Workers who are entitled to minimum wage under California and perform at least 2 hours of work per week in LA
Can sick time be used to care for loved ones?	Yes: children; parents; grandchildren; grandparents; spouses; registered domestic partners; parents of a spouse or domestic partner; and siblings	Yes: children; parents; grandchildren; grandparents; spouses; registered domestic partners; parents of a spouse or domestic partner; siblings; and any individual related by blood or affinity whose close association with the worker is the equivalent of a family relationship
Amount of paid sick time earned per year?	May earn up to 48 hours or 6 days of paid sick time, but an employer may limit use to 24 hours or 3 days / year	Up to 48 hours a year
Does unused sick time carry forward to the subsequent year?	Carry forward is not required if the full amount; however, 24 hours, or three days is provided at the beginning of each year	Carry forward is required, however, employers may cap it at 72 hours
Private Right of Action to go to Court?	No, but the State Labor Commissioner or Attorney General may bring a civil action	Yes

Paid sick leave disclosures — Examples

The following jurisdictions with paid sick leave requirements also require that employees be notified of certain PSL information on a regular basis.

	Amount Accrued	Amount Available	Amount Taken	Amount Paid	Frequency	Alternates to Pay Stub?
Arizona	No	Yes	Yes, YTD	Yes, YTD	Each time wages paid	No
California	No	Yes	No	No	Each time wages paid	Yes
Maryland	No	Yes	No	No	Each time wages paid	Yes
Minneapolis	Yes	No	No	No	Each time wages paid	No
Montgomery County, MD	No	Yes	No	No	Each time wages paid	Yes
Nevada	No	Yes	No	No	Each time wages paid	Yes
Oregon	Yes	No	No	No	At least quarterly	Yes
Seattle	No	Yes	No	No	Each time wages paid	Yes
Tacoma	No	Yes	No	No	At least monthly	Yes
Washington	Yes	Yes	Yes, since last notice	No	At least monthly	Yes
Federal Contractors	Yes	No	No	No	Most frequent of each pay period or each month	Yes

NOTE: Other jurisdictions may require the employer to provide paid sick leave information to an employee upon request.

Recordkeeping—Examples



California:

- Maintain at least three years of records documenting the hours worked and paid sick days accrued and used by an employee
- Allow the Labor Commissioner to access these records upon notification
- If an employer does not maintain adequate records, the employee is entitled to the maximum number of hours accruable, unless the employer can show otherwise by clear and convincing evidence

Oregon:

- Law does not contain any explicit record keeping requirements other than the required quarterly notifications of use and accrual by the employee

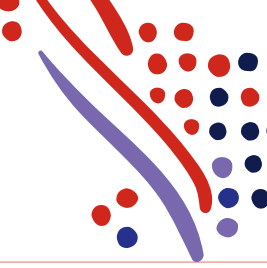
Minneapolis:

- Must maintain accurate records for each employee showing the accrued sick and safe time and the used sick and safe time for each day of the work week
- Records must be retained for a period of not less than three years in addition to the current calendar year

Consider whether more general wage and hour recordkeeping requirements would apply.

Paid sick leave outlook

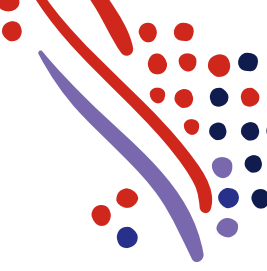
(list current as of 1/27/2020)



- Texas—on 11/12/2018 state legislation proposed to prohibit local sick leave laws – NOT enacted
 - Austin, TX (effective 10/1/2018), except for employers with 5 or fewer employees – ON HOLD pending appeal to TX Supreme Court; once in effect disclosure requirement may apply
 - San Antonio, TX (delayed indefinitely, awaiting court decisions); once in effect disclosure requirement may apply
 - Dallas paid sick leave ordinance effective 8/1/2019, lawsuit filed, still in effect pending any court action; once in effect disclosure requirement may apply
- New Mexico requires employers that provide paid sick leave to allow employees to use the leave to care for covered family members
- Duluth, MN (effective January 1, 2020) for greater than 5 employees
- Albany County, NY - Public hearing held on PSL proposal, not yet enacted
- Arizona Supreme Court left in place lower court ruling that allowed to pass benefit ordinances
- New York state has proposed PSL legislation

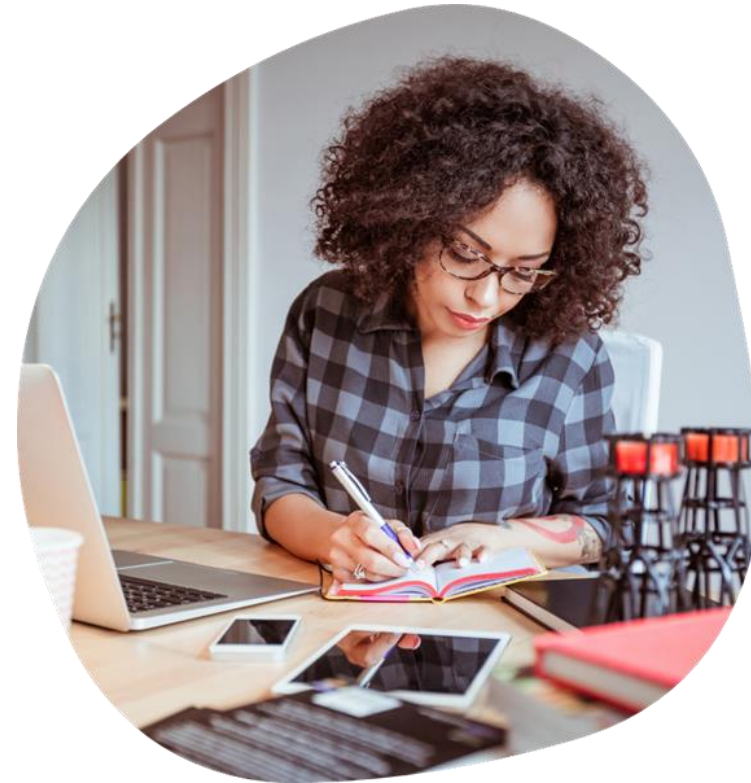
All-purpose paid leave

(listed by effective date; list current as of 1/27/2020))



Overview:

- Similar to paid sick leave
 - ✓ Accrual
 - ✓ front loading
 - ✓ minimum period of employment
 - ✓ carryover may be required
- Paid leave – for any reason
- Provides earned time off
- Employee contributions not required



All-purpose paid leave

(listed by effective date; list current as of 1/27/2020)

Maine

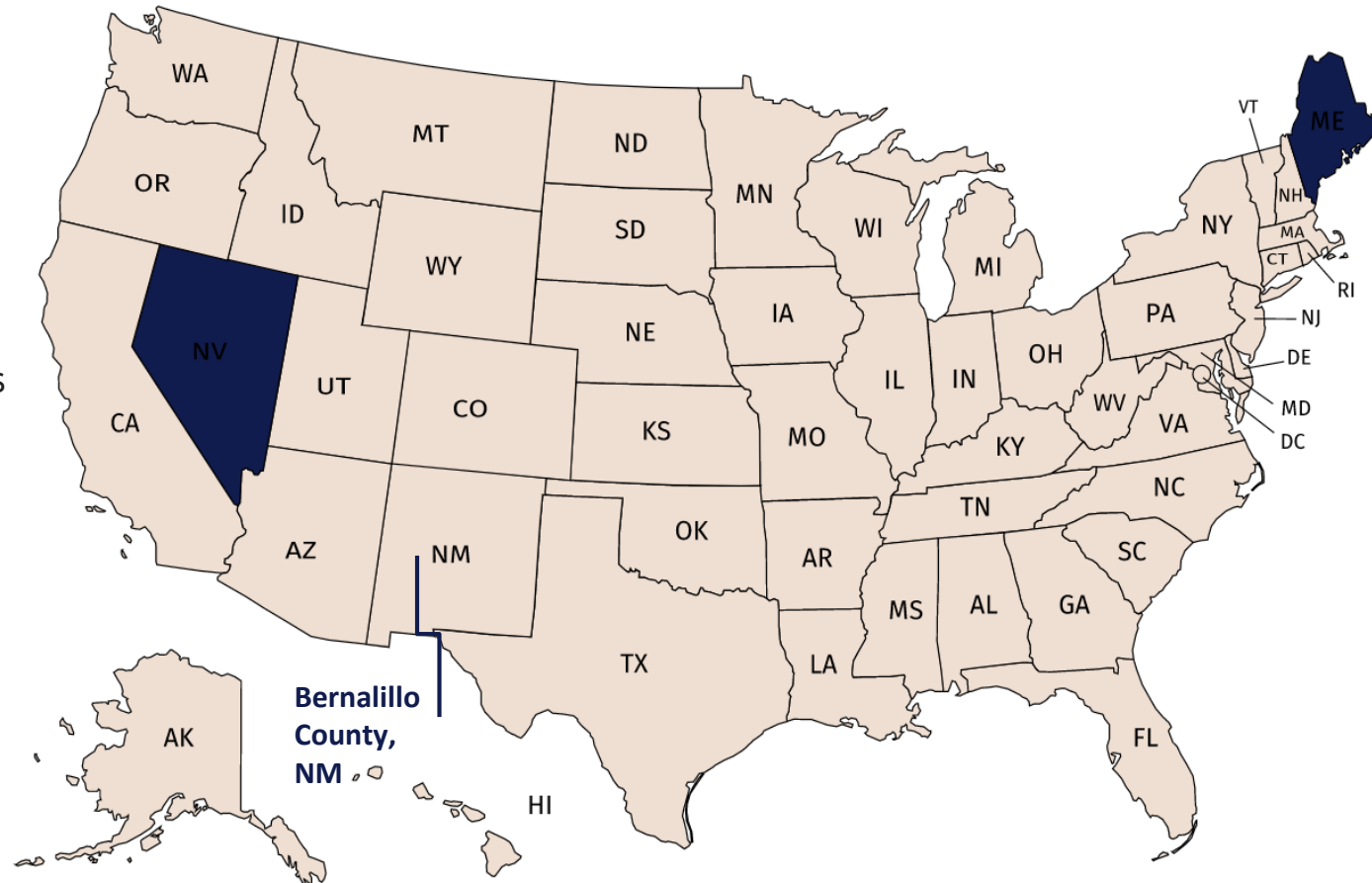
- S.P. 110 - L.D. 369
- Employers with more than 10 employees
- **Effective January 1, 2021**

Nevada

- Senate Bill 312
- Employers with 50 or more employees
- **Effective January 1, 2020**

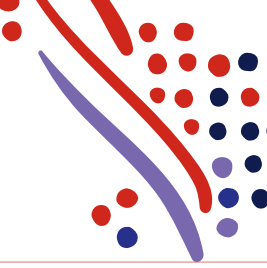
Bernalillo County, NM

- Ordinance 2019-17
- **Effective July 1, 2020**
- Employers that have a physical premises within the unincorporated limits of the County, and employ two or more employees within the unincorporated limits of the County.



Overview of paid family leave laws

(as of 1/27/20)



Existing paid family leave laws:

- California (Eff. 2004)
- New Jersey (Eff. 2009)
- Rhode Island (Eff. 2014)
- San Francisco (Eff. 2017)
- New York (phased in beginning eff. 01/2018; fully implemented in 2021)
- Washington State (eff. 01/01/2020 , payroll tax effective 01/01/2019)
- Washington D.C. (eff. 07/01/2020, payroll tax effective 07/01/2019)



Paid family leave outlook

(as of 1/27/2020)

- Massachusetts (eff. 01/01/2021, payroll tax effective 07/01/2019)
- California expands scope to include qualifying exigency (eff. 1/1/2021)
- Connecticut (eff. 01/01/2022 , payroll tax effective 01/01/2021)
- Oregon (eff. 01/01/2023 , payroll tax effective 01/01/2022)
- Colorado (eff. 01/01/2024 , payroll tax effective 01/01/2023)
- Vermont vetoed for 2nd time on 05/22/2018
- New Hampshire -- 05/9/2019 Governor vetoes PFL bill
- More to come...

Tax Credit for Paid Family and Medical Leave

TAX CUTS AND JOBS ACT



Types of Leaves

- Provides a tax credit to employers who voluntarily provide paid family and medical leave
- Included are FMLA qualifying leaves for 12-weeks/12 month period (Employer need not be subject to FMLA)
- NOT included: vacation, personal leave, or other non FMLA medical or sick leave, and where paid or required by state or local law
- Effective date: 3-year program effective for wages paid in taxable years beginning after December 31, 2017, and ending after December 31, 2020

Tax Credit for Paid Family and Medical Leave

TAX CUTS AND JOBS ACT



Eligible Employer:

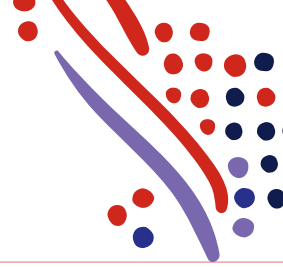
- Must have a written policy
- Allow all qualifying full-time employees at least two weeks of annual paid family and medical leave, and all less-than-full-time qualifying employees leave on a pro rata basis

Qualifying Employee:

- Both full-time and part-time workers, if employed at the organization for at least a year
- Employers must allow part-time employees to take a commensurate amount of paid leave, determined on a prorated basis
- Employees who were paid no more than \$75,000 for 2019 (This wage ceiling will be adjusted for inflation going forward)

Tax Credit for Paid Family and Medical Leave

TAX CUTS AND JOBS ACT



Eligible employers may claim a general business credit

- Equal to 12.5% of the amount of wages paid to qualifying employees if the rate of payment under the program is 50 percent of the normal wages
- Credit increases by 0.25 % (but not above 25 %) for each percentage point by which the rate of payment exceeds 50 percent

Examples:

- If an employee on FMLA leave is paid 60% of their normal wages, the credit would increase to 15% of the wage amount (12.5% plus $(10\% \times 0.25 = 2.5\%)$, which equals 15%)
- If an employee paid 100% of their normal wage amount would generate a credit equal to 25% of the wage amount (12.5% plus $(50\% \times 0.25 = 12.5\%)$, which equals 25%)

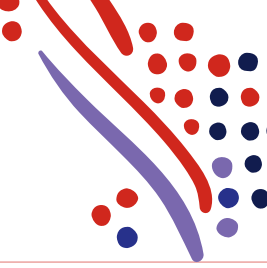


**Reduces your
company's
income tax
obligation**

For additional details, review the [IRS FAQ](#)

Tax Credit for Paid Family and Medical Leave

TAX CUTS AND JOBS ACT



- Review your company's existing paid leave policy
- Make sure it qualifies – leaves reasons qualify under FMLA
- Evaluate the amount of tax savings based on the examples; look at the following with respect to your 2019 expenditures to forecast for 2020:
 - Make sure to include employees with at least 12 months of service
 - Include wages paid up to 12 weeks per absence for employees who earn up to \$75,000 per year
 - Apply the formula to determine your tax credit
- Consult your finance and legal departments before taking any action



**No employer
is too big or
too small**

For additional details, review the [IRS FAQ](#)

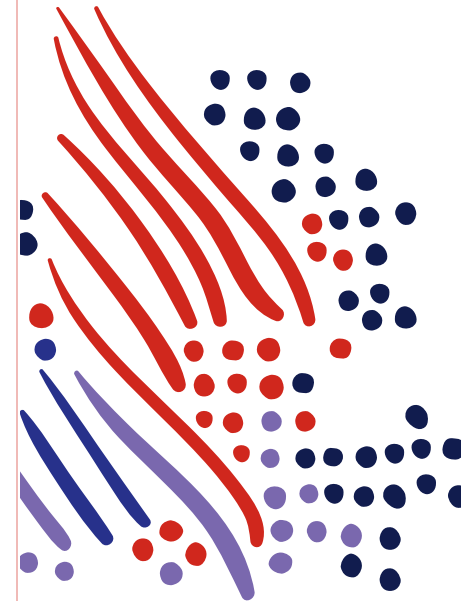
General best practices

- Follow the rules -- State, Local and Federal and their interaction
- Pay attention to the basics -- Notice requirements, content, timing and records
- Create and maintain documentation
- Integrate with Payroll, Disability, Timekeeping and Attendance programs
- Train your managers; avoid wrongful termination suits; use progressive discipline policy
- Make sure your handbook is up to date and reflects your policies and is made available to all employees

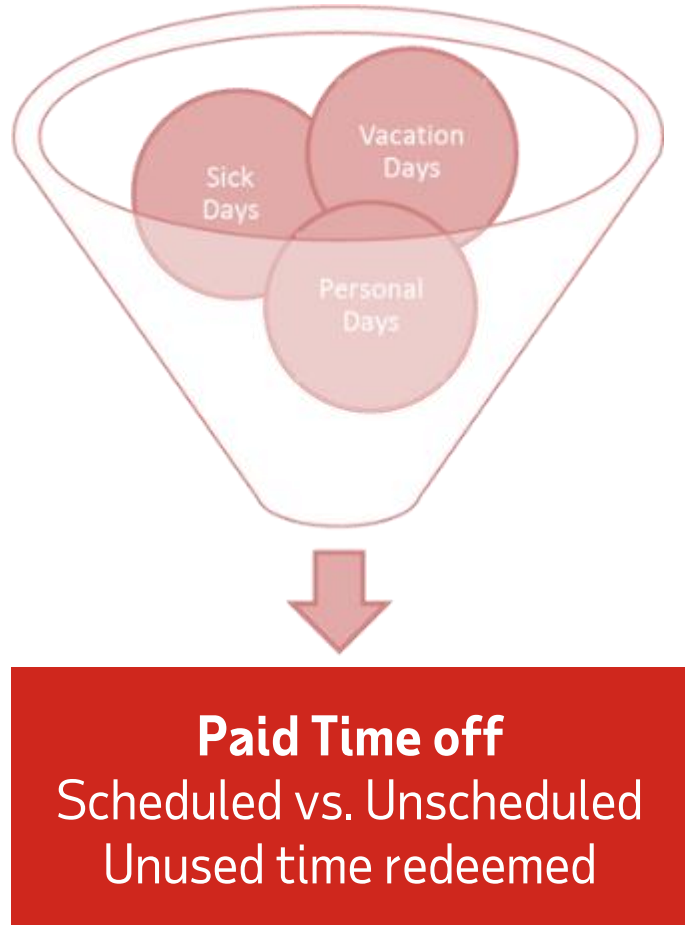
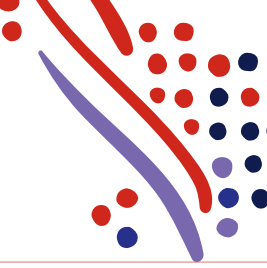
When in doubt, refer to your legal counsel



Paid Sick Leave – Part of PTO Policies

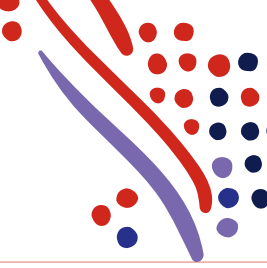


How does PTO work?



- Provides a bank of hours to balance the needs of work with outside interests and obligations
 - Does not distinguish absences from sick, vacation, floating holidays or personal days
 - Covers everything from planned vacations to unexpected sick days
 - Time off may be taken in hourly increments
 - Typically does not include holidays, jury duty, military duty, or bereavement leave
- Employer determines number of PTO hours allotted per year
 - Time allotted based on length of service, seniority, job level etc.
 - May be used as employee attraction and retention tool

Bundled Paid Sick Leave and PTO Policies

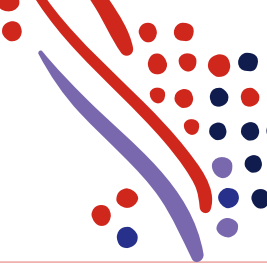


Pros	Cons
Employees have more flexibility	Payout may be required at termination
One policy for multiple jurisdictions	Potential for increased costs
Easier to administer	Must follow State law

My state requires me to provide paid sick leave to employees. Can I keep my current PTO policy?

- Under many of the paid sick leave laws, if you have a PTO policy, you generally don't have to provide additional paid sick days to employees if the policy:
 - Allows employees to use the same amount of leave for the same purposes and under the same conditions as required by the sick leave law; and
 - Satisfies the accrual, carry over, and use requirements of the sick leave law.

Check your applicable law to ensure compliance.



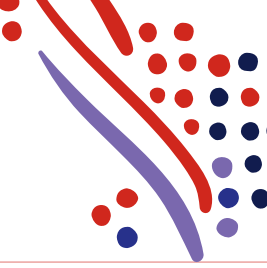
Laws and Agencies

Requirements are enforced by several agencies including the Department of Labor that affect businesses and workers regarding wages and hours worked, benefits, safety and health, as well as nondiscrimination policies.

- Fair Labor Standards Act (FLSA)
- Consumer Credit Protection Act
- Equal Employment Opportunity Commission (EEOC)
- Family and Medical Leave Act (FMLA)
- Uniformed Services Employment and Reemployment Rights Act (USERRA)
- Occupational Safety and Health Act (OSHA)
- Employee Retirement Income Security Act (ERISA)
- State Pregnancy Discrimination Laws
- IRC
- ADA, ADEAA
- ACA
- GINA
- Title VII
- State Leave Laws



Advantages and disadvantages



Advantages

- Flexibility and competitive practice
- Equitable time-off irrespective of health issues; improved morale
- Aligns with trend towards shorter vacations
- Attractive to younger workers
- Cost effective
 - Integrates with workforce planning
 - Simplified tracking – scheduled vs. unscheduled
- Reduces unscheduled absences
- Minimizes compliance risks medical / personal information
- Reduces administrative / compliance costs

Disadvantages

- Perceived take-away potentially fewer days but greater usage
- Slow accrual for new employees
- Tendency to consume all PTO
- Risk of presenteeism
- Paid sick time as part of PTO may need to be paid out as part of termination pay

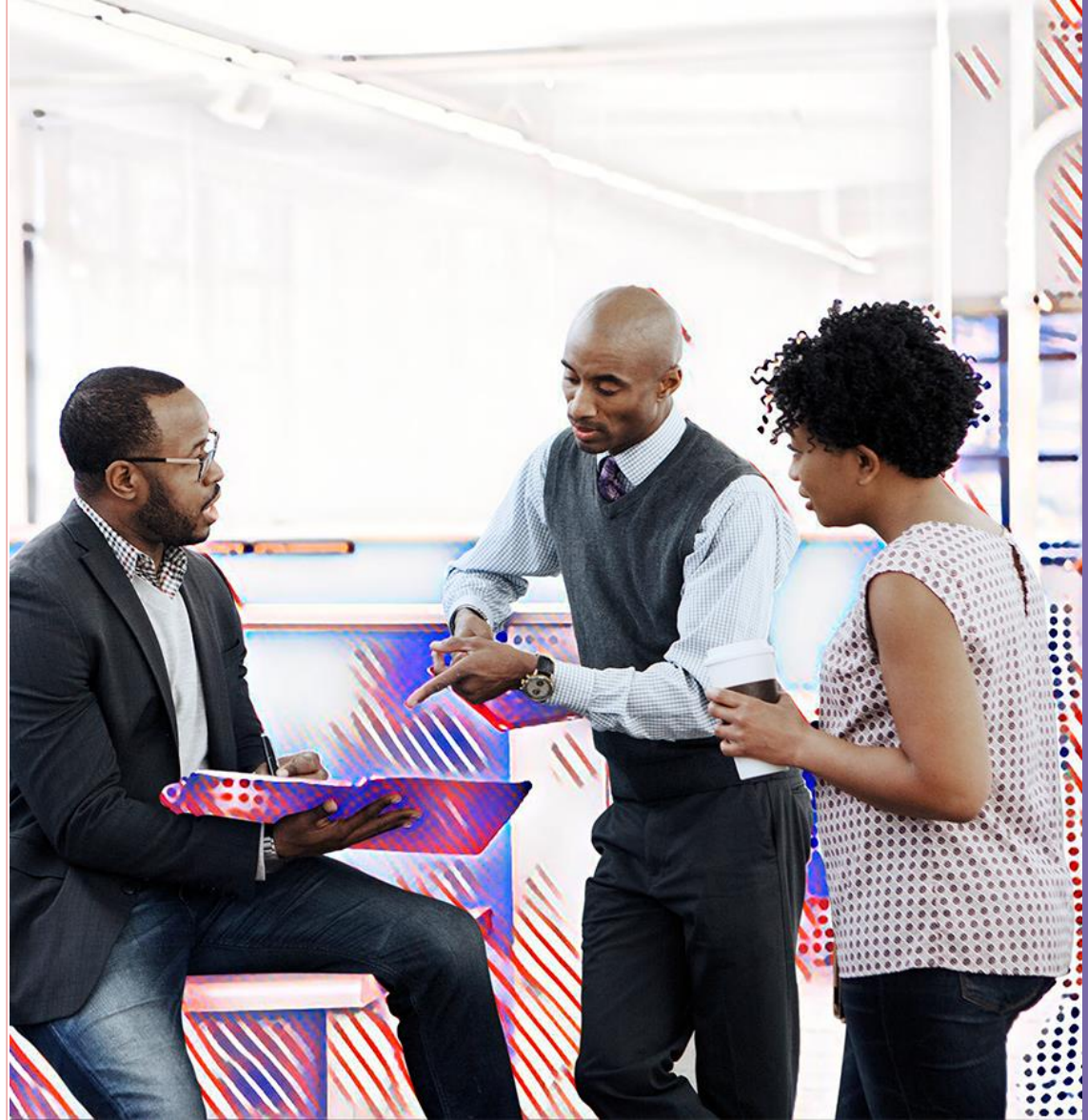
Best practices

- Identify what type of leave to offer and who will be eligible
- Create a time-off policy that coordinates and is compliant with Federal, State and Local laws
 - Include paid and unpaid components
 - Attendance consequences
- Clearly define eligibility and reasons for time-off as well as hours accrued and use of hours
- Include eligibility for FMLA benefits
- Include leave time for leaves qualifying under the ADA and ADAAA
- Promote greater workplace protections for nursing mothers
- Include Domestic Violence policies
- Conform to Pay Statement requirements



PTO best practices

- **Eligibility**
 - New hires and rehires
 - Probation / waiting period
 - Vacation buy / sell options
 - Perfect attendance
 - Comp time
- **Reasons for leave**
- **Accrual**
 - Schedule and maximum
 - Frontloading
- **Payment of unused paid time off**
 - Year end
 - Upon approval for LTD
 - Upon termination
 - Exceptions



PTO best practices continued



- **Procedures**
 - Borrowing
 - Carryover provision
 - Grandfather provision – used during transition
 - Exception – ex. Statutory Requirements for Paid Medical and Family Leaves etc.
- **Absence reporting for non-exempt vs. exempt employees**
 - Manager approval process for scheduled PTO
 - Attendance consequences for unscheduled PTO
 - Exceptions e.g. restrictions on PTO that may be used consecutively



PTO best practices (continued)

- **Coordination**
 - PTO drawdown provision for unpaid leave such as family and medical leave, sabbatical, or community service leave
 - Fund elimination period for short-term disability or long-term disability leave
- **Pay Statements** – e.g. California, Oregon, Minneapolis
- **Recordkeeping Requirements** – e.g. California, Oregon, Minneapolis





PTO Donation Models

Why Offer Employees The Ability To Donate PTO?

- PTO Donation programs allow employees to voluntarily donate time off
 - Enables contribution without providing cash out of pocket
 - Provides ability to reduce liability of having too much accrued but unused PTO on the books
- Concept -- not new, been in place for more than two decades
- Gaining popularity in recent years
 - Due to rise of simplified PTO models
 - National and natural disasters
 - Great for morale; builds comradery

CAUTION: Studies show that many Americans are notoriously bad at taking all of their vacation time



Prevalent Models



Leave Bank model --

employees anonymously donate PTO to a centralized account; where qualified beneficiaries can draw as the need arises

- Higher administrative costs
- Easier to track cumulative liability for PTO benefits
- Provides more protection to employees who lack close relationships at work

Leave Sharing model --

employees donate directly to particular co-workers in response to specific emergencies such as a serious illness or an injury

- Less expensive to administer
- Offers employees the satisfaction of helping a friend directly
- Requires proper management -
- fair and equitable, as may increase exposure to discrimination claims

Leave Donation to a Charitable Organization -

- Employees may donate the value of their unused or unwanted PTO to a charitable organization

- Higher administrative costs
- Donation may or may not be considered as taxable income that is subject to Federal and FICA withholding
- Employer may “gross up” employee’s pay

Tax Consequences of Employee Leave Donation Programs



Medical Emergencies

- Must meet requirements of a “qualified medical emergency leave” program and “bona fide employer-sponsored leave-sharing arrangement?”
- Amounts received are not taxable to the donor, considered “wages” of the recipient for purposes of FICA, FUTA, and income tax withholding
- Leave donor may not claim an expense, charitable contribution, or loss deduction for any leave donated
- Leave transferred must actually be used as medical leave by the recipient; program may not simply liquidate donated leave and pay cash to the recipient

Disaster Plan

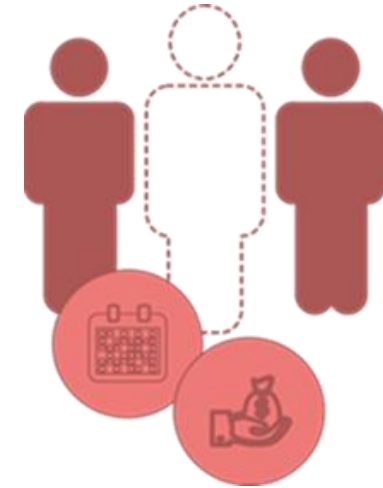
- Applicable to leave-sharing plans that are established for major disasters as declared by the President of the U.S.
- Amounts received are not taxable to the donor, considered “wages” of the recipient for purposes of FICA, FUTA, and income tax withholding
- Leave donor may not claim an expense, charitable contribution, or loss deduction for any leave donated
- Leave deposited for one major disaster may be used by only employees affected by that disaster
- Leave deposited in the bank that is not used by the end of the specified period must be returned to the donors

<https://www.irs.gov/uac/frequently-asked-questions-about-leave-donation-for-victims-of-hurricane-katrina>

<https://www.irs.gov/pub/irs-wd/0720017.pdf>

Key Considerations

- Does your corporation have enough cash on hand to pay out the PTO donated?
- Is there a limit to how much PTO each employee can donate?
- What is the time frame for when an employee can donate their PTO i.e., is it at a specific time of year, or is it a total amount that can be donated per fiscal or calendar year?
- Will the company designate the organization(s) an employee can support through their PTO or can the employee choose for themselves (as long as it fits within the 501(c)(3) guidelines)



Recommendation: Ensure employees have enough PTO to use should they need or want it; Example: some companies only allow employees to donate PTO if they have over two-weeks of accrued PTO

Steps to consider...

- Determine who is eligible to receive PTO donations – define criteria, length of time, application process etc.
- Establish conditions and limitations
- Use systematic approach to determine eligibility, enrollment and capture hours/days/dollars donated
- Define administrative/approval process – define when and how paid time off will transfer and who is responsible for tax consequences
- Consider additional costs including administrative costs and Company culture
- Conduct change management, communicate and educate all stakeholders including impact to pay and any tax consequences
- Establish governance to mitigate risks





Final takeaways

Best Practice -- Consider All Time Off / Leaves



- Paid Sick Leave
- Vacation or PTO
- Personal Leave
- Medical Leave
- Pregnancy Leave
- Accommodation Leave
- Short Term Disability (STD)
- Long Term Disability (LTD)
- Workers' Compensation
- Americans with Disabilities Act (ADA) -- Accommodation Leave
- Paid Parental Leave
- Paid Adoption Leave
- Other paid and unpaid leaves

Key takeaways

- Employers must evaluate different types of paid leave policies to pursue based on budget and culture
- PTO programs are on the rise as they provide equity as well as flexibility
- Define benefits package that helps attract and retain top talent, boost productivity and provide work-life balance
- Evaluate your current time-off programs and compliance risks
 - Is there a need for change? If yes, determine steps to start
 - ✓ Obtain buy-in from leadership team
 - ✓ Build a business case for change
 - ✓ Recommendation / Decision
 - ✓ Execution and Change Management
 - Stay tuned for regulatory updates

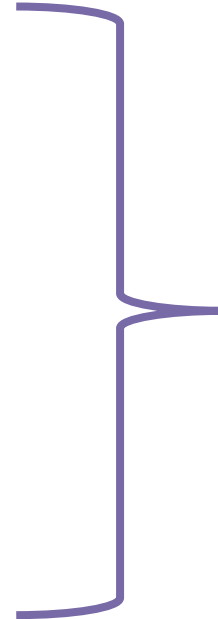
When in doubt, refer to your legal counsel



Aligning The Organization



Senior Executives
Line Management
Front Line Supervisor
Employees
Human Resources



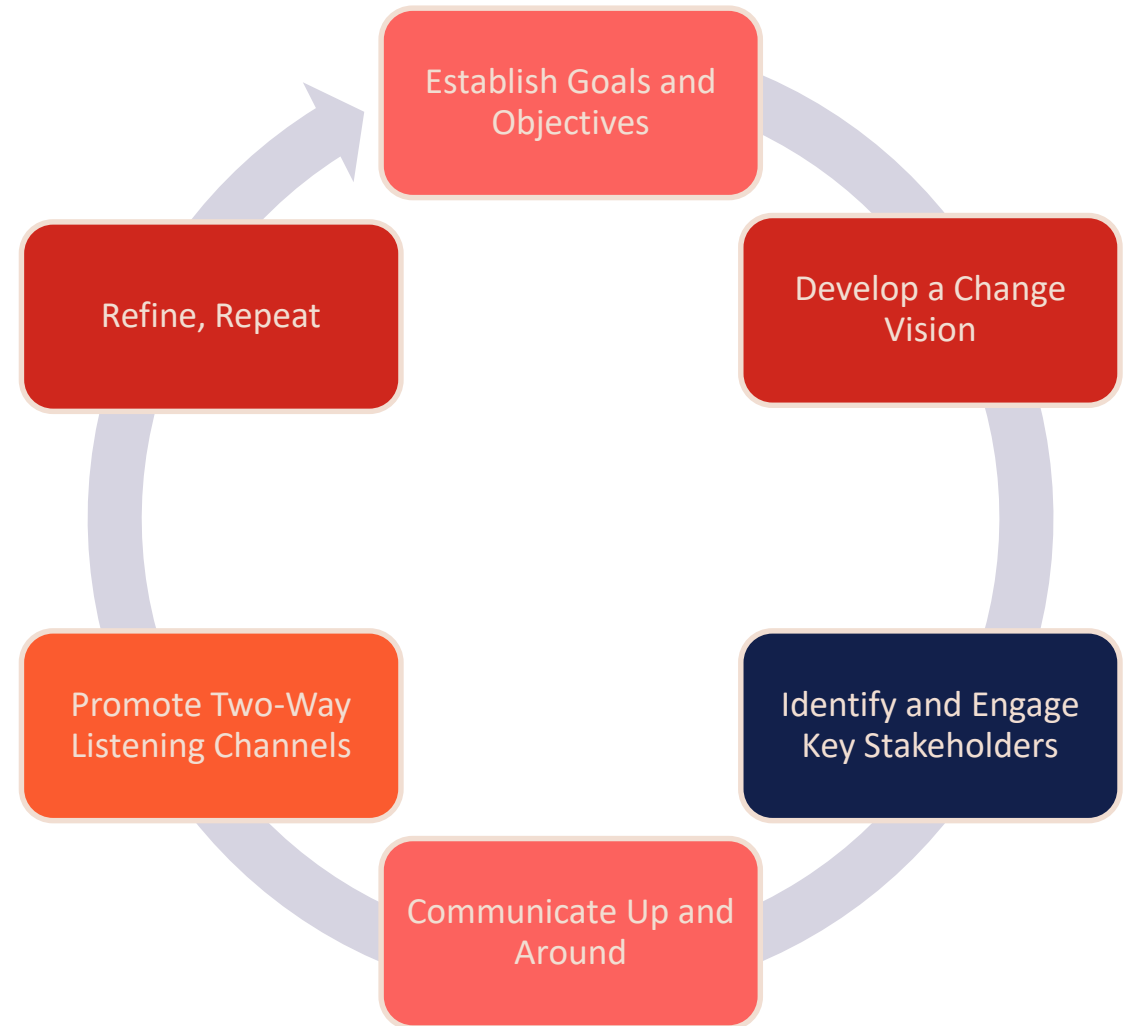
These are huge changes, therefore must be considered carefully; once a decision is made use a phased approach along with change management for rollout

Effective communications ties in with every aspect of your strategy; careful delineation of roles and responsibilities of HR, supervisor and an employee is critical

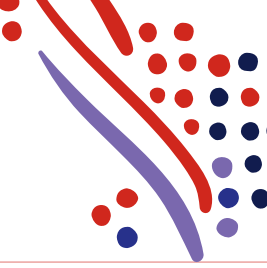
Change Management -- Next Steps



- Define Scope
- Governance Model
- Journey and Value
- Service and Operations
- How will you measure success?
- Future of Shared Services
- Change Management,
Communication and Education

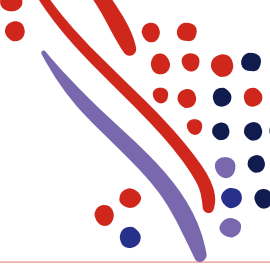


Tips for Supporting Organizational Change



- ✓ Establish a short- and long-term plan
- ✓ Prepare leaders and managers
- ✓ Create a team of change champions
- ✓ Explain “what’s in it for them”
- ✓ Keep it real – don’t sugarcoat
- ✓ Listen carefully, respond religiously
- ✓ Consider “unplugged” workers
- ✓ One-size-fits all doesn’t work
- ✓ Communications -- NO silver bullet

Change Management -- Next Steps



- What's changing and why?
- Who will this impact? Identify key stakeholders
- Consider “what’s in it for me”
- What will people need to know?
- What do they need to take action on?
- Are there potential barriers for rollout / adoption?
- Are there opportunities to tie this to broader organizational efforts?
- How do you communicate change today?
- What has worked / what doesn't
- What does success look like?
- How will we measure it?



Table Tent



Flier



Poster



Email



Brochure

Questions



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